

s.47F(1)

From: s.47F(1)
Sent: Tuesday, 21 March 2017 3:13 PM
To: Minister Chester
Subject: Aerocare Media Release
Attachments: Aerocare Response to Media Allegations 21 03 17.pdf

The Minister was asked a question today relating to Aerocare workers allegedly sleeping at the airport.

Media Release from Aerocare attached.

Any questions please give me a call.

Regards,

s.47F(1)



s.47F(1)

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MEDIA STATEMENT

AEROCARE RESPONSE TO MEDIA ALLEGATIONS

Aerocare is conducting a full review of the matters raised by the ABC 7.30 and Sydney Morning Herald overnight. Aerocare was not provided with any opportunity to comment on those allegations prior to publication.

Work Place Conditions

The media coverage has shown improvised sleeping arrangements said to be within the baggage handling area at Sydney Airport.

Aerocare provides a comfortable, air conditioned, catered lounge for the use of its staff. (photos included of Sydney Airport employee rest area for Aerocare). Aerocare is not aware of any of its employees sleeping between shifts in the manner depicted and does not permit its employees to do so.

Most of the personnel shown in the images are not Aerocare employees. The baggage handling area is accessed and used by employees from the many companies that service the airport and is patrolled by Australian Border Force and Airport Security.

Aerocare CEO, Glenn Rutherford said, "Aerocare does not and will not permit the "camping out" that has been shown. Our staff at Sydney Airport are provided with a comfortable, catered air conditioned and heated lounge."

"Baggage areas are carefully monitored and recorded by airport and Australian Border Force personnel. We have contacted both parties to confirm whether they have any record of such activity."

ABC 7.30 Report said that their sources were Aerocare employees who were risking their jobs to speak out publically. The ABC 7.30 story prominently featured an interview with a George Orsaris who was described as an Aerocare employee and spoke about fearing that he would lose his job. In fact Mr Orsaris left Aerocare nine month ago, partway through training. He was a trainee and employee over a two month period ending June 2016 during which time he undertook only 28 shifts that each averaged approximately 7 hours in duration with regular rest breaks and with no split shifts. His employment was exclusively in the catering truck segment of the business, which had no overlap with or access to the baggage claim areas that were the subject of his complaints. He left the company of his own volition and is now employed by a competitor.

Split Shifts

The opportunity to work two shifts in a day is offered to employees where the company does not have the contract coverage to provide a longer continuous shift. This was included in the last EBA that was approved by 97% of our workforce. Such shifts are entirely at the employees' option.

Specific Incidents Raised by ABC 7.30 Report

Aerocare handles over 170,000 flight turns each year in complex airport environments.

The two incidents covered by the 7.30 Report were inaccurately represented:

- The cargo door incident was fully investigated by the airline, by Aerocare and by the safety regulator ATSB who confirmed the incident was "not a safety risk";
- The disabled lift had been knocked on its side and later reinstated after hitting an aerobridge to which it caused no material damage.

There is no basis for the suggestion that either incident was fatigue related.

Our data and customer feedback indicates that such events occur less frequently at Aerocare than for any of its peers.

Aerocare policies and culture enshrine and promote employee safety reporting in an open way that has been commended by customers as "best in class".

Our Approach to Safety

Aerocare's approach to safety is through continual improvement and we have direct evidence as reported above that our performance is top-tier if not best-in-class with ongoing improvements in key performance metrics. Additional information on this topic can be found at our website (<http://aerocare.com.au/category/news/>) and in our corporate brochure (<http://aerocare.com.au/wp-content/uploads/2016/03/Aerocare-Corporate-brochure-email.pdf>) but we copy below a summary of material safety-related news over the last twelve months as evidence of our ongoing commitments and investments in this most crucial area of our business:

Other Summary Points of Fact:

- In 22 years and despite handling over a million flights, Aerocare has never been penalised for a safety related issue
- In 2016 Aerocare was subjected to over 180 safety and security-related audits – all passed
- Aerocare's lost-time injury frequency rate (LTIFR) well below industry average
- The only Australian-owned handler registered to the top global standard - IATA Safety Audit for Ground Operations (ISAGO)
- Approach to safety acknowledged by industry with numerous awards and commendations
- Aerocare has and always will be fully compliant with all laws and regulations and, specifically as relates to employment conditions has had its industrial agreements repeatedly reviewed in detail and approved by the Fair Work Commission, which was unequivocal at the latest renewal in confirming that *"each Award covered employee and each prospective Award covered employee would be better off overall if the [Aerocare] agreement applied than if the Award applied"*
- Aerocare again committed to delivering significant wage increases under its new Enterprise Bargaining Agreement

PHOTOS OVER PAGE

21 March 2017

Media Contacts: Peter Brookes, 0407 911 389 or Helen McCombie 0411 756 248 – Citadel-MAGNUS

AEROCARE EMPLOYEE REST AREA AT SYDNEY AIRPORT



QB17-000061

Date QTB created: 21 March 2017

Last updated by Department: 21 March 2017

Last updated by Adviser: 22 March 2017

AEROCARE - AVIATION SAFETY ISSUES**KEY ISSUES/QUESTION**

- Allegations made by Aerocare employees on the Monday 20 March *ABC 7.30 Report* program that current terms and conditions of employment are impacting on aviation safety at Australian airports.

GOVERNMENT POSITION

- The Australian Government takes aviation safety very seriously, we are proud of our excellent safety record and we will not compromise it.
- I am aware of concerns raised in relation to operations by Aerocare, an Australian ground handling company working for many of the major airlines at our major airports.
- I am informed that both Aerocare and the Fair Work Ombudsman are investigating the matters raised in media reports and considering whether further action is needed.
- In relation to aviation safety, airline operations, including the provision of ground handling services, are subject to regular auditing by the Civil Aviation Safety Authority (CASA), the aviation safety regulator.
- I have been advised that neither of the two reported safety-related incidents in the program, indicated any systemic safety issues.
- I would encourage anyone who has safety concerns at our airports to use the appropriate reporting mechanisms established with the Australian Transport Safety Bureau.
- Any worker concerned that terms of their enterprise agreement are not being followed is encouraged to raise their concerns with the Fair Work Ombudsman, which can investigate the matter.
- It is irresponsible for anyone to raise safety concerns through media outlets without going through due process, it is also concerning that this is occurring during EBA negotiations.
- These include the ability to provide confidential reports to our aviation safety investigator, the Australian Transport Safety Bureau (ATSB).
- I would encourage anyone who has safety concerns at our airports to use these reporting mechanisms.

Contact Officer:	s.47F(1) Director, Aviation Safety, Policy and Governance, Aviation and Airports	Work Phone: s.47F(1)	Mobile: s.47F(1)
Cleared by:	s.47F(1) General Manager, Air Traffic Policy, Aviation and Airports	Work Phone: s.47F(1)	Mobile: s.47F(1)

Date QTB created: 21 March 2017
 Last updated by Department: 21 March 2017
 Last updated by Adviser: 22 March 2017

[IF RAISED] OCCUPATIONAL HEALTH AND SAFETY AND INDUSTRIAL MATTERS

- The Occupational Health and Safety issues raised in the program are matters for the respective state OH&S oversight agencies.
- Negotiations between the company and its employees over a new collective wages agreement are a matter for the parties concerned.

