

IN THE FAIR WORK COMMISSION

Matter No.: AM2020/12

Variation of awards on the initiative of the Commission

AUSTRALIAN FEDERATION OF PILOTS

OUTLINE OF SUBMISSIONS

Background

1. On 1 April 2020 the Fair Work Commission (the 'Commission') released a Statement¹, in which it set out its provisional view regarding the variation of 103 moderns awards to provide an entitlement to unpaid 'pandemic leave', and the flexibility to take annual leave at half pay, in the unique circumstances pertaining to the COVID-19 pandemic.
2. The Statement further noted that the variations were proposed on the Commission's own initiative pursuant to s157(3) of the *Fair Work Act 2009* (Cth) (the 'Act').
3. The *Air Pilots Award 2010* was identified by the Commission as one of the 103 Awards it was considering varying.
4. The Australian Federation of Air Pilots (the 'AFAP') membership rules allow it to cover Pilots employed under the *Air Pilots Award 2010*.

AFAP's Response to Proposed Variation

5. The AFAP Submissions relate solely to the *Air Pilots Award 2010*.
6. The AFAP believes that there are several matters in the proposed variation that need to be altered.

Access to paid Personal Leave should be confirmed
Unpaid Pandemic Leave should be a sub-category of Paid Leave

7. The AFAP seeks that the Personal Leave provisions in the *Air Pilots Award 2010* be altered to ensure that a pilot may access Personal Leave, in circumstances where they need to self-isolate as a result of a possible exposure to someone with a COVID-19 infection.
8. The AFAP further seeks that unpaid Pandemic Leave be created as a sub-category of Personal Leave.
9. Consequently, a pilot that is required to self-isolate in relation to a potential COVID-19 infection, could either access paid Personal Leave, if they elect, or to access unpaid Pandemic Leave.

¹ PR718005

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10. Where the pilot initially elects to take paid Personal Leave, and the pilot's balance of that particular leave is subsequently exhausted, the pilot would then be able to elect to take another form of paid or unpaid leave, including unpaid Pandemic Leave.
11. These changes would confirm a pilot's access to paid Personal Leave, in cases where due to an exposure to a potential contagious medical condition, a pilot has been required to self-isolate.
12. The fact that the pilot may subsequently test negative for COVID-19, in no way, negates the material fact that, based on specific medical advice, the federal government and the State governments have each all directed that self-isolation of individuals is required whenever there is a risk that the individual has been exposed to a COVID-19 infection.
13. In conclusion, in such circumstances, a pilot is "not fit for work", based solely on medical considerations. They should consequently be able to take Personal Leave.

Definition of the term 'self-isolate'

14. The AFAP believes that it is critical that a definition of 'self-isolate' is included in the draft unpaid Pandemic Leave clause.
15. The Commission itself, at paragraph [47] of its Statement, points out that there has been a significant tendency for differing terms to be used interchangeably in the wider Australian community in recent weeks, in relation to this matter.
16. Without the insertion of a relevant definition, the AFAP is concerned that both misunderstanding and misapplication is likely to occur, in the subsequent use of the provision.

Need for repeated access to Pandemic Leave provision

17. In its Statement, the Commission presented compelling reasons to support the instigation of the new unpaid Pandemic Leave provision.²
18. The potentially dire choice that an employee may face (as detailed at [50] in the Statement), is unfortunately not ultimately a situation that an employee may only face once.
19. The spread of the COVID-19 infection in Australia has been, at times, unpredictable. Reports suggest that there continues to be a percentage of COVID-19 cases, where the source of the infection remains unclear.
20. In such a situation, there cannot be any absolute certainty as to the pattern of how infections will be passed on. This provides no guarantees as to who may, and may not, catch the infection next.
21. To date, many of the pilots employed under the Air Pilots Award 2010 continue to attend work, and operate flights.
22. Their usual pattern of work unfortunately means that they are likely to come into contact with other individuals at a higher rate when compared to employees that have the

² Paragraphs [48] – [54].

opportunity to work from home, or are able to some greater degree to minimise their exposure to groups of people.

23. In such work environments, despite the use of appropriate health and safety measures, the risk of a COVID-19 infection remains tangible. Further, in that environment, a pilot that has already had to self-isolate, but is found not to have the COVID-19 infection, is not guaranteed that they will not then need to self-isolate on further occasions.
24. The AFAP notes that employees can access Compassionate Leave under the Act, on multiple occasions, if required. The leave is available to an employee in circumstances where a member of the employee's immediate family or household dies, or contracts or develops a personal illness, or sustains a personal injury that poses a serious threat to their life.
25. These are all situations that are obviously outside of the immediate control of the employee.
26. Similarly, a Pilot's potential exposure at work to a passenger who is infected by COVID-19 is, to some large degree, outside their ability to control.
27. This may easily occur, particularly where a passenger or colleague is in fact already infected by COVID-19, but is not experiencing any symptoms or does not show any noticeable symptoms.
28. Initially reports in relation to COVID-19 suggested that the incidence of asymptomatic cases of COVID-19 were quite low, but more recent reports have suggested that such situations may actually occur at a significantly higher rate.
29. In such a situation, limiting an employee's access to unpaid Pandemic Leave to only a single occasion, runs contrary to the Commission's own stated justification for the introduction of this particular form of leave.

Air Pilots Award 2020

30. The *Air Pilots Award 2020* comes into effect on 4 May 2020, replacing the *Air Pilots Award 2010*.
31. The *Air Pilots Award 2020* is not mentioned in the Commission's Statement, as one of the Awards that will be varied.
32. The AFAP presumes, however, that it is the intent of the Commission to vary the *Air Pilots Award 2020*, by the addition of the two additional provisions, in a similar manner to that proposed for the *Air Pilots Award 2010*.
33. If that is the case, the Submissions herein outlined should be understood by the Commission to also be the AFAP's Submissions in relation to the *Air Pilots Award 2020*, unless subsequently amended by the AFAP.