

Form F10 – Application for the FWC to deal with a dispute in accordance with a dispute settlement procedure

[Fair Work Act 2009](#), s. 739; [Fair Work \(Transitional Provisions and Consequential Amendments Act 2009\)](#), Schedule 19; [Fair Work Commission Rules 2024](#), rules 119 and 123 and Schedule 1

This is an application to the Fair Work Commission for it to deal with a dispute in accordance with a dispute settlement procedure.

The Applicant



Please enter your details here.

Title	<input checked="" type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)	Andrew		
Surname	Molnar		
Postal address	Level 4, 132-136 Albert Road		
Suburb	South Melbourne		
State or territory	Victoria	Postcode	3205
Phone number	(03) 9928 5737		
Email address	andrew@afap.org.au		

If the Applicant is a company or organisation please also provide the following details

Legal name of business	Australian Federation of Air Pilots
Trading name of business	
ABN/ACN	63 230 452 036
Contact person	Andrew Molnar

Do you need an interpreter?



If you have trouble accessing this information, please contact us. We can arrange to provide it in another format. You can find information about [help for non-English speakers](#) on our website.

☐ Yes – Specify language

☒ No

Do you require any special assistance at the hearing or conference (eg a hearing loop)?

☐ Yes – Please specify the assistance required

☒ No

Do you have a representative?



A representative is a person or organisation representing you. This might be a lawyer or paid agent, a union or employer association or a not-for-profit association or body that provides support, advice or advocacy about employment or workplace relations matters. You do not need to have a representative.

☐ Yes – Provide representative's details below

☒ No

Your representative



These are the details of the person or organisation representing you (if any).

Name of person			
Firm, organisation, company			
Postal address			
Suburb			
State or territory		Postcode	
Phone number			
Email address			

Is your representative a lawyer or paid agent?

☐ Yes – please select:

☐ Lawyer

	<input type="checkbox"/> Paid agent
<input type="checkbox"/> No	

The Respondent



These are the details of the person or business who will be responding to your application to the Commission.

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input checked="" type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)	Judy		
Surname	Hawkins		
Postal address	Level 4, 5-7 Lobelia Circle		
Suburb	Brisbane Airport		
State or territory	Qld	Postcode	4008
Phone number	0428 978 007		
Email address	jhawkins@rfdsqld.com.au		

If the respondent is a company or organisation please also provide the following details

Legal name of business	Royal Flying Doctor Service of Australia (Queensland Section) Limited
Trading name of business	
ABN/ACN	80 009 663 478
Contact person	Judy Hawkins



Note: Responding to this application

1. If you would like to provide a response you should lodge your response with the Commission as soon as practicable. You can lodge your response by post, email, or in person to the [Commission's office](#) in your state or territory. There is no prescribed form for your response, you can use the F1 – Application (no specific form provided).
2. **You must serve a copy** of your response and any supporting documentation on the Applicant as soon as practicable after the document is lodged with the Commission.

1. Coverage

1.1 What industry is the employer in?

Aeromedical operations

1.2 What type of industrial instrument (eg an award or agreement) or other written agreement covers the employment relationship and contains the dispute resolution procedure relevant to this application?



Select one of the options below.

If you are not sure, the [Fair Work Ombudsman](#) can help you find out which industrial instrument covers you or your business.

If you know what industrial instrument covers you but you don't know all of the information to answer questions 1.2, 1.3 and 1.4 you can search for your instrument on the [Commission's website](#).

☐ A modern award

What is the name of the modern award:

☒ An enterprise agreement (made under the *Fair Work Act 2009* after 1 July 2009)

What is the name of the enterprise agreement:

Royal Flying Doctor Service of Australia (Queensland Section) Limited Pilots Enterprise agreement 2023

What is the ID code of the enterprise agreement (ie the eight digit code starting with AE):

AE524828

☐ Other instrument or written agreement

What is the name of the instrument or other written agreement containing the dispute resolution procedure:

What is the ID code of the instrument or other written agreement (if applicable):

1.3 What clause of the industrial instrument or other written agreement contains the dispute settlement procedure?



List the dispute resolution clause number from the relevant industrial instrument below. Attach a copy of the clause to this application.

Clause 10 – Dispute Resolution – attached as **Annexure A**

1.4 What clause of the industrial instrument or other written agreement does the dispute relate to?



List the clause(s) within the relevant industrial instrument or other written agreement that the dispute relates to. If also relevant, list the National Employment Standard that the dispute relates to. Attach a copy of the clause to this application

Clause 23 – Personal/Carer's Leave – attached as **Annexure B**

2. About the dispute

2.1 What is the dispute about?

Using numbered paragraphs, set out a description of what the dispute is about, including by reference to the clauses set out above. Attach additional pages if necessary.