BACKGROUND

On 20 March 2017, the ABC 7.30 television program ran a story based on interviews with several Aerocare workers and the Transport Workers Union which raised safety concerns caused by the terms and conditions of employment used by Aerocare.

The ABC program heavily focussed on the terms and conditions of Aerocare workers and linked this with safety concerns caused by fatigue given some part-time staff were working several shifts and hence having to sleep at the airport in between shifts in makeshift, poor conditions.

Aerocare, an Australian-owned company, provides contracted ground handling services at around 35 of Australia and New Zealand's major airports for several Air Operator's Certificate (AOC) holders including Qantas, Jetstar, Virgin, Tiger and Singapore Airlines. The company has responded to the program noting that it turns around over 170,000 flights per year and has an IATA accredited safety rating for ground services.

Aviation Safety Regulation

Part of the regulatory compliance obligations of the AOC holder require the holder to have comprehensive operating procedures in place with which the ground services organisation must comply. The airlines are also required to have in place an effective audit regime, as part of their safety management systems, to ensure the operations of the ground services organisation are in compliance with the airline's stipulated procedures.

CASA oversights the airlines that contract Aerocare to perform services in accordance with the airlines' operating procedures. CASA routinely conducts surveillance of the airline operations, including those services that Aerocare performs for the airline.

In particular, CASA will determine, through regular surveillance activity, the maturity of the airline to appropriately oversight and manage third-party contractors such as Aerocare. Any CASA audit findings are issued to the airline and if these relate to the services provided by the ground service organisation, the airline is required to ensure

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Date QTB created: 21 March 2017
 Last updated by Department: 21 March 2017
 Last updated by Adviser: 22 March 2017

appropriate remedial action is taken by the third party. CASA in turn assesses the efficacy of the remedial action.

Aviation Safety Incidents

The program also raised two alleged safety incidents involving Aerocare – a cargo door that was not properly shut before pushback at Brisbane Airport on 28 November 2014 and the top of a disabled persons lift being towed hitting an aerobridge in 2015.

On 1 December 2014, the ATSB was notified of an event involving a Tigerair A320 aircraft during push back—as opposed to take-off as reported by 7.30—while a cargo door was open at Brisbane airport.

Before push back, both pilots viewed the door page as closed and ground crew confirmed ground checks were completed.

The aircraft pushed back and the flight crew were then made aware via an automatic alert that the door was not fully closed.

At the completion of the push back, the pilots queried the door with the ground crew and the cargo door was secured.

The flight crew are not made aware of the extent to which the door isn't shut, just that it's not closed and locked and therefore not in a safe condition for take-off.

The airline notified the ATSB of this event on 1 December 2014, which is within the timeframe required for reporting this type of event.

Based on the notification, the ATSB assessed that the system worked as designed to detect the anomaly and the event was not a transport safety matter. The ATSB, therefore, did not investigate the event.

In relation to the 2015 disabled persons lift incident, Aerocare has stated this was investigated by the company and the airline incident auditors.

The incident involved a lift being towed between airport gates in preparation for a later flight and, in contravention of operating procedures, the tow driver took a "short-cut" and the top of the lift hit the aerobridge. The incident was reported to CASA and the airport.

The incident auditors did not find any systemic evidence of deficient procedures or that training or fatigue were contributing factors. The incident led to the employee involved being provided with coaching to improve future performance.

Response from Aerocare

Aerocare have released a media statement stating that comfortable rest facilities are available for their staff, including at Sydney Airport. Most of the employees shown in the

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QB17-000061

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ABC were not actually Aerocare workers and that Aerocare does not permit the 'camping out' of employees as shown on the video.

The person interviewed for the story s.47F(1) was only employed for a short period and left the company 9 months ago in June 2016. In the time he was employed, he did not work any split shift rosters.

Split shift rosters were overwhelmingly supported by the employees, this was indicated by the last EBA vote for which 97% supported the concept.

Aerocare have stated that in 22 years and despite handling over 20 million flights, Aerocare have never been penalised for a safety related issue.

Aviation Security

While no security issues were raised in the ABC program, the Office of Transport Security will, as part of its regulatory regime examine any issues arising out of the program.

Industrial Relations

Aerocare is currently in negotiations with employees over its next collective wages agreement and has flagged a pay increase of at least 5% and to increase minimum shift duration.

The Transport Workers Union has indicated that Aerocare's shorter shifts and part-time hiring policy at airports is consistent with the "Americanisation" of work practices in Australia.

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Cleared by:	s.47F(1) General Manager, Air Traffic Policy, Aviation and Airports	Work Phone: s.47F(1)	Mobile: s.47F(1)

s.47F(1)

From: s.47F(1)
Sent: Friday, 31 March 2017 1:18 PM
To: s.47F(1)
Cc: s.47F(1)
Subject: RE: Aerocare Meeting - TBC - Tuesday 4 April, 3:30pm, Parliament House Canberra [SEC=UNCLASSIFIED]
Importance: High

Dear s.47F(1)

Apologies for the delayed response due to the adverse weather events here in Brisbane.

We confirm that our client Aerocare would like to take up the opportunity to meet with the Minister on Tuesday as per your place holder.

We will confirm proposed attendees with introductory notes for the Minister and yourself shortly.

All the exhibits for the Ministerial Briefing have now been compiled and the complete document will also be pdf emailed to you shortly.

Kind regards

s.47F(1)

Macpherson Kelley**A:** Level 16, 324 Queen Street, Brisbane, Queensland, 4000**PO:** GPO Box 5299, Brisbane QLD 4001**P:** s.47F(1)**E:**

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From: s.47F(1)
Sent: Wednesday, 29 March 2017 1:26 PM
To: s.47F(1)
Subject: RE: Aerocare Meeting - TBC - Tuesday 4 April, 3:30pm, Parliament House Canberra [SEC=UNCLASSIFIED]

Hi s.47F(1)

Thank you for your time earlier on the phone.

If you could send through the information to this email address that would be great.

I have put a placeholder in for Tuesday 4 April at 3:30pm in Canberra as discussed and will await your confirmation.

Kind regards

s.47F(1)

s.47F(1)

Office of the Hon Darren Chester MP

Minister for Infrastructure and Transport

Deputy Leader of the House

s.47F(1)

Suite M1 26 Parliament House | CANBERRA ACT 2600

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s.47F(1)

From: s.47F(1)
Sent: Monday, 3 April 2017 5:15 PM
To: s.47F(1)
Subject: Accepted: 3:30 - AEROCARE - s.47F(1)
s.47F(1) [SEC=UNCLASSIFIED]

Dear s.47F(1)

Thank you again for your time recently.

Please find **attached** the compiled Aerocare Ministerial Briefing paper for your information and consideration.

