

**Submissions of the "Automotive, Food, Metals, Engineering,
Printing and Kindred Industries Union" known as the Australian
Manufacturing Workers' Union (AMWU)**

AM2016/3

COVER SHEET

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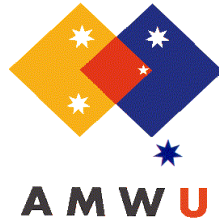
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Fair Work Act 2009

FAIR WORK COMMISSION

AM2016/3 – Proposed Helicopter Award

Submissions of the "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU)

Introduction

1. This submission is made in accordance with the directions issued by Vice President Hatcher on 10 December 2018.¹
2. This submission will respond to issues raised in the submission of Australian Business Lawyers and Advisors (**ABLA**) which was filed on behalf of Northern NSW Rescue Helicopter Service Limited, Australian Business Industrial and the NSW Business Chamber Ltd.

Response to Submissions of ABLA

3. ABLA raises various issues in relation to the AMWU's application for a new modern award covering helicopter aircrew as follows:
 - Threshold issues
 - Classifications
 - Minimum Wages
 - Allowances
 - Accident Pay
 - Payment of Wages
 - Ordinary Hours of work and rostering
 - Overtime days worked
 - Overtime hours worked
 - Time off instead of payment for overtime
4. In response to the Submission of ABLA, the AMWU continues to rely on its material filed to date, including notably, (but not necessarily limited to) the:
 - Submissions of the AMWU filed on 20 September 2017 (**September 2017 Submissions**)
 - Submissions of the AMWU filed on 24 January 2018 (**January 2018**)

¹ [Directions Issued 10 December 2018.](#)

Submission)

- Submissions of the AMWU filed on 27 April 2018 (**April 2018 Submissions**)
- Submissions made and documents handed up during the hearing on 20 July 2018.
- Submissions of the AMWU filed on 20 August 2018 (**August 2018 Submissions**).

5. The AMWU observes that at times, it appears that ABLA is not responding to the latest draft award provided by the AMWU, which is the July 2018 draft handed up during the hearing on 20 July 2018 (**the Draft Award**).²

Threshold Issues

6. The ABLA submission raises a concern with the proposed coverage clause, noting:

“the current proposed draft reflects a rescue helicopter operational model that is not standard across the industry;

there are other employers who do not perform rescue helicopter operations who would be caught by the new award, for example, private non-rescue operators that utilise an aircrewperson to perform “left front seat operations.”³

and

“It is not conceded by our clients that the Draft Award would not (or alternatively should not) cover helicopter aircrew that are not engaged by rescue helicopter services.”⁴

7. In apparent support of their submission ABLA point out that the coverage of non-rescue operators was put to the AMWU during the hearing on 20 July 2019.⁵
8. The questions that was specifically in relation to tourism and transport,⁶ and in the agriculture sector.⁷ The AMWU submitted that it in relation to agriculture, it is not

² [AMWU Draft Helicopter Award July 2018](#).

³ [Submission of Australian Business Lawyers & Advisors of 24 December 2018](#) [3.3].

⁴ Ibid [3.4].

⁵ Ibid.

⁶ [Transcript of proceedings 20 July 2018](#) PN420-421.

⁷ Ibid PN423.

intended that the award cover such work.⁸ The AMWU made further submissions regarding tourism transport operators in the August 2018 submissions.⁹

9. Respectfully, the ABLA submission has not identified a specific operator or even a sector where the Draft Award would have inappropriate and/or unintended coverage that has not already been addressed by the AMWU in the hearing of 20 July 2018, or in the August 2018 submissions.

10. The ABLA submission then goes on to say:

“our clients would be supportive of a further consultation process whereby any proposed new award be subject to:

(i) A short exposure draft process prior to arriving at the final version of the award; or

(ii) Interested parties being given an opportunity to comment on the coverage of any proposed new award, if this is the preferred course of action.”¹⁰

11. The AMWU acknowledges that these are properly matters for the Commission to decide. However, the AMWU questions the utility in a further consultation process regarding coverage of the award, noting that:

a. A draft of the AMWU’s proposed coverage clause was first provided on 4/07/2017;¹¹

b. Parties have been given the opportunity to comment on the proposed coverage clause, and indeed many have;¹²

c. ABLA’s clients have been provided with this further opportunity to make further submissions, including regarding coverage.

