

Form F18 – Declaration of employee organisation in relation to an application for approval of an enterprise agreement (other than a greenfields agreement)

[Fair Work Act 2009](#), s.185; [Fair Work Commission Rules 2024](#), rule 32, rule 36 and Schedule 1

Part 1 – About the employee organisation (the Union)



The Commission will send the contact person(s) listed in this section correspondence relating to the application (in addition to the contacts named in the Form F16).

Details of the Union			
Union	Australian Federation of Air Pilots		
Branch	N/A		
Postal address	4/132 Albert Road		
Suburb or town	South Melbourne		
State or territory	VIC	Postcode	3205
Details of the Union’s contact person(s)			
Name	Simon Lutton		
Position/role	Executive Director		
Email address	simon@afap.org.au		
Phone number	(03) 9928 5737 or 0419 482 582		

Attach additional pages if necessary.

Part 2 - Declaration

This is a declaration in relation to an application to the Fair Work Commission (the Commission) for approval of an enterprise agreement under Part 2-4 of the [Fair Work Act 2009](#).

I,	Simon Lutton
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[insert name of person making the declaration]

Level 4, 132 Albert Road

[insert postal address of person making the declaration]

South Melbourne	Victoria	3205
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[insert suburb]

[insert State or Territory]

[insert
postcode]

Executive Director, Australian Federation of Air Pilots

[insert occupation of person making the declaration]

declare that:

1. I am an officer or authorised employee of the following employee organisation (the Union):

Name of Union	Australian Federation of Air Pilots (AFAP)
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2. This declaration relates to an application for approval of the following enterprise agreement (the Agreement):

Name of Agreement	Qantas Airways Limited Pilots (Short Haul) Enterprise Agreement 2024 (EBA9)
Name(s) of employer(s) covered by the Agreement	Qantas Airways Limited

3. Is the Union a bargaining representative for the Agreement?



See s.176 of the [Fair Work Act 2009](#). An employee organisation will be a bargaining representative if it has a member who will be an employee covered by the Agreement (unless the employee has appointed another person as his or her bargaining representative or has revoked the status of the organisation as his or her

FAIR WORK COMMISSION

Form F18 – Declaration of employee organisation in relation to an application for approval of an enterprise agreement (other than a greenfields agreement)

bargaining representative) and the organisation is entitled to represent the industrial interests of the employee in relation to work to be performed under the Agreement.

Yes

No

4. Does the Union want to advise the Fair Work Commission (the Commission) that it supports or opposes approval of the Agreement?

Yes

No

5. If you answered yes to question 4 – Does the Union support approval of the Agreement by the Commission?

Yes

No

If you answered **No** – Specify the grounds on which the Union opposes approval of the Agreement, using numbered paragraphs.

1. The AFAP cannot support the approval of the proposed agreement in its current form because it does not meet the requirements of the Fair Work Act 2009 (FW Act). Specifically,
 - a) the proposed dispute resolution procedure is not compliant with the FW Act; and
 - b) the salary proposed for a First Officers Under Training (FOT) is below the Award salary.

Dispute Resolution Procedure

2. The proposed Agreement in its current form does not comply with a Full Federal Court’s findings in *Energy Australia Yallourn Pty Ltd v. Automotive, Food, Metal, Engineering, Printing and Kindred Industries Union (Yallourn)* (followed in *Australasian Meat Industry Employees Union v Primo Foods Pty Ltd* [2023] FWC 570; and more recently in *PHI International Australia Pty Ltd* [2024] FWC 3460 (**PHI**)).
3. In particular, the AFAP would have no capacity to initiate a dispute in its own right under the dispute resolution procedure in the proposed Agreement. As observed by Deputy President Roberts in *PHI*:

*“[15] As was pointed out in Yallourn, s.186(a)(i) requires that an enterprise agreement includes a term that provides ‘a procedure that requires or allows [the Commission] ... to settle disputes ... about **any matters** arising under the agreement’ (emphasis added). There are a range of matters which a union covered by an agreement may wish to agitate through a dispute settlement process both on its own account and by way of representing a particular member or members. In construing the dispute settlement clause in Yallourn, Flick J pointed out that there are many cases where it may be the union, rather than an individual employee, who may seek to have a dispute resolved, including a dispute as to the application or interpretation of an agreement.”*

FOT salary

4. At clause 27.4 of the proposed Agreement, the rate for a First Officer under Training (FOT) is effectively \$80,838.55 until “cleared to line”.
5. The Air Pilots Award does not have a classification of FOT. They are classified as a Narrow Body Aircraft - First Officer.
6. The minimum salary for a B737 or A320 First Officer under the Air Pilots Award 2020 is \$127,214.88.
7. The proposed Agreement pays First Officers a salary \$46,376.33 less than they would be entitled under the Air Pilots Award for the period before they are cleared to line.
8. At a minimum it takes a number of months before a “FOT”, or more correctly “First Officer”, is cleared to line.

Prior Notice of Concerns

9. These concerns were provided to the employer via email on 4 February 2025, prior to the commencement of the access period, as follows:

“From: Patrick Larkins <patrick@afap.org.au>

Sent: Tuesday, 4 February 2025 5:06 PM

To: Jim Morton <jimmorton@qantas.com.au>

Cc: Simon Lutton <simon@afap.org.au>; Chris Aikens <chris@afap.org.au>; Karl Romberg-Yee <karl.rombergjee@qantas.com.au>; Andrew Coull <acoull@qantas.com.au>

Subject: RE: SHEA9 in-principle agreement document

Dear Jim,

The timeframe proposed by Qantas is unreasonable and has provided limited opportunity for the AFAP to have genuine input into the document prior to the access period. Despite this, our reps have worked to provide a comprehensive response which will follow at a later time.