Please note:

- Subsequent to scanning, it was noted that the name of s.47F(1) current employer is s.47F(1) s.47F(1)
- Appendix 8 did not scan well, so a separate pdf is attached.

I again confirm the scheduled meeting with Minister Chester for Tuesday 4 April at 3.30pm; and our client would welcome the opportunity for a similar meeting with Minister Cash should there be an opportunity to do so.

If you have any additional queries, please do not hesitate to contact me at any time on my mobile.

Kind regards

s.47F(1)

Principal
Workplace Relations

Macpherson Kelley

A: Level 16, 324 Queen Street, Brisbane, Queensland, 4000

PO: GPO Box 5299, Brisbane QLD 4001

P: s.47F(1)

E: s.47F(1)

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Wednesday, 29 March 2017

Discussed with s.47F(1) - will send through information

From: contactform@aph.gov.au [<mailto:contactform@aph.gov.au>]
Sent: Monday, 27 March 2017 4:12 PM
To: Chester, Darren (MP)
Subject: APH Website contact form - new enquiry Darren.Chester.MP@aph.gov.au

Parliamentarian Hon Darren Chester MP

Name s.47F(1)

Telephone (work)

Telephone (mobile)

Email

Address Lvl 16, ANZ Building/324 Queen Street
Brisbane
QLD
4000
Australia

Question Dear Minister/ Staff

I act for Aerocare Flight Support Pty Ltd.

As the Minister is aware from the recent ABC 7.30 Report (21/03/17) and questions referred to the Minister in Question Time last week, Aerocare is the target of story which is objectively inaccurate and misleading. Given that Aerocare has been informed that a further story is to be aired by the 7.30 Report and given that the TWU affiliated s.47F(1) has requested further information from the company, we would like to provide a Ministerial Briefing note on the matter to the Minister and also to Minister Cash and to the Prime Minister.

Minister Cash's office has already been in contact and provided contact details and we would be obliged to receive the Minister's details at your convenience.

Kind regards

s.47F(1)

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LANGE Jacqueline

From: s.47F(1)
Sent: Tuesday, 4 April 2017 3:05 PM
To: s.47F(1)
Subject: Fwd: Aerocare Update
Attachments: image001.png; ATT00001.htm; Ltr to ABC - 04.04.17.pdf; ATT00002.htm; Aerocare Media Statement 4th April 2017.pdf; ATT00003.htm; Ltr to ABC - 27.03.17.pdf; ATT00004.htm

Dear s.47F(1)

Further to our meeting shortly-

The following was sent to s.47F(1) this morning:

Thanks s.47F(1)

The data provided does not correlate and appears wildly inaccurate and would undoubtedly be misleading if presented to anyone – layperson or expert alike. Those levels would be very high for the overall Company, let alone a single port. Additionally, there are over 200 staff of the classifications outlined at Sydney International.

Aerocare's employee safety performance is most transparently benchmarked via workers' compensation insurance premiums, which are a function of injury frequency and severity (relative to hours worked). Workers compensation is independently verified by government entities.

Aerocare's key injury metrics are shown in the table below. We strongly encourage the ABC to verify these injury claims and premium rates with the various WorkSafe / WorkCover regulators in each state. In addition, we encourage you to provide this audited factual information to any workplace safety experts you have for comment.

I am also attaching a document with an overview of Aerocare's approach to injury reporting.

Finally, we would also encourage you to approach IATA regarding the requirements and outcomes of their review that resulted in the ISAGO designation.

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I am anticipating 'round 2' of the ABC/TWU campaign against Aerocare to air tonight. We have sent the following to media outlets (without the legal letters). We don't anticipate any uptake, but hope it will deflate the ABC's balloon a little.

Aerocare, alongside Australian airport authorities, today confirmed that claims of employee sleeping "camps" at its airport facilities were totally without foundation.

The Company provided the results of an extensive investigation into recent disturbing media footage of improvised sleeping arrangements, allegedly within one of its airport areas, having worked in parallel with Sydney, Melbourne, Brisbane and Perth airports and the Australian Border Force to conduct the investigation.

All parties confirm that after careful physical inspection and review of surveillance footage and digital records they have found nothing to substantiate the existence of "camps" where people are sleeping on site or any similar practices at any of these locations. A Media Statement is attached.

The original allegation was aired on the ABC's 7.30 Report program, and is part of a campaign by the TWU to undermine Aerocare during its EBA negotiations with its employees.

Despite the material in the original story being untrue and misleading The 7.30 Report is understood to be preparing to air a second story with further claims against Aerocare, which the company strongly refutes and has repeatedly provided comprehensive factual rebuttals to over the last few days that we feel may well be ignored in favour of sensationalism.

The ABC claim to have information from a reliable source purporting to have drawn information from inside Aerocare but have not shared the information with Aerocare and the data summary they provided was wildly inaccurate and in no way a match to our audited injury records. Our concern is that there is more union-driven fabrication or deception as has been demonstrated to be the case regarding the allegations of systemic employee "camping" from the first episode.

Aerocare has written to the 7.30 Report on two occasions, and the letters are attached as background.

Regards,

s.47F(1)

s.47F(1)

Group Chief Executive Officer / Director
Aerocare Flight Support Pty Ltd

31 Longland Street, Newstead, QLD 4006 Australia

s.47F(1)

s.47F(1)

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Document 3

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Ministerial Briefing

TO:

The Honourable Michaelia Cash, Minister for Employment, Minister for Women and Minister Assisting the Prime Minister for the Public Service

The Honourable Darren Chester, Minister for Infrastructure and Transport

Executive Summary

1. Aerocare Flight Support Pty Ltd (**Aerocare**) is an Australian private company; which over 25 years has grown from a small business "mop & bucket" aircraft cleaning business to a major participant in the Australian aviation industry, employing nearly 3,000 workers across 35 airports in Australia and New Zealand and servicing the needs of numerous Australian and international airlines.

Aerocare competes for work with the internal ground services arms of Qantas and Virgin; and with a variety of Australian and international aviation support companies, such as the Emirates – owned Dnata and UK publically listed company Menzies.

Aerocare has always operated in compliance with applicable industrial relations laws. Its current enterprise agreement, the *Aerocare Collective Agreement 2012*, nominally expired on 19 February 2017; however in accordance with that agreement Aerocare entered into bargaining with the Transport Workers Union (**TWU**) and Australian Services Union (**ASU**) prior to the expiry; and bargaining is ongoing despite the TWU's current media campaign against Aerocare.