Background

1. Clause 23 of the Enterprise Agreement (EA) relevantly provides that:

23.1 Personal/carers leave is provided for in the National Employment Standards (NES) and detailed in Policy;

23.2 Employees (other than casual employees) are entitled to 10 days' paid personal/carers leave for each year of service, accruing progressively and accumulating year to year.

2. This clause is in identical terms to previous enterprise agreements to which the current EA is a successor, and provides for an entitlement greater than the NES

3. In November 2024, approximately five months after the EA was approved by the Fair Work Commission, RFDS Qld advised the AFAP that it intended to "correct for the future of an historical anomaly" in the way personal/carers leave had been accrued and deducted for pilots (**Annexure C**).

Effect of the Change

4. The proposed “correction” alters the accrual and deduction of personal/carer’s leave for pilots:
- a. Under the previous system, based on a 40-hour week, pilots accrued 10 days per year, with each “day” equating to 8 hours. A day of leave resulted in an 8-hour deduction. This entitlement is greater than that provided for in the NES.
 - b. Under the new system, based on a 42-hour week:
 - i. Pilots accrue the equivalent of 2 weeks per year (i.e., 7 x 12-hour shifts);
 - ii. A full shift of leave results in a 12-hour deduction, and a 6-hour shift results in a 6-hour deduction.
5. RFDS Qld has confirmed that, under this approach, pilots now accrue:
- a) 7 occasions of personal/carer’s per year (based on 12-hour shifts), or 14 occasions of personal/carer’s per year (based on 6-hour shifts), or a variable combination — effectively reducing the number of days on which leave can be taken.

Interpretation of Clause 23

6. Clause 23 governs pilots’ entitlement to personal/carer’s leave under the EA. Its proper construction must be approached in accordance with the reasoning in *AMWU v Berri Pty Ltd* [2017] FWCFB 3005, which allows the Commission to have regard to objective contextual facts, not subjective intention.
7. The relevant objective background facts include:
- a) Prior to the “correction”, pilots consistently accessed 10 occasions of personal/carer’s leave per year;
 - b) In Q&A material distributed during the pre-approval process, RFDS Qld confirmed that “there is no change to personal/carer’s leave in the proposed agreement”;
 - c) RFDS Qld contracts of employment (sighted by the AFAP) reference “two weeks (or ten working days)” of paid personal leave per annum;
 - d) At no point during EA negotiations or the voting process were pilots informed of a change in the way personal/carer’s leave would be accrued or deducted.
8. On its proper construction, clause 23 of the EA preserves the pre-existing entitlement to 10 occasions of personal/carer’s leave per year, and RFDS Qld’s post-approval “correction” is inconsistent with the terms of the agreement and the parties’ mutual understanding.
9. The Commission is respectfully asked to determine, pursuant to s 739 of the Fair Work Act, that clause 23 of the EA provides that pilots are entitled to 10 actual working days of personal/carer’s leave per year, consistent with past practice and the representations made during the agreement approval process.

2.2 Does this application relate to a refusal by an employer of a request by an employee for flexible working arrangements?

☐ Yes

☐ No

2.3 Does this application relate to a refusal by an employer of a request by an employee for an extension of unpaid parental leave?

☐ Yes

☐ No

2.4 Does this application relate to a dispute about conversion from casual employment to full-time or part-time (permanent) employment?

☐ Yes

☐ No

2.5 What steps have already been taken to resolve the dispute under the dispute resolution procedure?

Using numbered paragraphs, set out, in chronological order, the steps already taken (if any). Attach additional pages if necessary.

1. The AFAP formally wrote to RFDS Qld on 5 March 2025.
2. The AFAP met with RFDS Qld to discuss the dispute on 19 March 2025.
3. The dispute remains unresolved.

3. Relief sought

3.1 What relief are you seeking by making this application to the Commission?

If the dispute resolution clause in the instrument gives the Commission the power to arbitrate the dispute, please also specify the determination sought.

The Commission is requested to determine that clause 23 of the EA provides that pilots are entitled to 10 actual working days of personal/carer's leave each year, regardless of shift length.

Authority to sign and signature



For 'Authority to sign':

- If you are the Applicant—insert 'Applicant'
- If you are an employee of a company or organisation that is the Applicant—insert your position title
- If you are the Applicant's representative and have provided your details in this form—insert 'Representative'.

