

Our ref: VR\ANWY\1000 059 729  
Partner: Vince Rogers  
Direct line: +61 7 3259 7285  
Email: vince.rogers@ashurst.com  
Contact: Andrew Wydmanski, Senior Associate  
Direct line: +61 7 3259 7030  
Email: andrew.wydmanski@ashurst.com

Ashurst Australia  
Level 38, Riverside Centre  
123 Eagle Street  
Brisbane QLD 4000  
Australia

GPO Box 9938  
Brisbane QLD 4001  
Australia

Tel +61 7 3259 7000  
Fax +61 7 3259 7111  
DX 388 Brisbane  
www.ashurst.com

16 January 2020

Associate to Vice-President Hatcher  
Fair Work Commission  
**By email: Chambers.Hatcher.VP@fwc.gov.au**



Dear Associate

**AM2016/3: Proposed Helicopter Aircrew Award/variations to the Air Pilots Award – Inadvertent errors in submitted drafts**

We advise that the terms of the letter have been agreed to by the AMWU and reflect the joint position of Babcock, CHC and the AMWU.

The AMWU, Babcock and CHC wish to draw the Commission's attention to inadvertent errors in the proposed draft variations to the Air Pilots Award that were submitted both by the AMWU and by Babcock and CHC on 20 December 2019.

**Travel allowances**

The most significant error concerns travel allowances for Helicopter Aircrew, and if it is not corrected it will result in a double payment of certain entitlements for employees working away from home base.

The starting point was an AMWU draft variation to the Air Pilots Award sent to employers for comment in mid-December. Schedule F of that draft did not follow exactly the same format of the existing Schedule E of the Air Pilots Award 2010. Unfortunately, Babcock and CHC did not pick up the error when it reviewed the AMWU's draft award and made its own modifications and mark-ups to the draft Award.

The error can be demonstrated as follows.

In both the AMWU and the Babcock/CHC drafts of the Air Pilots Award (both filed in the Commission on 20 December 2019), Schedule E (which relates to Helicopter Pilots) remains as it is in the existing Air Pilots Award 2010. Under Schedule E there are **different** travel allowance arrangements which apply depending on whether a pilot is employed on-shore or offshore as follows:

<b>On shore</b>	<b>Offshore</b>
E.5.4 - overnight allowance	E.6.6.(c) – Daily Travel Allowance per hour away
E.5.6(b)(ii) – meal allowances	

Schedule F (Helicopter Aircrew) of the AMWU and the Babcock/CHC drafts of the Air Pilots Award filed in the Commission on 20 December 2019 both contain the following.

<b>AMWU draft</b>	<b>Babcock/CHC draft</b>
On shore: F.4.5(e) – overnight allowance	On shore: F.4.3(b) – overnight allowance
All aircrew : F.5.8 – Daily Travel Allowance per hour away F.5.9(b)(ii) - meal allowances	All aircrew: F.5.8 – Daily Travel Allowance per hour away F.5.9(b)(ii) – meal allowances

The payment of the Daily Travel Allowance is intended to be instead of a separate payment of a meal allowance. Employees should get **either** an overnight allowance and meal allowances **or** a Daily Travel Allowance, not both. However, the proposed meal allowance and Daily Travel Allowance clauses in the draft Awards filed on 20 December 2019 are not expressed to be mutually exclusive.

We note that the last version of the proposed [Helicopter Aircrew Award](#) tabled at the Fair Work Commission hearing on 20 July 2018 recognised the distinction. It contained:

1. Overnight allowance (clause 19.8) and meal allowance (cl 19.12) for all aircrew in Australia; or
2. Meals and incidentals per ATO for overseas (cl 19.9), with an associated express exclusion of 19.8 and 19.12 in that circumstance.

We also note that the draft Air Pilots Award filed in the Commission on 8 January 2020 on behalf of Northern NSW Rescue Helicopter Service Limited, Australian Business Industrial and the NSW Business Chamber has by mark-up identified and sought to correct this error – although some of the cross referencing in the clauses need to be rectified. Its proposal, like Schedule E for pilots, is (in summary):

<b>On shore</b>	<b>Offshore</b>
F.4.4(e) - overnight allowance	F.5.5.(c) - Daily Travel Allowance per hour away
F.5.6(b)(ii) - meal allowances	

Notwithstanding that there are other differences between the parties about how hours of work and other conditions ought to apply between Offshore and Onshore employees, it was never intended that employees would be entitled to be paid both a meal allowance as well as a Daily Travel Allowance.

### **Cross referencing and typographical errors**

The review of this issue has uncovered other typographical errors in the AMWU draft (for example incorrect references to 'pilots' in schedule F and incorrect cross references in F.4.5(c); F.4.6(d); F.5.6(d) and F.5.9(b)(i)). Many of these were corrected and marked up in the Babcock/CHC proposed draft. These do not go to substantive entitlements but ultimately will need to be corrected at the next stage.

AM2016/3 Proposed Helicopter Aircrew Award

Babcock, CHC and the AMWU ask the Fair Work Commission take this into account when assessing the proposed variations, and to permit a correction of these errors at a later date (if necessary) and in any subsequent drafts of the Award that may be issued.

Yours sincerely

A handwritten signature in blue ink that reads "Ashurst Australia".

**Vince Rogers**

Partner

T: +61 7 3259 7285

E: vince.rogers@ashurst.com

**Andrew Wydmanski**

Senior Associate

T: +61 7 3259 7030

E: andrew.wydmanski@ashurst.com