2. Aerocare was the subject of a story on the ABC's **7.30 Report** (21/03/17) that:
 - a. Raised two incidents involving Aerocare – a pushback of a Tigerair passenger jet with an unsecured cargo door at Brisbane Airport in 2014 and height clearance collision of a mobile mobility loading platform at Sydney Airport in 2015;
 - b. Raised insinuations that incidents such as these, were due to worker fatigue;
 - c. Made further insinuations that fatigue amongst Aerocare baggage handlers was due to employees working split shifts;
 - d. Raised allegations that Aerocare baggage handlers were "resting" between split shifts in makeshift, unsanitary, secret "camps"; and
 - e. Afforded the TWU the opportunity to raise untrue allegations that:
 - i. Aerocare workers are unlawfully being paid below the applicable Award;
 - ii. Aerocare workers are being exploited with a risk to the health and safety of the flying public; and
 - iii. Customer airlines were risking their reputations by engaging Aerocare to provide services.
3. The 7.30 Report relied on the commentary of one identified interviewee, s.47F(1) and two unidentified interviewees (an alleged current Aerocare employee and an alleged former employee) and the General Secretary of the TWU, s.47F(1)

In relation to those interviewed:

- a. s.47F(1) stated that by giving the interview he was placing his employment at risk – however if this is the case, it is not employment with Aerocare, as he abandoned his casual employment with Aerocare in June 2016 (he failed to return after an approved absence, failed to respond to emails and calls regarding further rostering of casual hours and was seen working for a competitor). To Aerocare's knowledge, s.47F(1) is presently employed with one of Aerocare's direct competitors, s.47F(1), a subsidiary of the s.47F(1).

Further, s.47F(1) was only ever employed in a truck driver role (so never worked as a baggage handler), was not a witness to either of the reported incidents and has no demonstrated expertise to be able to comment on the cause, nature or seriousness of those incidents;

- b. The unidentified witnesses made comments about safety without establishing whether they were employed at the time of the two incidents, were witnesses to them, or have any qualifications or expertise allowing them to comment on the cause, nature or seriousness of those incidents. Indeed if they are in fact baggage handlers they are decidedly unlikely to have any such expertise etc;
 - c. According to Aerocare's records, s.47F(1) has never exercised a Right of Entry for discussions or work health and safety issues (or for any other reason) and has no personal or direct knowledge of working conditions at any of Aerocare's workplaces at any major Australian airport.
4. The 7.30 Report showed a number of photographs and video footage of a purported makeshift "camp" at Sydney airport; however the photographer was not identified, nor where and when the photographs/ footage was taken; and none of those interviewed stated that they had in fact "slept" at the photographed "camp" at any time or that it was in fact a "camp" created by Aerocare workers.

It is further to be noted that it is an offence under airport security to take photographs in an "airside" security area; and that airport security and the Australian Federal Police routinely patrol airside security areas and would have taken action had any such "camp" been identified/ discovered.

Similarly Aerocare conducts routine managerial inspections of Aerocare work areas and at no time had any such camp been located within an Aerocare airside work area.

As such, there is a strong possibility that the photographs/ footage are not recent, do not relate to Aerocare and could well be staged given the TWU's current campaign against Aerocare.

5. The two incidents raised by the 7.30 Report, did not put the public or other workers at serious risk due to the multiple layers of oversight, supervision, safety and security. Independent review of both incidents did not result in any prosecution or penalty against Aerocare.

Further:

- a. in 25 years of operations and despite handling over a million flights, Aerocare has never been penalised for a safety related issue;
- b. In 2016 Aerocare was subjected to and passed over 180 safety and security-related audits (See Appendix 1);

- c. Aerocare is the only Australian-owned handler registered to the top global standard – IATA Safety Audit for Ground Operations (ISAGO) (See **Appendix 2**); and
 - d. Aerocare's approach to safety is acknowledged by the Australian aviation industry with numerous awards and commendations (See **Appendix 3**).
6. At all times, and as is spelled out in the current Aerocare Collective Agreement 2012 (and in the current draft 2017 enterprise agreement); it is at the employee's option to agree to work split shifts.
7. There is no empirical or academic evidence that working split shifts of the nature offered by Aerocare causes worker fatigue or fatigue increasing the risk of accidents or injuries.

Indeed, Aerocare's lost-time injury frequency rate (LTIFR) is well below industry averages.

8. For the ABC to raise the above insinuations and allegations without expert analysis or corroborated evidence is, in Aerocare's view, in breach of the ABC's Code of Conduct. Accordingly a formal complaint has been lodged with ABC management and with Mediawatch. If Aerocare is not satisfied with ABC management's response, a complaint will be pursued with ACMA.
9. Aerocare is of the belief that it is being targeted by the Transport Workers Union in a campaign to generate membership to the commercial detriment and embarrassment of the company.

Factual Matrix

ABC 7.30 Report (20/03/17)

10. This is a link to the ABC 7.30 Report and transcript of 20th March 2017.

<http://www.abc.net.au/7.30/content/2017/s4639390.htm?source=rss>

An analysis of the story and the unsubstantiated, uncorroborated and false allegations are identified in **Appendix 4**.

The footage used by the ABC

11. The ABC has claimed that its material had not come from the TWU. However the TWU's own press release says:

"Footage obtained by the TWU and shown on ABC 7.30 shows workers forced to sleep near baggage carousels at the airport because of low paid, part-time and insecure work."

<http://www.twu.com.au/home/media/footage-shows-third-world-conditions-for-workers-a/ease>

12. The Footage provided by the TWU purported to show filthy and improvised sleeping arrangements said to be within the baggage handling area at Sydney Airport and used by Aerocare workers between split shifts.
13. Aerocare was not made aware that 7.30 had this footage or that 7.30 would be using it to anchor their story. With no right of reply, Aerocare was unable to correct the allegations or to

point out that the people shown in the images were not Aerocare workers until after broadcasting.

14. The baggage handling area at Sydney Airport is accessed and used by employees from the many companies that service the airport and is patrolled by Australian Border Force and Airport Security.
15. Aerocare's investigations, alongside those of Sydney Airport and Australian Border Force, confirm that there is no evidence of the alleged employee "camps" depicted in the media last week. The footage supplied by the TWU to the 7.30 Report appears to not have been filmed recently.
16. Even if scenes like this may have existed at some point in time in the past somewhere at an Australian airport, and even then if they had in some way involved Aerocare employees, these are not working conditions that are supported or condoned in any way by Aerocare or by Australian airport security.
17. Aerocare provides a comfortable, air conditioned, catered lounge for the use of its staff. (Photos of Sydney Airport employee rest area for Aerocare are in **Appendix 10**). Aerocare is not aware of any of its employees sleeping between shifts in the manner depicted and does not permit its employees to do so.
18. Aerocare can confirm that the individual shown in the footage was not an Aerocare employee.
19. Aerocare continues to investigate other recent media reports that claim that some workers have been sleeping on site or in their cars because of the length of time between split shifts.

Split Shifts – Sydney Airport

20. Much of the 7.30 Report's focus centred on the potential for the gaps between split shifts to lead to unacceptable worker behaviour and fatigue. It is common practice in the aviation industry in Australia, and elsewhere in the world, for aviation support workers such as Aerocare staff to work more than one shift in a day (**split shifts**), given rosters are determined by fluctuating flight schedules.
21. For example it generally takes three hours to fully service an international aircraft, so longer shifts in relation to such aircraft are not justified or sustainable. Shorter shifts are sometimes required to meet the demands of airline customers.
22. Many of Aerocare's competitors and other industry participants allow for and engage in split shifts in their rostering. Some larger competitors are able to sustain a higher proportion of longer single shifts as they have more contracts that deliver more consistent flight schedules and higher revenue.
23. Aerocare has spent millions of dollars improving its rostering system to maximise the duration of employee shifts. Since its last enterprise agreement, which was fully approved by the Fair Work Commission in 2013, Aerocare has seen average shift lengths increase as the company has won more contracts and work.