Authority to sign	Legal Counsel – Australian Federation of Air Pilots
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Insert your signature, name and the date. If you are completing this form electronically and do not have an electronic signature, type your name in the signature field.

Signature	
Name	Andrew Molnar – Legal Counsel
Date	16 April 2025

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS

*Note: In clause 9, **relevant Employees** means the Employees who may be affected by the major change or the change to the regular roster or ordinary hours of work as applicable.*

10. Dispute Resolution

10.1 If a dispute relates to:

- (a) a matter arising under this Agreement; or
- (b) the NES;

this term sets out procedures to settle the dispute.

10.2 An Employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.

10.3 In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the Employee or Employees and relevant supervisors and/or management. These discussions must occur in a timely manner.

10.4 If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to the FWC.

10.5 The FWC may deal with the dispute in 2 stages:

- (a) The FWC will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
- (b) if the FWC is unable to resolve the dispute at the first stage, the FWC may then:
 - (i) arbitrate the dispute; and
 - (ii) make a determination that is binding on the parties.

Note: If the FWC arbitrates the dispute, it may also use the powers that are available to it under the Act.

A decision the FWC makes when arbitrating a dispute is a decision for the purpose of Div. 3 of Part 5.1 of the Act. Therefore, an appeal may be made against the decision.

- 10.6 While the parties are trying to resolve the dispute using the procedures in this term:
- (a) work must continue in accordance with this Agreement and the Act. Subject to applicable occupational health and safety legislation, an Employee must not unreasonably fail to comply with a direction by the Employer to perform work, whether at the same or another workplace, that is safe and appropriate for the Employee to perform; and
 - (b) an Employee must comply with a direction given by the Employer to perform other available work at the same workplace, or at another workplace, unless:
 - (i) the work is not safe; or
 - (ii) applicable aviation and/or occupational health and safety legislation would not permit the work to be performed; or
 - (iii) the work is not appropriate for the Employee to perform; or
 - (iv) there are other reasonable grounds for the Employee to refuse to comply with the direction.
- 10.7 The parties to the dispute agree to be bound by a decision made by the FWC in accordance with this clause.

PART 3 - TYPES OF EMPLOYMENT AND TERMINATION OF EMPLOYMENT

11. Types of Employment

- 11.1 Employees will be employed in any of the following categories:
- (a) full-time;
 - (b) part-time;
 - (c) casual; or
 - (d) maximum term/specified task basis.
- 11.2 At the time of engagement, the Employer will inform the Employee of the terms of their engagement and in particular whether they are to be engaged as a full-time, part-time, casual or maximum term/specified task basis.
- 11.3 All Employees (other than a casual Employee) will be engaged on a probationary period of six months, effective from the Employee's date of commencement. The probation period will coincide with the minimum employment period provided for in the Act. The minimum employment period applies to all employees.
- 11.4 To assist an Employee during their probation period who is attempting to secure finance, the Employer will provide the services of a financial advisor (at no cost to the Employee) up to a total cost of \$500 (gross).

- (d) in circumstances where the Employee gives notice to the Employer in accordance with clause 22.19, and the Employer and the Employee subsequently agree to a different way in which the leave will be taken, the Employee will withdraw their written notice to the Employer.

Provision to 'Cash-Out' Annual Leave

- 22.20 An Employee that has accrued an annual leave balance in excess of 42 days may elect to cash out annual leave provided that:
- (a) immediately after the annual leave is cashed out, the Employee retains a minimum balance of at least 42 days' annual leave;
 - (b) there is a written agreement between the Employee and the Employer on each occasion annual leave is cashed out, specifying the amount of annual leave to be cashed out, the remaining balance of accrued annual leave, the total amount to be paid to the Employee and the date on which the payment will be made to the Employee;
 - (c) the payment is not less than the amount the Employee would have received had the Employee instead taken the leave, at the time the payment is made;
 - (d) the maximum amount of accrued paid annual leave that may be cashed out in any 12 month period is 2 weeks.
- 22.21 The Employer will not exert undue influence or pressure on the Employee to cash out annual leave.

FRMS Limitations

- 22.22 The FRMS specifies any fatigue risk related flying limitation or restriction upon an Employee. It is incumbent upon the Employee approaching any limit to alert their Senior Base Pilot in a timely manner of the potential of this limitation being reached.
- 22.23 In the event that an Employee has reached a flying limitation or restriction, they will be given the opportunity to conduct non-flying duties until the restriction has passed. In cases where an Employee does not wish to conduct non-flying duties, annual leave should be applied for as an alternative.

23. Personal/Carer's Leave

- 23.1 Personal/carers' leave is provided for in the NES and detailed in Policy.
- 23.2 Employees (other than casual Employees) are entitled to 10 days' paid personal/carers' leave for each year of service. The entitlement accrues progressively during the year and accumulates from year to year.

- 23.3 Paid personal/carer's leave is available where an Employee:
- (a) is not fit for work because of a personal illness or injury affecting the Employee;
 - (b) is providing care or support to a member of the Employee's immediate family, or a member of the Employee's household, who requires care or support because of:
 - (i) a personal injury or personal illness affecting that person; or
 - (ii) an unexpected emergency affecting that person.
- 23.4 An Employee that has taken personal/carer's leave will, as the request of the Employer, provide evidence that would satisfy a reasonable person (eg a medical certificate) that the leave is taken for a reason specified in clause 23.3, if the period of absence is more than 2 working days. In the absence of such evidence, the Employer may refuse to treat the absence as personal/carer's leave.

Illness While On Duty

- 23.5 An Employee who becomes ill while on duty away from Home Base and who is unable to perform further duties, is entitled to:
- (a) daily travelling allowance up until sign-off in Home Base, plus reasonable out-of-pocket expenses excluding meals and laundry. If the Employee is hospitalised, daily travelling allowance will cease while the Employee is hospitalised. Reasonable out-of-pocket expenses incurred by the Employee while away from Home Base must be met by the Employer;
 - (b) accommodation of an appropriate standard (if required);
 - (c) transport to and from airport, accommodation or doctor;
 - (d) booked travel to Home Base; and
 - (e) transport to home or doctor if the Employee requires this on arrival at Home Base.

Leave for Upper Respiratory Tract Infection (URTI)

- 23.6 In addition to the entitlements of clause 23.2, Employees will be granted up to 6 days of paid leave per annum for a disability associated with URTI:
- (a) the paid leave in this clause is not cumulative;
 - (b) Employees will determine whether the URTI is sufficiently serious as to prevent them from performing flying duties;
 - (c) the Employer encourages staff to remain at home when unwell to assist with infection control;

- (d) the Employer may require a medical certificate specifying the nature of the URTI.

The Effect of Workers Compensation

- 23.7 There is no entitlement to paid leave of absence for any period the Employee is receiving workers compensation payments.

Return from Personal Leave

- 23.8 An Employee who has been absent from work due to an injury or illness which has resulted in a temporary suspension of the aviation medical shall not resume flying until that temporary suspension is lifted by CASA.

24. Compassionate Leave

- 24.1 Compassionate leave is provided for in the NES and detailed in Policy.

25. Community Service Leave

- 25.1 Community service leave is provided for in the NES and detailed in Policy.

26. Parental Leave

- 26.1 Parental leave is provided for in the NES and detailed in Policy.
- 26.2 The Employer provides paid Parental Leave to eligible employees in accordance with Policy.

27. Public Holidays

- 27.1 The Role Base Rates and entitlement to annual leave provided for in this Agreement take into account an Employee's entitlement to public holidays in the NES and include compensation for all public holidays provided for in the NES.
- 27.2 Employees performing the role of PHC Pilot who are not rostered for flying duties are expected to carry out non-flying duties on public holidays, where rostered.

28. Long Service Leave

- 28.1 An Employee's entitlement to long service leave will be in accordance with the *Industrial Relations Act 2016* (Qld) and Policy.
- 28.2 At the Employee's request and where approved by the Employer, long service leave at half pay may be granted for a period not exceeding twice the normal entitlement.

Recall from Long Service Leave

- 28.3 The Employer will not be entitled to recall an Employee from long service leave except by mutual agreement.

RFDS Queensland Head Office

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Brisbane Airport QLD 4008

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Royal Flying Doctor Service

QUEENSLAND SECTION

4 November 2024

Andrew Molnar
 Legal Counsel
 andrew@afap.org.au

Dear Andrew

RE: Correction for the future of an historical anomaly in the accrual and deduction of leave for RFDS Pilots

In negotiating and implementing the new Enterprise Bargaining Agreement, it has come to the attention of the RFDS that there have been historical anomalies in the accrual and deduction of Annual Leave, Personal/Carer's Leave and/or Long Service Leave for our pilots. The anomalies have resulted at times in not enough leave being deducted and at other times too much leave being deducted. The issues that have been identified have not had any impact at all on the pay received by pilots when they have accessed paid leave. All paid leave has been paid correctly, it is only the leave balances for paid leave that have been impacted.