Classifications

11. ABLA submit that:

“Unfortunately, there exist no widely-accepted qualifications or other external tool (such

⁸ Ibid PN426.

⁹ [Submission of the Australian Manufacturing Workers’ Union of 20 August 2018](#) [174]-179].

¹⁰ [Submission of Australian Business Lawyers & Advisors of 24 December 2018](#) [3.3](e).

¹¹ [Submission of the Australian Manufacturing Workers’ Union of 4 July 2017 draft coverage clause for proposed award.](#)

¹² See in particular the [Submission of United Voice, dated 14 February 2018](#); and the [Submission](#) of the Health Services Union of 25 January 2018.

as roles denoted by the Civil Aviation Safety Authority) which might be used to underpin the classifications of the award.”¹³

12. The AMWU does not agree with his assertion. The AMWU witnesses outline the relevant qualifications they are required to hold which forms the basis of the classification structure in the Draft Award.

13. In particular, the relevant qualifications that can be found on the National Register for training are the:

- a. Certificate III in Aviation (Rescue Crewman); and
- b. Certificate IV in Aviation (Aircrewman).

14. The classifications in the Draft Award have been based off these qualifications, and the AMWU submits that this is appropriate for a modern award. The equivalent qualifications of Certificate III and Certificate IV as a basis for classifications are common across the Modern Award System.

15. The AMWU otherwise repeats and relies upon its previous submissions on this point.¹⁴

Minimum Wages

16. ABLA submit:

“it is not apparent why the remuneration of any employee covered by the Draft Award should be linked to the Manufacturing and Associated Industries and Occupations Award 2010 classifications.”¹⁵

17. In response, the AMWU refers to and repeats its submissions of 20 September 2017 where it submitted:

“It is important to note that the wage rates included in the proposed Modern Award are “properly fixed minimum” wage rates connected to the C10 trade rate in the Manufacturing and Associated Industries and Occupations Award 2010. This is in alignment with the wage rates across the Modern Award System.

The wage rates are not indicative of industry standards and would not be considered

¹³ [Submission of Australian Business Lawyers & Advisors of 24 December 2018](#) [3.7].

¹⁴ See in particular the [submission of the Australian Manufacturing Workers' Union of 20 September 2017](#) [59]-[65].

¹⁵ [Submission of Australian Business Lawyers & Advisors of 24 December 2018](#) [3.11].

industry standards by any Helicopter Aircrew. The wage rates in the Award would not be used by any Helicopter Service Operators if they were serious about retaining a long term dependable workforce.”¹⁶

18. The reason for linking the minimum wages in the proposed award to the classifications in the Manufacturing and Associated Industries and Occupations Award is to align the rates to the modern award system more generally.

19. The AMWU submits that this is entirely appropriate for a modern award.

20. In response to ABLA’s submission at [3.11] we refer ABLA to the table at clause 18.1 of the Draft Award.¹⁷

Allowances

Mobile Intensive Care Ambulance Allowance

21. ABLA submit that this proposed allowance is not relevant because it

“is applicable to the Babcock operational model and the contractual arrangements to which it performs work”¹⁸

22. In response, the AMWU submits that this does not establish that the clause is not appropriate to form part of a minimum safety net of terms and conditions. Put simply, if an employee covered by the Draft Award is required to have the training (or equivalent) then it is appropriate that they be remunerated for this training and the Draft Award provides for this.

23. If the skill is not relevant to a particular operator, then there will be no adverse consequences for an operator, because the award term as currently drafted would have no effect.

Other Required Additional Skill Certification Allowance

24. The ABLA submission indicates the opposition of their clients to this proposed clause.¹⁹ Opposition appears to be grounded on the facts that the clause does not provide for a

¹⁶ [submission of the Australian Manufacturing Workers’ Union of 20 September 2017](#) [46]-[47].

¹⁷ Link to draft award <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am20163-documents-amwu-250718.pdf>

¹⁸ [Submission of Australian Business Lawyers & Advisors of 24 December 2018](#) [3.14].

¹⁹ Ibid [3.15].

monetary amount, and instead requires the parties to reach agreement.²⁰

25. The first draft award submitted by the AMWU prescribed a set amount as compensation for a requirement to maintain an additional skill.²¹

26. This was jettisoned in favour of the current proposed clause on the basis that the proposed clause provides for more flexibility for both employers and employees with regards to the quantum of the remuneration. It is not clear whether ABLA's clients would support a clause which did provide clearly quantified amount. In the circumstances the AMWU presses for the inclusion of the proposed allowance as provided for in the Draft Award.