24. The choice to work split shifts was included in Aerocare's last (and still current) enterprise agreement, and was voted in favour for by 97% of all employees. Such shifts are entirely at the employees' option.
25. In the draft enterprise agreement currently in negotiation, Aerocare has committed to increase minimum shifts from 3 hours to 4 hours, and the company's intent is to make individual shifts last as long as possible.
26. The ABC story focussed on Sydney airport. To put the allegations of any alleged link between split shifts, fatigue and opportunity to "sleep" (if there is indeed any need for same); a review of Aerocare's shifts at Sydney Airport over the previous 6 months reveal:
- There was 31,785 shifts worked totalling 179,317 hours (not including meal break)
 - There were 3,829 instances of more than one shift worked in a day
 - The average gap between the two shifts was 1.7 hours, the median was 1.17 hours and the maximum was 9 hours
 - There were only 204 occasions where the gap was > 5 hours
 - There were 2,732 occasions where the gap was <=2 hours

s.47F(1)

27. The ABC story focussed on s.47F(1)

s.47F(1) was represented to be a current Aerocare truck driver. That is not the case. s.47F(1) s.47F(1) worked briefly for Aerocare in 2016, commencing on 26 April 2016 and he worked his last shift on 19 June 2016. At that time he requested not to be rostered until further notice as could not work in the immediate future due to personal commitments. He was then removed from rostering for the following 4 week Roster Period. He indicated that he would likely be available for further rostering after 28 June 2016. Attempts were made to contact s.47F(1) at that time but all were unsuccessful. He was then seen working at Sydney airport with a competitor of Aerocare. He was accordingly recorded in Aerocare's systems as having abandoned his employment.

28. Over his span of 56 days employment, which was all covered by his probation, he worked 28 shifts of which:
- no shifts were 'split shifts'
 - The average shift length was 6.7 hours
 - He never worked more than 4 consecutive days
 - Most shifts were 7.5 hours in length
 - For all of his shifts he was engaged in either training (classroom) or buddy training. At no point was he rostered to work in any role that would require him to access the baggage makeup areas.

A screen capture of his final shifts appears in **Appendix 5**.

16. To Aerocare's knowledge, s.47F(1) is presently employed with one of Aerocare's direct competitors, s.47F(1) a subsidiary of the s.47F(1)

17. During his employment with Aerocare, s.47F(1) was not engaged in baggage handling and he had no access to the baggage areas he talked about in the story. He worked in the catering truck segment.
18. s.47F(1) made the comment:
"That's barely enough time to sleep, by the time you get home and get up and go to work again. So we end up sleeping underneath the terminal where all the baggage goes in between, just to catch up on sleep".
19. The 7.30 Report did not advise viewers that s.47F(1) had misrepresented himself and that he worked for a competitor at the time of the interview.
20. s.47F(1) never had reason to sleep at work between shifts, as he never once worked a split shift in his short time with the company.

Aerocare's response to the story and position generally

17. Statement by Aerocare CEO Glenn Rutherford:

"The Australian aviation sector is the safest and one of the most highly regulated and audited of its type in the world. While we recognize that incidents can and do occur, Aerocare's commitment to continual improvement and investment in safety systems and processes has been a significant factor in the industry's consistent and continual improvement in this most crucial area."

"I am therefore deeply concerned by any allegations of safety deficiency and poor employee work conditions, as looking after the welfare and safety of every single employee and the broader travelling public is my most important job."

"We will continue to investigate any claims thoroughly. That said, I have worked for this company for many years - starting as a baggage handler. In 25 years of operation that have seen us handle over one million flights, Aerocare has never been penalised for a safety related issue and is widely considered a leader in safety by customers and regulators."

Aerocare's Industry-Leading Commitment to Safety

18. Aerocare places the highest emphasis on safety, especially where its staff and the broader travelling public are involved, and is gravely concerned by any allegation or misrepresentation that might suggest otherwise. Since inception, Aerocare's first priority has been its commitment to ensuring that all employees are fully trained, well informed and given the best possible safety conditions in what is a complex and potentially hazardous working environment.
19. To support this organisational priority, Aerocare has invested in creating a team of dedicated specialist safety personnel and world-class proprietary training and compliance systems at a cost of many millions of dollars. The effectiveness of this investment is evidenced by the company's safety track record, which has never seen any penalty or loss of contract for safety related issues in 25 years of operation.
20. In addition, Aerocare also points to the following facts:

- a. Aerocare is fully compliant with Australian Occupational Health and Security regulations, Australia's Civil Aviation Safety Authority (**CASA**) regulations, and all other applicable work health and safety regulations and can provide evidence of this;
- b. Aerocare additionally complies with all additional and complimentary requirements of each of its client airline partners, which are often based on international criteria;
- c. As an airline ground handling service provider, Aerocare is subjected to more audits and scrutiny than the airlines themselves, given the additional layer of customer airline audit. Aerocare was subjected to over 180 safety and security-related audits by regulators, government departments and airlines in 2016, in addition to its own continuous internal investigations and reviews. Auditors included CASA, Workplace Health and Safety (various states and territories), the Office of Transport Security, Qantas, Virgin, Jetstar, Tigerair, AirAsia, Scoot, Air New Zealand, Fiji Airways, Hawaiian Airlines, Cebu Pacific, Air Vanuatu, Silk Air, Hong Kong Airlines, Qatar Airways, US Transport Security Administration, Singaporean Civil Aviation Authority, NZ Civil Aviation Authority, and Australian Biosecurity (Copies of a variety of audit report clearances are attached at **Appendix 1**);
- d. Aerocare's most recent comprehensive end-to-end safety management system audits performed by two of its largest customers had zero deficiency findings, which we understand is unprecedented in the Australian context;
- e. Aerocare is the only Australian-owned IATA Safety Audit for Ground Operations (ISAGO) registered handler. This designation is awarded by the peak global aviation body IATA and requires the handler to have met strict standards in safety compliance and performance as assessed by qualified independent auditors (A copy of the certification is attached in **Appendix 2**).

Employee Safety and Work Conditions

- 21. Aerocare's lost-time injury frequency rate (**LTIFR**) – the most accepted measure of relative employee work conditions – is well below comparable aviation industry rates and also well below national competitor rates. Aerocare's latest annual result of <2.7 events across the company for every one million hours worked, is less than a third of the published industry average of 9.1 events/ one million hours. Further, Aerocare's LTIFR rate continues to decline despite strong growth in its employee base.
- 22. Aerocare's national 2015/2016 insurance premium rate for workers' compensation is 28% better than the national average industry rate for "Services to Air Transport." This is objective market-based evidence that Aerocare is significantly better than its competitors in injury prevention and return-to-work outcomes.
- 23. Aerocare has strongly promoted an open and healthy staff incident reporting culture. Aerocare is often praised by our customers for its transparency.
- 24. No Aerocare employee was ever found occupying a makeshift bed as depicted in the 7.30 Report footage.

In any event it seems absurd that at Sydney Airport (due to the 7.30 Report being focussed there) that any Aerocare staff member would not avail them selves of the staff lounge in their staff room or even the facilities of the terminal instead of a dirty concrete floor surrounded with

rubbish. The Sydney staff room, as in many of the other major ports, has tea and coffee making and kitchen facilities and space to comfortably relax if and when a split shift is being performed, noting again that in the vast majority of cases the average time between split shifts is less than 2 hours (See photos in **Appendix 10**).

Specific Incidents Raised by ABC 7.30 Report 20/03/17

25. Aerocare currently performs over 170,000 flight turn arounds each year. In as complex an environment as an airport, it is unfortunately unavoidable that safety-related events occasionally occur, although Aerocare's data and customer feedback indicates that such events occur less frequently than with any of its competitors.

Brisbane cargo door incident 2014

26. In November 2014, a Tigerair aircraft was pushed back a short distance from the Brisbane domestic terminal before the pilots became aware a cargo door was open as part of their pre-flight checks. Cockpit systems indicated the cargo door was open well before the aircraft began to taxi. Air traffic control also contacted the cockpit to advise of the cargo door status. Pushback procedures ceased immediately, the engine was shut down, cargo door closed and the aircraft resumed its journey without further issue.
27. The incident was reported to the Australian air safety regulator, the ATSB, as a routinely reportable matter. The ATSB decided the matter did not warrant further investigation. The airline was also confident that all appropriate actions were taken to rectify the problem.
28. Contrary to the insinuations of the 7.30 Report, safety of the aircraft's crew, passengers and ground staff was never at risk. There was no risk of an aircraft departure with the cargo door open. That is why the Regulator took no further action beyond the initial reporting. There are multi-layered and overlapping procedural checks and balances with Aerocare, the airlines and the airports to ensure this is the case.
29. A detailed review was also subsequently undertaken by Aerocare and Tigerair; and additional procedural improvements were introduced to further mitigate the risk of any repeat future occurrence.

Disabled persons lift incident 2015

30. A disabled persons lift was being towed between gates in preparation for a later flight and, in contravention to operating procedure, the driver decided to take a "short-cut" that saw the top of the lift hit an aerobridge. No one was on the lift at the time of the incident, and no one was injured, the lift was not destroyed and there was no material damage to any airport property (See photos in **Appendix 9**). As the event was caused by an error in judgment despite adequate training and culture, the employee involved was coached to assist them in making better decisions.
31. The 7.30 Report presented that a disabled lift had been "cut in half" when in fact it was only knocked on its side and later reinstated after colliding with an aerobridge. Reviews showed the incident had been caused by driver error not by fatigue.

32. No aircraft was involved in this incident and there was no material damage to the aerobridge. It was dishonest for 7.30 Report to refer to this as *"a serious accident"* which could cause *"harm and damage to airline (sic) or people travelling on that airline"*.

Conclusions on the Two Identified Incidents

33. Both incidents were investigated and documented in detail by Aerocare's safety team and by the airlines, who in turn report all such incidents to CASA and/or the airports. Both incident responses were handled correctly internally and with the regulators and airlines concerned.

Importantly, the incident auditors did not find any systemic evidence of deficient procedure and also verified that deficient employee training or fatigue were not in any way contributing factors.

Aerocare's Approach to Safety

34. Aerocare's approach to safety is through a continual improvement loop; and its audit results are direct evidence that its performance is top-tier if not best-in-class. Additional information on this topic can be found at our website

(<http://aerocare.com.au/category/news/>) and in our corporate brochure

(<http://aerocare.com.au/wpcontent/uploads/2016/03/Aerocare-Corporate-brochure-email.pdf>)

Set out below is a summary of material safety-related news over the last twelve months as evidence of Aerocare's ongoing commitment and investment in safety processes:

35. **February 2017:** Aerocare invested in industry-leading technology to improve adverse weather monitoring at highest adverse weather risk airports, allowing necessary and timely precautions to ensure the safety and wellbeing of staff during storms, as well as protecting aircraft and ground equipment and providing information to other airport stakeholders. As a result of Aerocare's partnership with UBIMET, the most advanced lightning detection system in Australia, UBIMET are continuing to update their product to provide the best lightning data from which staff can make effective and safe decisions.

Aerocare has since introduced other airlines to UBIMET. No competitor or like operator has, as yet, made an investment of this type;

36. **December 2016:** Aerocare was shortlisted for the second year running for the Ground Handling International Ramp Safety Awards for The Far East, India and Australasia. Although Aerocare as a whole was nominated and commended for its firm-wide performance, specific recognition was also made of Aerocare's Canberra operation, where an Aerocare ramp prevented the likely collision of two aircraft after one was incorrectly given clearance by a tower operator and began taxiing behind another aircraft;
37. **October 2016:** Comprehensive end-to-end organizational audit (including safety systems) by two of Aerocare's largest client airlines resulted in nil adverse findings and several commendations (unprecedented in the Australian context);
38. **September 2016:** Aerocare won 4 out of 8 possible awards at the QantasLink Regional Airports Ground Handling Conference, in recognition of service, safety reporting, safety health checks and compliance to safety procedures;

39. **March 2016:** Aerocare was registered as an ISAGO provider (International Air Transport Association (IATA) Safety Audit of Ground Operations – ISAGO), recognising Aerocare's commitment to a world class safety culture (See **Appendix 2**).

Aerocare's Ongoing Commitment to Employees

40. Consistent with its exemplary 25 year industrial relations and compliance record, Aerocare is again committed to delivering significant wage increases as against the applicable Modern Award in the enterprise agreement currently in bargaining to cover over 2,000 employees across Australia.

The company is proposing to increase rates across the board by at least 5% (on top of the benefits of tenure-based increases), to increase minimum shift duration, and to introduce significant additional long service bonuses.

41. Pay levels will continue to exceed Modern Award conditions and the Fair Work Commission's Better Off Overall Test (BOOT) requirements. The company's current draft agreement also provides for additional annual length of service increases of 2.5% - 4% for 4 years.
42. These commitments are being made as its large global competitors are actively announcing their intention to cut costs and reduce wages (see **Appendix 6 – Dnata memo 1 March 2017**).
43. The majority of Aerocare employees are now employed on a permanent, part-time basis, with approximately one-third of its workforce on full-time equivalent hours. Aerocare remains committed to all employees having permanent positions. This is evidenced by the fact that the company offers on an ongoing basis the opportunity for casual employees to convert to permanent employment, at any time, on their election.
44. Aerocare strongly refutes any allegations or assertions in ABC's 7.30 Report program and by the TWU elsewhere inferring poor treatment or under-payment of its employees and, in turn, would like to point to the following facts:
- a. There have never been any findings against the company in relation to labour practices or wage payments, nor has there been any application by employees to Aerocare or to the Fair Work Commission itself as is provided in the current agreement's dispute resolution clause;
 - b. Alongside permanent full-time positions wherever possible, Aerocare does employ numerous employees on a permanent part-time basis, which is driven by the needs of airline customers, with rosters determined by flight schedules. It is to be noted that it generally takes three hours to fully service an international aircraft;
 - c. Alongside heavy investment in new equipment and recruitment, training and HR technologies, Aerocare has invested millions of dollars to improve the quality of its rostering so as to maximise the duration of shifts; with the goal of securing more contracts which would enable Aerocare to offer employees longer shifts and viable full-time positions as a result;
 - d. 97% of Aerocare's employees voted in favour of the current enterprise agreement (for which the replacement is now in bargaining), which delivered better wages and, as industry developments have shown, better job security and working conditions

than many of Aerocare's competitors. Despite the present TWU campaign against the company, Aerocare is confident there will be a similar level of support for the agreement currently under negotiation, as has been the case in six prior EBA negotiations over 25 years. It is also worth noting that Aerocare's 97% approval rate of the current agreement contrasts with that of industry competitors who have typically had at a much lower level of support/ approval.

- e. It is worth noting that a number of Aerocare's competitors continue to operate on expired or below-award, non-certified agreements, some of which cover unions.

Indeed as of 20 March 2017, Senior Deputy President Hamburger in the Fair Work Commission made an order that Aerocare's current agreement apply in lieu of the Oceania Aviation Services Staff Agreement 2010 – 2013 to Oceania employees coming across to work for Aerocare at Broome Airport, where remaining Oceania employees continue to be paid under an agreement, which covers the ASU, which nominally expired approximately 4 years ago (see **Appendix 7 – Decision AG217/589**).

- f. The Fair Work Commission has previously found that Aerocare's current agreement delivers above Award conditions to employees; with the Fair Work Commission's Vice President stating in ratifying the agreement on 12 February 2013:

"I have weighed the respective advantages and disadvantages under the Agreement compared to the Award. In my view the benefits of the Agreement are substantial. I have also considered the detailed evidence and calculations provided in the proceedings which assists in assessing the extent of the benefits and the disadvantages. I note that in relation to minimum shift lengths the basis of these calculations adopt the unions' proposals regarding financial impact. Having regard to all of the circumstances I am satisfied that each Award covered employee and each prospective Award covered employee would be better off overall if the agreement applied than if the Award applied. In my view the Agreement satisfies the BOOT. I am satisfied that each Award covered employee and each prospective Award covered employee would be better off overall if the agreement applied than if the Award applied."

- g. In a further decision relating to the employment of new workers inherited from a smaller competitor that would likely have failed without Aerocare's intervention, the Fair Work Commission, on 4th November 2015 stated that:

"Aerocare is a large national employer in this industry. It operates under formal enterprise agreements. It has been able to grow its business through flexible innovative employment arrangements. Its agreements have passed legislative approval tests."

- 45. In conclusion, Aerocare observes that despite the current allegations being raised by former or unidentified and unconfirmed employees and the TWU, there is no genuine substance to them.

In relation to safety, aside from two sensationalised incidents of no currency/ in excess of 2 years old, the 7.30 Report relies upon unqualified comments of interviewees of unestablished or discredited credibility. Against this is the company's provided evidence of audit clearance, safety awards and industry acknowledgements.

In relation to pay and terms and conditions under a current enterprise agreement, the 7.30 Report offered no evidence of underpayment or breaches of the agreement and the TWU, despite having access to a dispute resolution clause in the current agreement, has taken no action in the Fair Work Commission in support of any such allegation.

7.30 REPORT'S LACK OF BALANCE

46. An Aerocare employee who called ABC reporter s.47F(1) to tell him about their experience with Aerocare and how it had good work practices was told words to the effect:

"Not to bother. We have 10 people coming forward to substantiate the claims made on the program for every one trying to defend the company."

The employee asked to be put on air with his point of view. s.47F(1) asked them to send an email.

47. The 7.30 Report has been advised that the promotion of this "story" for publication through them is part of a TWU campaign to undermine Aerocare's EBA process. The 7.30 Report does not currently accept this despite the TWU itself launching a targeted pamphlet campaign publicly taking credit for providing the 7.30 Report with the footage that underpins the accusations.
48. In **Appendix 11** is a copy of correspondence from Aerocare's media lawyers Johnson Winter Slattery addressing the lack of integrity, responsibility and accuracy required of the ABC by its own Code of Practice.

Pending further ABC 7.30 Report

49. . Aerocare is on notice that the ABC/ 7.30 Report intend to air a further story critical of Aerocare and its safety record. Aerocare, to the extent that it has (limited) visibility of what the ABC intends to broadcast, has again responded via its media lawyers, Johnson Winter Slattery, in correspondence dated 30 March 2017 and also attached in **Appendix 11**.

TWU/ UNION ABSENCE FROM THE WORKPLACE

50. Set out in **Appendix 8** is a listing of TWU rights of entry for Brisbane, Gold Coast, Sydney, Melbourne, Canberra, Adelaide and Perth Airports.

The numbers and timing speak for themselves – in actual fact the TWU has no capacity to directly comment on working conditions of Aerocare workers at the major airports because their personal observations are either non-existent or long out of currency.

TWU HARASSMENT AND INTIMIDATION OF STAFF

It has come to Aerocare's attention that a number of its employees who have decided to voice their contrary views to those published in the 7.30 Report and on the TWU website have been intimidated by replies stating that their details had been "screenshot" for further reference or deleted. Many have also been contacted at their private email addresses by the TWU in circumstances where they have not previously provided their emails to the union or consented to the union contacting them.

Aerocare has thanked those staff for their support but not encouraged them to engage with the union through social media. Further, those staff concerned about the responses they have received have been directed to the Office of the Australian Privacy Commissioner.

GENDER EQUITY

51. Although not addressed in the ABC stories, as the Honourable Senator Cash is the relevant Minister for Women, it is worthwhile also bringing to her attention Aerocare's position as a leading gender equity employer, which is detailed in the company's most recent filed report with the Regulator:

https://www.wgea.gov.au/sites/default/files/public_reports/tempPublicReport_vc2kmiuk2e.pdf

A copy of the report is appended in full at **Appendix 12**.

