

**From:** Chris Aikens [<mailto:chris@afap.org.au>]

**Sent:** Tuesday, 20 August 2019 3:15 PM

**To:** Chambers - Hatcher VP

**Cc:** Simon Lutton; Simon Miller; David Stephens; Andrew Molnar; Joanne Janes; Gabriel Miller

**Subject:** AM 2016/3 - Helicopter Aircrew Award - AFAP Submission for Conference of 26 Aug

Dear Associate,

Please find attached a cover letter and submission from the AFAP for the attention and consideration of the Vice President for the Conference scheduled for 26 August 2019, at which the AFAP will be attending in person.

Yours sincerely

**Chris Aikens**

Senior Industrial Officer



**AUSTRALIAN FEDERATION OF AIR PILOTS**

LEVEL 4, 132-136 ALBERT ROAD

SOUTH MELBOURNE VIC 3205

T 03 9928 5737 M 0411 068 525

[AFAP.ORG.AU](http://AFAP.ORG.AU)



Foundation Member of IFALPA

---

Message protected by MailGuard: e-mail anti-virus, anti-spam and content filtering.

<http://www.mailguard.com.au>



20 August 2019

Associate to Vice-President Hatcher  
Fair Work Commission  
Level 10, Terrace Tower  
80 William Street  
EAST SYDNEY NSW 2011

**By email:** *chambers.hatcher.vp@fwc.gov.au*

Dear Associate

**AM 2016/3 – Helicopter Aircrew Award**

Further to the Australian Federation of Air Pilots correspondence to the Commission dated 16 July 2019, please find attached a brief submission in preparation for the Conference scheduled for Monday 26 August, 2019.

Thank you for your consideration. Please contact Chris Aikens, Senior Industrial Officer, at [chris@afap.org.au](mailto:chris@afap.org.au) or on (03) 9928 5737 should you have any queries or wish to discuss these matters further.

Yours sincerely

Simon Lutton  
Executive Director

## IN THE FAIR WORK COMMISSION

**Matter No.:** AM2016/3

**Applicant:** AMWU

### **4 yearly review of modern awards – Proposed Helicopter Aircrew Award**

#### **A. Background**

1. Further to the Decision of the Fair Work Commission (the Commission) of 8 July 2019, the Australian Federation of Air Pilots (AFAP) advised the Commission, in a brief letter dated 16 July 2019, of our concerns arising from the proposed next steps in reviewing or establishing a proposed Helicopter Aircrew Award.
2. Specifically the Commission in their Decision of 8 July 2019, proposed the following:  
*“...in the first instance, for the presiding member of the bench to conduct a conference of the parties to identify what existing provisions of the Air Pilots Award might appropriately apply to helicopter aircrew and what modifications might be necessary in order for that award to cover helicopter aircrew in a way consistent with the modern awards objective. If no consensus can be reached, a further hearing will be listed to receive any further submissions which interested parties may wish to make concerning the possibility of coverage under the Air Pilots Award.”*
3. In preparation of an intended conference the AFAP thought it beneficial for all parties that our concerns as briefly highlighted in our letter of 16 July 2019 be expanded upon.
4. The concerns of the AFAP can be categorised as having three main tenets. They are the history and context of the current Air Pilots Award; the flawed key assumptions of the parties to this matter leading to conclusions being drawn from false premises ; and potential anomalies arising from the proposed course of action.
5. The AFAP fully understands that the Commission must ensure the Fair Work Act (the Act) is adhered to regarding S161(2) and that the requirement is to initially review whether a current award can be varied, prior to establishing a new modern award.

---

Lodged by:	AFAP	Telephone	(03) 9928 5737
Address for Service:	Level 4, 132 – 136 Albert Road	Fax:	(03) 9699 8199
	South Melbourne 3205	Email:	simon@afap.org.au

6. The purpose of the AFAP identifying our concerns is to seek in the first instance that the Commission review their proposed intention to modify Schedule E of the Air Pilots Award and then hold a further hearing should there be no consensus. Rather, the AFAP would respectfully seek that the proposed path be reversed and that prior to identifying potential variations to the Air Pilots Award that the parties consider in more depth if the Air Pilots Award is the appropriate vehicle in this exercise.
7. The AFAP can briefly outline the three key areas of concern as follows.

**B. The Air Pilots Award**

8. The Air Pilots Award has both in its current Modern Award form and within other instruments pre-dating the Modern Award, been accepted by the Commission, the AFAP, and industry employers as necessitating being of an occupational nature.
9. During the establishment of Modern Awards the Full Bench stated the following in their Statement of 22 May 2009:

*“Because air pilots are a discrete type of employment it is not convenient to combine terms and conditions with those applying to other categories of employment under one award. The parties to existing awards have been involved in extensive consultations on the terms of a single award for pilots.”*
10. In their submission of 18 March 2009, Qantas stated:

*“...pilots are a distinct occupational group with unique and complex working arrangements mandating a separate occupational award. All relevant stakeholders have proposed a separate occupational award for pilots.”*
11. On 6 March 2009, the Ai Group submitted:

*“...that there should be a separate occupational award for pilots. The industrial coverage of pilots has historically been distinct and the terms and conditions of pilots are vastly different to the terms and conditions of other industry participants.”*
12. The AFAP’s submission at that time, which is still appropriate today, was that:

*“Historically, pilots have been recognised and treated by the Australian Industrial Relations Commission, and its predecessors, and other jurisdictions as separate and distinct entities, as if it were an ‘occupational industry’. For*

*example, in 1968 the Flight Crew Officers Industrial Tribunal was established to specifically deal with industrial affairs of Australian pilots.*

*Whilst this Award modernisation process and outcomes are not predicated by history it would be remiss not to recognise the specific demands of the profession of air pilot. The profession is unique, has been recognised as such and therefore its nature requires its continued recognition through an occupational award.”*

13. In March 2009, the Australian and International Pilots Association stated:

*“... it is important to note that the occupation of a pilot is sui generis and has been considered as such by the AIRC (and its predecessors) and successive governments since at least the late 1960’s.”*

14. Such a unity of positions across all parties is a clear acceptance of the unique training, duties, environment, conditions of employment and regulatory oversight that have evolved for pilots over a lengthy period of time. The inclusion of a separate occupational group, which is unaligned historically, and fundamentally different in all major aspects of their relative duties will only complicate and confuse such a unified understanding and application regarding the Air Pilots Award and undermine the integrity of the decision underlying the FWC (and predecessors) having long determined the need for an occupational award covering pilots.

15. The establishment of modern awards (and their antecedents) for employees working within the body of an aircraft has clearly recognised the ongoing difficulties of grouping such disparate employees. To date those working within the body of aircraft consequently have retained an occupational award status. An example of that is the *Aircraft Cabin Crew Award 2010*. The AFAP contends that the current proposed approach to potentially depart from the occupational approach within the aviation industry would negatively impact the accepted and easy to understand approach that has been developed by all parties in accordance with S134(g) of the Act.

### **C. Flawed Assumptions/ Errors**

16. The AFAP has real concerns in the accuracy of understandings detailed within the Decision of 8 July 2019. Comments regarding the similarity of duties, conditions, training and regulatory parameters existing between helicopter aircrew and helicopter pilots infer (wrongly) that many similar if not identical arrangements and conditions exist between the groups.

17. The AFAP can provide expert evidence from Helicopter Pilots and other aviation industry specialists that will detail the extent to which the two roles differ and differ significantly. The following extracts within the 8 July Decision, detailing understandings from the AMWU, are some of the areas in which the AFAP has most concerns:

*“The AMWU understands that the operational hours of work for pilots and aircrew operating on the same helicopter are structured in the same way.*

*Aircrew have the same fatigue risk management standards as pilots.*

*Aircrew have the same level of training and duty hours as pilots.*

*Flight and duty hours are the same as the pilots. The duty hours change depending on the job role. However the duty hours mirror and are identical to the pilots. Duty is on call ready to fly. Flying time is separate. Both have restrictions and accrue fatigue.*

*If Aircrew and Pilots are on different rosters, then the Helicopter would need to land every time that any Aircrew or Pilots had flown the maximum number of hours or were due for rest. Rostering Aircrew and Pilots on the same rosters alleviates this problem and therefore is the main way in which most Aircrew and Pilots are rostered.*

*These parameters mean that the rostering would be identical.*

*At many bases, the pilots and Aircrew will be flying together with a fixed crew of Pilot, Aircrew and Rescue crew attached to a Helicopter.*

*In surveillance operations, there may be some differing rostering arrangements. Surveillance Aircrew may not necessarily fly with the same pilots. However, the same roles exist in every flight and the same parameters for duty hours applies.”*

18. If required the provision of expert evidence will ensure a greater clarity, not only into the current understandings that are flawed, but also to provide a greater understanding and examination of the differences that exist between the two occupational groups undertaking very distinct roles within the same aircraft. In essence the AFAP contends that the training, checking, medical and legal responsibilities only apply to pilots. Furthermore, other work arrangements regarding flight duties and fatigue are specific to pilots. Where aircrew are at times handled in a similar fashion it is only because it remains convenient for an employer to do so.