27. In support of why the clause should be included, the AMWU refers to and repeats its submissions at [28]-[30] of its January 2018 submissions, and [7]-[21] of its April 2018 submissions, and [166] of its August 2018 submissions.²²

Fitness Allowance

28. The ABLA submission opposes the inclusion of a fitness allowance, asserting that:

“aircrew are required to undertake a CASA class 2 medical but this does not involve a fitness examination, meaning that the maintenance of a particular standard of fitness is not a pre-requisite of employment”²³

29. In response, the AMWU submits that many operators, (CHC, QG Air, etc) do currently conduct fitness testing so as to ensure that their employees have the required fitness/strength to do their job.

30. Even in situations where an employer may not test for fitness there is a requirement and expectation for Crewmen to have an above average level of fitness and core strength to be able to handle the manual lifting/manoeuvring of patients and stretchers in and out of a helicopter single-handedly and the flexibility to manoeuvre around the cabin of a helicopter in a bent over position.

²⁰ Ibid.

²¹ Draft Award Filed by the Australian Manufacturing Workers Union on 20 September 2017.

²² [Submission of the Australian Manufacturing Workers' Union of 24 January 2018](#) [28]-[30]; [Submission of the Australian Manufacturing Workers' Union of 27 April 2018](#) [7]-[21]; [Submission of the Australian Manufacturing Workers' Union of 20 August 2018](#) [166].

²³ [Submission of Australian Business Lawyers & Advisors of 24 December 2018](#) [3.18].

31. The AMWU submits that this is established in our evidentiary case.
32. ABLA further question the basis for the quantum of the fitness allowance, and the fact that there is no requirement for verification from an employee that they have incurred expense; and that there is no exemption for employer that provide an onsite gym.²⁴
33. The basis of the quantum of the fitness allowance is addressed in detail in the AMWU's August 2018 submissions, see in particular [33]-[41].²⁵
34. It is acknowledged that an exemption for employers that provide a gym on-site is not an un-meritorious proposal. However, it would appear that a fitness allowance would be opposed by ABLA's clients even if it did provide for such an exemption.
35. In those circumstances, the AMWU presses for the inclusion of a fitness allowance as drafted, noting that there are further expenses incurred by maintaining a standard of fitness which would not be off-set by an employer providing gym facilities on site.

Expenses and Travel (Clauses 19.8. 19.9. 19.11 and 19.12)

36. ABLA submit:

*"to the extent that the Westpac Rescue Service pays allowances relating to meals and travel, these are based on the ATO taxation determination amounts."*²⁶

37. The clauses that ABLA appear to take issue with have been agreed with Babcock. The AMWU does not intend on disturbing that consent position.
38. In the August 2018 submissions the AMWU made clear that the overnight allowance of \$23.13 is taken from the CHC award and is slightly more than the relevant Tax Office Taxation Determination, and the meal allowance agreed is slightly lower than the relevant Tax Office Taxation Determination provides for.²⁷

Permanent Transfers

39. With respect to clause 19.18 ABLA submit that "any costs incurred by an employee who elects to relocate should not be borne by the employer."²⁸

²⁴ Ibid.

²⁵ [Submission of the Australian Manufacturing Workers' Union of 20 August 2018](#) [33]-[41].

²⁶ [Submission of Australian Business Lawyers & Advisors of 24 December 2018](#) [3.19].

²⁷ [Submission of the Australian Manufacturing Workers' Union of 20 August 2018](#) [86-88] and [98-99].

²⁸ [Submission of Australian Business Lawyers & Advisors of 24 December 2018](#) [3.20].

40. Clause 19.18 of the Draft Award was taken from the old CHC enterprise award.²⁹
41. The AMWU does not agree with the submission that the current clause is unclear that it only operates in circumstances where the employer has required an employee to relocate. The words *“requested and approved by the employer”* make this sufficiently clear.
42. In any case, it is not conceded by the AMWU that the award should not provide reimbursement where an employee elects, considering that the request would under the current terms of clause 19.8 be subject to approval by the employer regardless.

