



# DECISION

*Fair Work Act 2009*  
s.156—4 yearly review of modern awards

## **4 yearly review of modern awards—Proposed Helicopter Aircrew Award** (AM2016/3)

Airline Operations

VICE PRESIDENT HATCHER  
DEPUTY PRESIDENT HAMILTON  
COMMISSIONER SIMPSON

SYDNEY, 28 FEBRUARY 2022

*Proposed Helicopter Aircrew Award – amendments to Air Pilots Award 2020 – final variation determination issued.*

[1] In a decision<sup>1</sup> issued on 15 February 2022 (February 2022 decision), we finalised the amendments to the *Air Pilots Award 2020* (Pilots Award) arising from the Australian Manufacturing Workers’ Union’s (AMWU) application, as part of the 4 yearly review of modern awards, to create a new modern award for helicopter aircrew.

[2] The background to this matter, including the outstanding issues identified in a conference on 15 October 2021<sup>2</sup> and other matters raised, is set out in the February 2022 decision.

[3] We published a draft determination reflecting the proposed variations to the Pilots Award in conjunction with the February 2022 decision. We expressed a *provisional* view that the variation of the Pilots Award in accordance with the draft determination is necessary to accommodate coverage of helicopter aircrew within the Pilots Award and that the variations are necessary to achieve the modern awards objective.<sup>3</sup> We further published a draft award, marked up in accordance with the proposed variations to assist the parties.

[4] Interested parties were provided 10 days from the date of the February 2022 decision to file any submissions in relation to the *provisional* view before the variations to the Pilots Award were finalised.

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<sup>1</sup> [2022] FWCFB 14.

<sup>2</sup> Transcript of conference, 15 October 2021.

<sup>3</sup> *Fair Work Act 2009*, s 134.

[5] Submissions were received from Babcock Mission Critical Services Australasia Pty Ltd (Babcock), Lloyd Helicopters Pty Ltd (CHC)<sup>4</sup> and the AMWU<sup>5</sup> on 24 February 2022.

[6] Babcock and CHC made a joint submission in response to the *provisional* view expressed by the Full Bench in the February 2022 decision. Babcock and CHC submit that they agree with the *provisional* view set out in the February 2022 decision, subject to the drafting of clause E.3.6 in the draft determination, which lists all-purpose allowances in respect of helicopter aircrew. Babcock and CHC submit that clause E.3.6 in the draft determination should be changed to reflect the proposed clause of the AMWU contained in its 12 November 2021 submission and agreed to by Babcock and CHC.

[7] Babcock and CHC additionally make the following observations of the translation of the draft determination into the Pilots Award (paragraph references are to the draft determination):

- Paragraph 4: the former definition of “home base (pilots employed subject to Schedule D...)” has not been deleted.
- Paragraph 5: the change from “pilot” to “employee” has not been made.
- Paragraph 6: the change from “pilot” to “employee” has not been made.
- Paragraph 7: the words “or helicopter aircrewperson” after the word “pilot” appearing in the definition of “search and rescue” have not been inserted.
- Paragraph 9: the change from “pilot” to “employee” has not been made.
- Paragraph 84: the change from “pilot” to “employee” has not been made in one instance in the first line of clause 19.3.
- There is a numbering issue in clause E.4.2. Subclause (a) is “tools of trade”. From part (iv) onward, the identified allowances are not subordinate to the Tools of Trade allowance and should be renumbered as (b) to (h), commencing from (b) Loss of baggage allowance.

[8] Babcock and CHC have no other concerns with the draft determination.

[9] The AMWU agrees with the *provisional* view set out by the Full Bench in the February 2022 decision and submits that the Pilots Award should be varied on the bases set out in the draft determination, subject to the following changes to the draft determination. The AMWU agrees with the submission of Babcock and CHC relating to the all-purpose allowances set out at clause E.3.6.

[10] The AMWU submits that there appears to be an inadvertent clause numbering error in clause E.4.2. The AMWU submits that the sub-clause numbering should begin at (a), with the remaining sub-clauses in E.4.2 being amended as (b) to (g) accordingly.

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<sup>4</sup> Submission by Babcock and CHC dated 24 February 2022.

<sup>5</sup> Submission by AMWU dated 24 February 2022.

[11] As submitted by Babcock and CHC, the AMWU also submit that there are discrepancies between the draft award and the amendments proposed in the draft determination.

[12] The AMWU submits that it has identified further issues with the draft award in addition to those identified by Babcock and CHC, but has not listed these in its submissions on the basis that the amendments as set out in the draft determination overtake those set out in the draft award, and that it is the draft determination that will be used to facilitate the necessary variations to the Pilots Award.<sup>6</sup>

### **Consideration**

[13] After considering the views of the parties, we confirm our *provisional view* that the variation of the Pilots Award in accordance with the draft determination is necessary to accommodate coverage of helicopter aircrew within the Pilots Award and that the variations are necessary to achieve the modern awards objective in s 134(1) of the *Fair Work Act 2009* (FW Act). We are also satisfied that, to the extent that the new Schedule E will prescribe minimum wages for helicopter aircrew, the variation will meet the minimum wages objective in s 284(1) of the FW Act.

[14] We agree with the submissions of the parties that clause E.3.6 of the draft determination published on 15 February 2022 did not reflect the agreed position of the parties and we will amend the variation determination as proposed by the parties.

[15] We agree with the submission of the AMWU that there is a clause numbering error at item 141 of the draft determination relating to clause E.4.2, and that the sub-clause numbering should begin with subclause (a), with the remaining sub-clauses in E.4.2 being amended as (b) to (g) accordingly. We will amend the variation determination in this regard.

[16] The draft award prepared by the Commission and published on 15 February 2022 was provided as an aide for the parties but, as identified by the AMWU, it is the draft determination which sets out the variations proposed to be made by the Commission. The final varied award will be published with the variations as set out in the variation determination. We are not required to make a determination regarding the errors identified in the draft award, although we thank the parties for bringing those to our attention.

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<sup>6</sup> Submission by AMWU dated 24 February 2022 at paragraph 14.

[17] A final variation determination will be published with this decision and will operate from 7 March 2022.



VICE PRESIDENT

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<PR738767>