A review of the leave taken by pilots from January 2018 to 24 November 2024 will be finalised shortly after the pay period ending on 24 November. Where the review reveals any instances where a pilot has had too much leave deducted RFDS will re credit such leave to the leave balance. Importantly, any instances of too little leave being deducted resulting in higher leave balances, such additional leave will be retained by the pilots.

From 25 November 2024, we will be implementing new practices so that annual leave, personal/carers' leave, and long service leave are properly managed in the system going forward. The detail for each leave type is outlined below:

Annual leave

Currently, pilots have accrued 6 weeks annual leave based on a nominal 40 hour week (FTE) and have historically taken leave in one week blocks. Whilst this nominal 40 hour week doesn't reflect days of annual leave, the salary paid per week of annual leave taken was correct. However, where annual leave has been taken in blocks of less than one week it is possible that the amount of leave deducted may not have been accurate. This could be too much, or not enough leave deducted. Importantly, there has been no impact on the pay pilots have received for periods of paid annual leave as the full salary has been paid for all leave taken.

From 25 November annual leave will be accrued and taken in calendar days only with each pilot entitled to 42 days leave. The payment for part-time pilots is based on their pro-rata salary value.

Personal/Carer's leave

Currently, full-time pilots accrue 2 weeks personal/carers leave based on a nominal 40 hour week for a total of 80 hours per annum (pro-rata for part-time pilots). Given that the salary is paid on this same nominal basis the correct salary has been paid for such leave. When taking leave it has been deducted only for days of leave Monday to Friday and only at 8 hours per shift, which depending on the particular circumstances may have resulted in not enough leave being deducted or too much leave being deducted from the personal/carers leave balance. Importantly, there has been no impact on the pay pilots have received for periods of personal/carers leave as the full salary has been paid for all leave taken.

From 25 November personal/carers leave will accrue on the basis of a 42 hour week whereby a full-time pilots will accrue 84 hours per annum (pro-rata for part-time) and be taken on the basis of hours not worked of each 12 hour shift they were rostered to work. Pilots do not need to take personal/carers leave for days on which they were not rostered to work a shift.

Long service leave

Currently, full-time pilots have accrued 0.86667 weeks long service leave based on a nominal 40 hour week for a total of 34.67 hours per annum (pro-rata for part-time pilots). Given that the salary is paid on this same nominal basis the correct salary has been paid for such leave. When taking leave it has been deducted only for days of leave Monday to Friday and only at 8 hours per shift, which depending on the particular circumstances may have resulted in not enough leave being deducted or too much leave being deducted from the long service leave balance. Importantly, there has been no impact on the pay pilots have received for periods of long service leave as the full salary has been paid for all leave taken.

From 25 November long service leave will be accrued on the basis of a 42 hour week whereby a full-time pilot will accrue 36.40 hours per annum (pro-rata for part-time) and be taken on the basis of hours not worked of each 12 hour shift they were rostered to work. Pilots do not need to take long service leave for days on which they were not rostered to work a shift.

Conversion of current leave balances

There will also be a conversion of pilot leave balances held immediately prior to 25 November as a result of the change to representing pilots salaries as an average 42 hour week (pro-rata for part-time). For example, if a pilot had 40 hours of personal leave this will be converted to 42 hours of personal leave. This conversion will ensure that pilots have the same amount of leave to be taken at the average of 42 hours per week (pro-rata for part-time).

Communications with pilots

We are writing to each of our pilots to explain what has historically occurred and the steps being taken by the RFDS from 25 November 2024 to rectify these issues for the future. In this correspondence we will be confirming to our pilots that their current leave balances will not be reduced and will remain available to them. Where there has been too much leave deducted in the period from January 2018 to 24 November 2024 that will be remediated by increasing leave balances.

We will also be confirming to them that they have at all times been paid correctly for any paid leave that they have taken. A copy of the correspondence to the pilots is attached for your information.

As this is correcting an historical anomaly and we are only making changes to future leave accrual or deductions and increasing leave balances, where historically too much leave has been deducted, we do not anticipate any difficulty in the implementation of the changes from 25 November 2024. However, if you have any questions please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Judy Hawkins', is centered within a light gray rectangular box.

Judy Hawkins
Executive General Manager – People and Culture