In the interim, it is important to draw Qantas’ attention to compliance issues with the proposed agreement which if voted up in its current form the AFAP will be raising with the Fair Work Commission (FWC). Our preference is that these issues are rectified in the document prior to being released for the vote.

1. *Disputes Procedure – clause 11*

We object to the clause in its current form for compliance reasons with the Fair Work Act 2009 (Cth) (Act). The clause limits the parties to a dispute to pilots and the employer, which is inconsistent with the requirements of s.186(6) of the Act when read with the decision in Energy Australia Yallourn Pty Ltd v. Automotive, Food, Metal, Engineering, Printing and Kindred Industries Union [2018] FCAFC 146 (Yallourn).

Further the words in clause 11.9 provide that a “pilot may request to have a representative of his or her choice, which may include a representative from the Association (or a representative of a Registered Industrial Organisation of which they are a member), represent them at any

stage of this dispute settlement procedure.” The AFAP as an organisation is unable to initiate the dispute resolution process under that clause unless we are authorised to do so by a pilot covered by the Agreement.

The clause needs to provide the express right for a union party to the agreement to initiate a dispute.

2. *FOT salary*

The training salary for FOTs is \$80,838.55 per annum compared to \$127,214.88 under the Award (\$46,376.33 less). This raises issues for the Better Off Overall Test (BOOT) under s.193 of the Act. The previous position put by Qantas to the AFAP is that a pilot under training is not covered by the Air Pilots Award until check to line is not a sustainable argument.

Regards,

Patrick Larkins
Senior Industrial/Legal Officer

AUSTRALIAN FEDERATION OF AIR PILOTS
LEVEL 4, 132-136 ALBERT ROAD
SOUTH MELBOURNE, VIC 3205
T 03 9928 5737 F 03 9699 8199 “

10. The employer did not address these concerns in the document released for vote.

Proposed remedy

11. The AFAP would support the approval of the proposed Agreement if:

- The new model disputes term for enterprise agreements (which provides for a union covered by the Agreement to initiate a dispute in its own right) replaces the current clause or the Applicant gives an undertaking to the same effect; and
- The Applicant gives an undertaking to provide the minimum salary to a First Officer Under Training (FOT) equivalent to the salary of a Narrow Body Aircraft - First Officer classification under the Air Pilots Award 2020 until cleared to line.

12. The AFAP reserves the right to make further submissions on these points.

Attach additional pages if necessary.

6. Does the Union want to advise the Commission that it disagrees with one or more statements in an employer’s declaration relating to the Agreement (the Employer’s Declaration)?

Yes

No

If you answered Yes – Provide details of the Employer’s Declaration.

Name of person who made the Employer’s Declaration	Jim Morton
Date of Employer’s Declaration	7 March 2025

7. If you answered Yes to question 6 – Set out the statements that the Union disagrees with and state why the Union disagrees with them, using numbered paragraphs.

1. Question 9 of the Employer’s Form F17B requires that the employer “Match all the employee classifications in the agreement to the classifications in the modern award(s) listed in your answer to question 8.”
2. The employer provided that “First Officer under Training” classification is “Not covered by the Air Pilots Award 2020, or any other modern award”.
3. This is incorrect. The classification is covered by the Air Pilots Award 2020 and is a Narrow Body Aircraft – First Officer classification.

Attach additional pages if necessary.

8. Does the Union want to express a view about whether the Agreement passes the better off overall test?

See s.193A(3) of the [Fair Work Act 2009](#). The Commission must give consideration to any views relating to whether the agreement passes the better off overall test that have been expressed by:



- the employer or employers that are covered by the agreement
- the award covered employees for the agreement

FAIR WORK COMMISSION

Form F18 – Declaration of employee organisation in relation to an application for approval of an enterprise agreement (other than a greenfields agreement)

- if the agreement is a single-enterprise agreement that covers one or more employees to whom a supported bargaining agreement or a single interest employer agreement applies—those employees, and
- a bargaining representative for the agreement.

Yes

No

9. If you answered Yes to question 8 – Is the Union of the view that the Agreement passes the better off overall test?

Yes

No

Explain the reasons for the Union’s view, using numbered paragraphs.

1. While the agreement provides a range of benefits above the Air Pilots Award 2020, First Officers receive a significantly lower salary for the period in which they are under training than they would be entitled under the Air Pilots Award 2020.
2. At clause 27.4 of the proposed agreement, the rate for a First Officer under Training (FOT) is effectively \$80,838.55 per annum compared to \$127,214.88 under the Award for a First Officer (\$46,376.33 less).
3. At clause 27.4.4 the proposed FOT salary applies “until cleared to the line on the aircraft type to which he or she was initially allocated.”
4. This is an indeterminant period but at a minimum is a number of months.

Attach additional pages if necessary.

FAIR WORK COMMISSION


Form F18 – Declaration of employee organisation in relation to an application for approval of an enterprise agreement (other than a greenfields agreement)

10. Does the Union give notice pursuant to s.183 of the Fair Work Act 2009 that it wants the Agreement to cover it?

Yes

No

Signature		Date:	14/03/2025
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	<p>Giving false or misleading information is a serious offence.</p> <p>A person who knowingly gives false or misleading information or knowingly produces a false or misleading document in relation to an application for approval of an enterprise agreement is guilty of an offence, the punishment for which is imprisonment for up to 12 months - see s.137.1 and s.137.2 of the <i>Criminal Code</i>.</p>
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Consent to contact by researchers

The Commission undertakes research with participants in agreement approval matters to ensure a high quality process. Some research may be undertaken by external providers on behalf of the Commission.

Do you consent to the contact details provided on page 1 of this form being provided to an external provider of research services for the purpose of inviting you to participate in this research?

Yes

No

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS