

IN THE FAIR WORK COMMISSION

**AM2016/3 – Proposed Helicopter Aircrew Award
Four yearly review of modern awards**

Submission by Cobham SAR Services Pty Ltd

1. This submission is made on behalf of Cobham SAR Services Pty Ltd (**Cobham SAR**), in accordance with the directions issued by the Fair Work Commission (**FWC**) on 1 October 2019 in respect of the proposed Helicopter Aircrew Award.
2. This submission is in response to the submission and witness statements filed by the Australian Federation of Air Pilots (**AFAP**) on 3 October 2018 concerning the provisional view of the Full Bench in paragraphs [69]-[71] of [2019] FWCFB 4748 (**the July 2019 Decision**) that "...it may be appropriate for the Air Pilots Award to cover helicopter aircrew..."
3. Cobham SAR provides search and rescue operations on long term contracts to the Australian government.
4. A related entity, Surveillance Australia Pty Ltd T/A Cobham Aviation Services - Special Mission (**CAS-SM**), provides surveillance operations on long term contracts to the Australian government.
5. In these submissions, Cobham SAR and CAS-SM will be referenced collectively as "**Cobham**" unless separately identified.
6. Cobham supports the AFAP's contention that the Air Pilots Award should remain an occupational award exclusively covering pilots.
7. The AMWU application is for a modern award to cover the work of helicopter aircrew who are not pilots.
8. It is evident throughout the July Decision that the Full Bench is only concerned in these proceedings with potential inclusion of helicopter aircrew in the Air Pilots Award. There has been no consideration of other occupations performing similar work in fixed wing aircraft.
9. At paragraph 69 of the July Decision, the Full Bench stated:

...Helicopter pilots are covered by this award, and Schedule E, Sector Specific Conditions – Helicopter Operations contains conditions specifically applicable to various types of helicopter operations...
10. It was confirmed at the conference convened by the FWC on 26 August 2019 that the Full Bench intends at this time to only continue to consider variations of the Air Pilots Award to expand coverage to include helicopter-based aircrew, potentially linked to Schedule E of the Air Pilots Award - *Sector Specific Conditions—Helicopter Operations*.
11. Cobham does not employ helicopter aircrew in any role. As such it has not been actively involved in these proceedings until comparatively recently.
12. Nevertheless, Cobham and its related entities are covered by the Air Pilots Award in relation to all their fixed wing operations, and directly relevant to these proceedings, its Search and Rescue operations.
13. At paragraph 14 of its Submission, the AFAP is correct that Cobham employs Observers and Mission Coordinators.

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14. The role definitions proposed by AMWU in its draft award tabled on 20 July 2018 include the following:
 - 17.1 (b) Surveillance Aircrewperson - A member of the helicopter flight crew other than a pilot who is qualified and proficient in the operation of equipment and techniques necessary to be despatched on surveillance missions.
 - 17.1.(d) Surveillance Mission Coordinator – A member of the helicopter flight crew other than a pilot who is qualified and proficient in the operation of equipment and techniques necessary to be despatched as the Coordinator of surveillance missions.
15. Cobham engages employees in substantially similar if not identical roles.
16. Cobham SAR employees are currently covered by the [Cobham SAR Services Pilot and Aircrew Enterprise Agreement 2015 \(SAR EA\)](#) (AG2015/5900).
17. The SAR EA covers roles described as follows:
 - 1.2.2 "Aircrew" means a person charged with duties essential to the mission operation of an aircraft in flight and includes both Pilot(s) and Observer(s) qualified to carry out search, surveillance, supply drop, cabin safety and passenger duties as required.
 - 1.2.3 "Aircraft Mission Coordinator" means the senior Observer position on the aircraft and has primary responsibility for the operation of mission systems. The role/classification has overall responsibility for the achievement of the mission objectives and oversees the Observer roles.
 - 1.2.43 "Observer" means an Employee who is qualified to operate mission systems and carries out search, surveillance, supply drop, cabin safety and passenger duties as required.
18. CAS-SM employees are currently covered by the [Surveillance Australia Pilot and Observer Enterprise Agreement 2016 \(CAS-SM EA\)](#) (AG2017/3215).
19. The CAS-SM EA covers roles described as follows:
 - 1.2.41 "Observer" means an Employee who carries out aerial surveillance duties.
 - 1.2.27 "Electronic Observer" means an Observer who has undergone the required training, achieved competency and who acts in the capacity of an Electronic Observer on an aircraft so equipped and tasked.
 - 1.2.28 "Electronic Mission Coordinator" means the senior position within the Observer stream. The role/classification is effectively the 'Senior Electronic Observer', having the overall responsibility for the achievement of the mission objectives and oversees the Electronic Observer (EO) role.
20. Whilst as a matter of convenience and operational synergy Cobham has historically negotiated an enterprise agreement to include both pilot and non-pilot aircrew in the same agreement, different safety nets apply as the minimum entitlement against which terms and conditions must be assessed under the Better Off Overall Test.
21. Historically, the AFAP has been a bargaining representative for the pilots, and the Transport Workers Union has been a bargaining representative for the non-pilot aircrew.
22. As noted by the AFAP at paragraph 16 of its Submission, if the Full Bench expands the coverage of the Air Pilots Award to include helicopter aircrew, the exclusion of aircrew with substantially the same duties working in various fixed wing operations could result in employees employed as aircrew being covered by different awards.
23. Cobham agrees with the AFAP submission at paragraph 31 that if helicopter aircrew are included in the coverage of the Air Pilots Award it would be reasonable to predict that fixed wing aircrew will also seek to review their respective work value with helicopter aircrew, as well as with pilots.
24. Cobham asks that the Full Bench consider that the proposed variation could provide impetus and potentially a precedent for future inclusion of fixed wing aircrew in the Air Pilots Award.
25. The subject of potentially confusing award coverage has already been raised in these proceedings in submissions by:

25.1. the Health Services Union on 25 January 2018; and

25.2. United Voice on 18 February 2018.

26. Although Cobham does not engage any employees performing the specific duties that were the subject of those submissions, they remain important to the issues of ensuring the modern awards objective of the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards [s 134(1)(g)].

Signed:



Christopher Ridings
5 November 2019

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Witness Statement of Russell Dyer


1. My name is Russell Peter Dyer.
2. I am employed by Surveillance Australia Pty Ltd T/A Cobham Aviation Services Special Mission (**Cobham SM**) in the role of Vice President Vice President Special Mission.
3. 'Special Mission' includes the functions of air surveillance and search and rescue operations on behalf of the Australian Government.
4. My role includes responsibility for the search and rescue operations of Cobham SAR and the related entity Cobham SAR Services Pty Ltd (Cobham SAR).
5. Cobham Special Mission employs flight crew to fulfil operations under its contracts. Currently there are over 200 pilot and non-pilot crew employed on such operations. Approximately 100 are non pilot aircrew.
6. 'Non pilot Aircrew' includes the roles of Aircraft Mission Coordinator, Visual Observer, Electronic Observer, Electronic Mission Coordinator and Drop Master on specially-equipped fixed wing aircraft.
7. Cobham SAR and Cobham SM do not currently employ operational crew in helicopter operations.
8. My role includes responsibility for enterprise bargaining agreements.
9. Cobham SAR employees are currently covered by the [Cobham SAR Services Pilot and Aircrew Enterprise Agreement 2015 \(SAR EA\)](#) (AG2015/5900). The Cobham SM employees are currently covered by the [Surveillance Australia Pilot and Observer Enterprise Agreement 2016 \(the EA\)](#) (AG2017/3215).
10. I have reviewed the proposed position descriptions for the following roles under the proposed *Helicopter Aircrew Award 2018* tabled by the AMWU at the Full Bench Hearing on 20 July 2018:
 - 17.1 (b) Surveillance Aircrewperson - A member of the helicopter flight crew other than a pilot who is qualified and proficient in the operation of equipment and techniques necessary to be despatched on surveillance missions.
 - 17.1.(d) Surveillance Mission Coordinator – A member of the helicopter flight crew other than a pilot who is qualified and proficient in the operation of equipment and techniques necessary to be despatched as the Coordinator of surveillance missions.
11. From those proposed definitions, and from my knowledge of the industry and the types of surveillance contracts operated in Australia, I am aware that those roles are substantially similar, if not identical, to the roles performed by employees classified in our enterprise agreements as Visual Observer, Electronic Observer and Electronic Mission Coordinator.
12. The equipment used to perform the surveillance is in some cases identical and determined by the client.
13. Cobham has historically negotiated enterprise agreements to include both pilot and non-pilot aircrew in the same agreement, for reasons of internal efficiency in getting historically complex and protracted

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negotiations done simultaneously. However, different safety nets apply as the minimum entitlement against which an enterprise agreement is bargained.

14. At Cobham SAR, all parties have been clear throughout negotiations that the Air Pilots Award covers all pilots and is an occupational award that only covers pilots and that it is not the safety net instrument for the Better Off Overall Test for aircrew.
15. Cobham's contracts are long term contracts. I am concerned that if the Full Bench expands the coverage of the Air Pilots Award to include helicopter aircrew, the fixed wing aircrew will seek to be covered by the Air Pilots award as well. I believe this could drive a considerable increase in costs of employment into long term contracts which would not be recoverable under the terms of those contracts and may therefore materially affect the viability of the business.

The above is true and correct to the best of my knowledge and belief.

Signed: 
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Russell Peter Dyer

Date: 05/11/2019
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