Telephone

43. In respect of this clause, it appears that ABLA are not responding to the most recent draft. This is clause 19.19 in the Draft Award, and contrary to the comment from ABLA,³⁰ is in fact now agreed between the AMWU and Babcock.³¹
44. The concern that ABLA identify is that: *“it is not agreed that reimbursement of costs associated with mobile phones in the manner outlined in subclause (a) is appropriate.”*³²
45. In response, the AMWU would simply point out that ABLA’s concern may have been addressed in the most recent draft which was amended after further discussion with Babcock.

Protective Clothing and Uniforms

46. With respect to clause 19.21, ABLA submit that:

*“As currently drafted, it is unclear whether an employee may unilaterally elect to purchase their own footwear and be reimbursed for the cost, or whether they are required to accept the provision of footwear by the employer instead.”*³³

47. This clause is not intended to operate so that the employee may make a unilateral election as to whether they purchase their own footwear. It is conceded that this may not be sufficiently clear on the current drafting. Consequently, the AMWU proposes the following minor amendment to clause 19.21 of the Draft Award:

(a) The employer will reimburse employees for the reasonable cost of supplying

²⁹ CHC Helicopters (Aircrew/Rescue Crew) Award 2002 PR916784 [14.3].

³⁰ [Submission of Australian Business Lawyers & Advisors of 24 December 2018](#) [3.21].

³¹ [AMWU Draft Award of July 2018](#) clause 19.19.

³² [Submission of Australian Business Lawyers & Advisors of 24 December 2018](#) [3.21].

³³ *Ibid* [3.22].

uniforms and protective clothing unless these items are provided by the employer.

(b) The employer will reimburse an employee for replacing uniforms and clothing on a fair wear and tear basis unless these items are replaced by the employer.

(c) The employer will reimburse to a reasonable amount for the purchase of a high standard of lightweight durable footwear suitable for flying duties up to \$152 p.a unless footwear of an equivalent standard is provided and maintained by the employer.

Indemnity

48. ABLA raise a concern that clause 19.24 may not be a matter that is permitted to be included in a modern award.³⁴

49. The AMWU has addressed this objection in detail in its submission of 20 August 2018.³⁵ The AMWU repeats and relies on those submissions.

50. Regarding the ABLA's submission that such a clause is not an entitlement which should form part of the minimum safety net, the AMWU submits that the need for indemnification in the circumstances of a uniquely hazardous environment is self-evident. To this end, we note the AMWU's proposed clause is agreed with Babcock and not opposed by CHC.

51. In response to the ABLA submission the operation of sub-clause B of the proposed indemnity clause,³⁶ we would draw ABLA's attention to the AMWU's submission of 20 August 2018, where the AMWU indicated that it no longer pressed for subclause B.³⁷

Life Insurance and Total and Permanent Disability Insurance; Income Protection Insurance

52. ABLA submits that these clauses should be "*deleted from the draft award*".³⁸

53. In response, the AMWU repeats and relies on its submissions made on 20 August 2018 in respect to both the jurisdictional and merit questions.

Accident Pay

54. ABLA submit that an accident make-up pay entitlement should not be included in the

³⁴ Ibid [3.23].

³⁵ [Submission of the Australian Manufacturing Workers' Union of 20 August 2018](#) [120]-[141].

³⁶ [Submission of Australian Business Lawyers & Advisors of 24 December 2018](#) [3.25].

³⁷ [Submission of the Australian Manufacturing Workers' Union of 20 August 2018](#) [117].

³⁸ [Submission of Australian Business Lawyers & Advisors of 24 December 2018](#) [3.26].

Draft Award because:

*“there does not exist an industry standard which would mean such a clause is necessary for the award to constitute a fair and relevant minimum safety net nor is there a history of pre-reform entitlement which would suggest such an entitlement is appropriate.”*³⁹

55. In support of the clause, the AMWU notes the consent position with Babcock, and otherwise relies on previous submissions, particularly its January 2018 submission at [50]-[54].⁴⁰

Payment of Wages

56. ABLA submit that the arrangements for payment of wages should mirror the Pilots Award.⁴¹

57. The Pilots Award provides that payment of wages can be made on a weekly, fortnightly or monthly basis in arrears.⁴²

58. The AMWU is not necessarily opposed to a more flexible hours of work clause, although it may not be appropriate for employees to be remunerated in arrears.