19. During the Modern Award submissions Qantas commented on this very fact in relation to flight attendants:

*“Flight attendants also have unique and complex working arrangements. Although they are also flying positions, the hours of work and terms and conditions are quite different from those of pilots, in particular because hours of work for flight attendants are not determined by CASA regulation. Accordingly, a separate occupational award is required for these distinct occupational groups.”*

20. The clear similarities that exist with the other main occupational award groups regarding Medical Practitioners and Nurses is also relevant, instructive and pertinent. Working in the same environment, often liaising closely and working under the same professional registering body, these two occupations have clearly distinct training and duties/roles and there is no inherent means of career/industry progression for an employee from either occupation to the other. The same situation exists for Pilots and Aircrew.

#### **D. Anomalies**

21. It is noted that in their Decision of 8 July 2019, the Commission, in explaining why a variation of the Aircraft Cabin Crew Award to include helicopter aircrew was not appropriate, indicated that what would be likely to transpire is the creation of ‘an award within an award’. The AFAP believes that exactly the same outcome would occur should the Air Pilots Award be used in the alternative.

22. Indeed, in the original formulation of the Air Pilots Award the Commission made specific reference to many of the unique elements not normally found in Modern Awards:

*“The provisions include highly prescriptive clauses which we would expect belong more in enterprise agreements rather than a minimum safety net award. Nevertheless we have decided to include agreed provisions regarding additions to salary, Civil Aviation Safety Authority (CASA) drug testing, suspension of employees, commission payments on termination of employment, splitting of meals and accommodation provisions, pilot indemnity and some other corrections and minor variations sought by the parties.”*

23. Yet, effectively contrary to those findings and decision, in the Decision of 8 July 2019, the Commission detailed specific conditions of the proposed Helicopter Aircrew Award that they did not see as suitable for a Modern Award. A review of those very conditions highlights that some are basic elements of the Air Pilots Award. Consequently, recognising the extensively prescriptive nature of the Air Pilots Award, the likely outcome of the current proposal would be the need to isolate the conditions enjoyed by pilots, from those the Commission would deem suitable for inclusion in a modern Award for helicopter aircrew. This would likely culminate in the need to create an 'award within an award'.
24. Evident also to the AFAP is the problems associated with the scope of the AMWU's proposed Award (or potentially a schedule to another Award). There are other classifications of employees who operate from the rear of aircraft, are employed in Australia to undertake a range of different roles and duties within emergency service operations, unrelated to Aircrewman and who are not only employed on helicopters. As such these classifications would be specifically excluded by the currently proposed classifications within the Award from the AMWU. In particular there are, for example, employees classified as Observers working in various fixed wing (aeroplane) operations, including in surveillance and search and rescue roles. Without an adjustment to the intended scope, it would eventuate that certain classifications will end up covered by differing awards, potentially ranging from the Miscellaneous Award, a schedule to a different current award, or under their own specific award.
25. This arbitrary scope of the aircrew employees to be covered by the proposed Award is a further reason that they should not be considered for inclusion in a schedule of the Air Pilots Award. The occupational grouping of all pilots has been clearly delineated many decades ago, culminating in pilot specific Awards in the past, and a current single modern Award. In comparison, the full extent of comparable roles is not even captured in the current proposal and as such has not been contemplated within these proceedings and are beyond the scope of the decision or subsequent decision, and therefore award coverage. As such, the inclusion of only a select group of aircrew within the Air Pilots Award, when other classifications would be excluded, runs directly contrary to the long established rationale of the Air Pilots Award itself. Rather than covering the entire cohort of a distinct occupationally based group of workers, it would then cover one complete occupational group, and an incomplete portion of another.



26. This brief submission hopefully provides greater clarity to the AFAP's concerns regarding the Commission's current approach to the AMWU's application for a Helicopter Aircrew Award. As previously mentioned, the AFAP does seek in the first instance that the Commission review in more detail the appropriateness of using the Air Pilots Award to accommodate helicopter aircrew.

**Date:** 20 August 2019

Chris Aikens  
Senior Industrial Officer, AFAP