Ordinary Hours of Work and Rostering

59. ABLA submits that “clause 23 has not been drafted in a manner which easily accommodates the operational reality of the industry”⁴³ citing their four on/ four off 12-hour shift roster used by its clients in support.

60. The AMWU submits that the ordinary hours of work and roosting clause in the is considerably facilitative.

61. In the circumstances, it is not apparent, nor have ABLA made clear in their submission, why the provisions of the Draft Award would prevent the Westpac Rescue Service or any other operator from continuing their current roosting arrangements.

62. ABLA further submit that “our clients note that some of these elements are dealt with in clause 25 – Hours of duty and days free of duty. However, the interaction of these clauses requires further consideration.” Respectfully, respect, it is difficult to respond to this

³⁹ Ibid [3.27].

⁴⁰ [Submission of the Australian Manufacturing Workers' Union of 24 January 2018](#) [50]-[54].

⁴¹ [Submission of Australian Business Lawyers & Advisors of 24 December 2018](#) [3.27].

⁴² Air Pilots Award 2010 clause 20.

⁴³ [Submission of Australian Business Lawyers & Advisors of 24 December 2018](#) [3.29].

submission considering there is no actual alternative drafting position being put forward.

63. In the circumstances, the AMWU sees no reason why clause 25 as drafted and agreed between the AMWU and Babcock should not be adopted.

Overtime Days Worked

64. With respect to clause 27, ABLA submit that:

“our clients oppose the calculation of all overtime for ‘overtime days’ being calculated at the rate of double time. As currently drafted, employees are also entitled to shift penalties on an overtime shift, which could result in payment at a rate of triple time. This kind of ‘double dipping’ should not be permissible under any new modern award.”⁴⁴

65. The AMWU submits that overtime days should be paid at double time because of the additional disability of being away from home. If the additional “day” is a night shift there is no reason why there should not be compensation for this aspect of the disutility. The situation can be distinguished from the ordinary scenario where an employee working overtime after a night shift wouldn’t be entitled to a shift allowance in addition to an overtime rate, because under the AMWU’s proposed “overtime days” clause the 200% and 10% loadings are compensating for entirely separate disabilities.

66. Thus, the AMWU rejects the submission that this amounts to “double dipping.”

Overtime Hours Worked

67. With respect to clause 28, ABLA submit:

“The clause does not specify when ‘overtime hours’ become payable, other than a reference to clause 23, which merely provides for a permissible maximum number of hours averaged over a cycle.”⁴⁵

68. In response to this submission the AMWU to overtime hours worked, the AMWU repeats its April 2018 submissions at [68]:

“In relation to overtime hours, the calculation of overtime over the work cycle is to ensure that employees are paid an appropriate overtime penalty. The averaging of hours arrangement for a 28 day cycle of 15 days on and 13 days off would result in approximately 10 hours per day during the 15 days on. The scope for overtime is limited,

⁴⁴ [Submission of Australian Business Lawyers & Advisors of 24 December 2018](#) [3.31].

⁴⁵ Ibid [3.33].

taking into account the rest periods and occupational health and safety.”⁴⁶

Time off instead of payment for overtime

69. With respect to clause 29 ABLA submit:

“Our clients do not agree that a time off instead of payment for overtime clause is appropriate in this context”⁴⁷

70. The AMWU included clause 29 in light of the Commission’s Decision in the Award Flexibility proceedings AM2014/300. The clause is not opposed by the other employer parties.

71. The AMWU submits that ABLA have not identified why the inclusion of such a term would be inconsistent with a fair and relevant safety net, other than providing a brief comment identifying that the Air Pilots Award does not provide for a time off instead of payment for overtime clause.⁴⁸

72. The reason why no such clause was inserted into the Air Pilots Award during the Award Flexibility Common Issue proceedings was because the Air Pilots Award does not provide for overtime.⁴⁹ The Draft Award *does* provide for overtime, and thus the comparison is not valid.

END

16 January 2019

⁴⁶ [Submission of the Australian Manufacturing Workers’ Union of 27 April 2018](#) [68].

⁴⁷ [Submission of Australian Business Lawyers & Advisors of 24 December 2018](#) [3.34].

⁴⁸ *Ibid.*

⁴⁹ *4 -yearly review of modern awards-Award flexibility* [2016] FWCFB 2602 [50].