APPENDIX 1 - Safety and Security-Related Audits

Attached summary



Aeromemo

To: s.47F(1)
 From: [REDACTED]
 Date: 27th March 2017
 Re: Audits

Summary

- 181 audits completed on the business during calendar year 2016
- Includes system audit by two major clients with nil non-compliances identified
- Aerocare completed 43 audits (24%)
- Clients completed 95 audits (52%)
- Regulators completed 43 audits (24%)
 - Domestic (CASA / OTS / Biosecurity) completed 34 audits (19%)
 - International (CAA (NZ) / TSA (US)) completed 9 audits (5%)

Port Summary

- BNE – 9 audits completed during 2016 (including 1 x CASA, 1 x TSA)
- SYI – 10 audits completed during 2016 (including 1 by CASA)

Audit Summary

Auditor	Number of Audits
Air New Zealand	4
AlrAsia	14
Alliance	1
CAA (NZ)	7
CASA	19
Cebu Pacific	1
Cobham	9
Fiji Airways	1
Hawaiian Airlines	1
Hong Kong Airlines	2
JetGo	1
Jetstar	18

Auditor	Number of Audits
Origin Air	1
OTS	10
Qantas Airways	2
QantasLink	7
Biosecurity	5
Scot	2
Tigerair	11
TSA (USA)	2
Virgin Australia	13
Virgin International	5
WH&S	2
Aerocare	43

APPENDIX 2 - IATA Safety Audit for Ground Operations (ISAGO)

Attached certificate



Presented to

STN- 0584

Aerocare Flight Support

On the occasion of their ISAGO Station Registration at

Gold Coast, Australia – Gold Coast Airport (OOL)

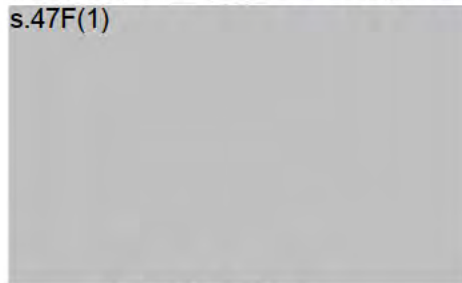
under the

IATA SAFETY AUDIT FOR GROUND OPERATIONS PROGRAM

In the following operational disciplines

Organization and Management (**ORM**)
Load Control (**LOD**)
Passenger and Baggage Handling (**PAB**)
Aircraft Handling and Loading (**HDL**)
Aircraft Ground Movement (**AGM**)

Registration is valid until December 3, 2017
in accordance with the provisions of the ISAGO Program Manual
s.47F(1)



Senior Vice President
Safety & Flight Operations

APPENDIX 3 - Australian Aviation industry Awards & Commendations

Aerocare wins four of eight QantasLink awards

23 SEPTEMBER 2016

Aerocare has won four of the eight awards announced at the annual QantasLink Regional Airports Ground Handling Conference in Sydney last week.

Aerocare CEO Glenn Rutherford said: "Considering our relatively short history with QantasLink and the fact that we received 50 per cent of the awards when we only handle 12 per cent of their airports makes this a truly remarkable achievement."

"I wish to sincerely congratulate and thank our team members at Sunshine Coast, Coffs Harbour, Mackay and Nelson Airports for their excellent work in achieving this result," Mr Rutherford said.

- Sunshine Coast Airport received an Outstanding Airport Award for outstanding overall service across all areas, with special mention made of the high performance since commencement of services late last year.
- Coffs Harbour Airport received the Most Improved Airport Award for having the highest calibre safety reporting. Specific mention was also made of the strengthening relationship with crew and on time performance.
- Mackay Airport received an Outstanding Airport Award for carrying out health checks. The QantasLink auditor said that in many years of auditing it was the first time he had been to an airport and couldn't find a single concern.
- Nelson Airport (NZ) received an Outstanding Airport Award for the best safety reporting rate in the network.

The awards were presented by QantasLink Head of Airports Paul Ferguson at the airline's annual Regional Ground Handling Conference events.

Aerocare is the largest ground handler within the Australian and New Zealand region, with more than 3,000 team members currently servicing 3,200 flights per week and 41,200 passengers per day.

For more information, please contact Michelle Priebe, Communications Manager, on +61 7 3107 1920 or m.priebe@aerocare.com.au



Private: Aerocare wins five of nine Jetstar Ground Handling Awards

24 MARCH 2017

Aerocare has won five of nine awards presented by Jetstar CEO Dean Sater at the airline's annual ground handling conference in Melbourne earlier this week.

Aerocare CEO Gern Rutherford said: "The awards success highlights that Aerocare is performing well across the Jetstar network and we are delivering strongly in all areas – service, safety and performance."

"Our teams in Darwin, Auckland, Queenstown, Napier and the Sunshine Coast should feel extremely proud of this achievement, having been acknowledged as stand-out performers by several measures in a strong field," Mr Rutherford said.

The five awards were as follows:

- Sunshine Coast Airport was recognised for having the highest safety reporting levels, which Jetstar sees as a critical factor in ensuring safe operations.
- Darwin Airport was recognised for customer satisfaction score improvement.
- Napier Airport was recognised for having the best turnaround time, which Mr Sater said was the purest "measure of an operation's on time performance."
- Queenstown Airport was recognised for compliance to baggage and passenger check-in rules.
- Auckland Airport was recognised for continual improvement in on time performance over the past 12 months.

The awards were presented at Jetstar's annual Ground Handling Conference in Melbourne which brings together the airline's internal and external ground handling teams.

Aerocare is the largest ground handler within the Australian and New Zealand region with more than 3,000 team members currently servicing 3,200 flights per week and 41,200 passengers per day.

Pictured: Aerocare's Jose Holly Dime and Natasha Freiberg with Jetstar CEO Dean Sater.

For more information, please contact Michelle Priebitz, Communications Manager, on 161 7 3107 1920 or m.priebitz@aerocare.com.au

















APPENDIX 4 – Transcript of ABC 7.30 Report, with commentary/ responses

TRANSCRIPT(FROM ABC WEBSITE)

LEIGH SALES, PRESENTER: When we fly, we want to arrive safely at our destination, on time. And the cheaper the ticket, the better. We don't often think that much about the workers getting the plane into the air. But this next story may change that.

Aerocare is a large Australian company that proudly contracts its services to Tigerair, Virgin, Qantas, Jetstar and Singapore Airlines, to name a few. A side to Aerocare you won't see on their website is staff on low pay¹, working split shifts, sleeping at work beside baggage carousels (sic)², inside luggage containers³ and on the floor of offices⁴. It's all legal⁵, but workers⁶ claim the conditions are causing life-threatening mistakes⁷.

And tonight, workers are risking their jobs to speak out publicly for the first time⁸. James Thomas reports.

JAMES THOMAS, REPORTER: What sort of a risk are you taking, speaking publicly?

s.47F(1) AEROCARE WORKER⁹: Yeah, I...I will...I will lose my job¹⁰.

JAMES THOMAS: **s.47F(1)** is a truck driver employed by Aerocare¹¹. Aerocare is an Australian company with more than 2,000 workers. They are the human engine of the airport - moving baggage, loading passengers, and doing safety checks on the planes we fly. Qantas, Virgin, Jetstar, Tigerair, Singapore Airlines - they all contract Aerocare to ensure travellers get on their planes, and on their way, safe and sound¹². But few travellers know what some of these workers endure...

s.47F(1) It's filthy, it's cold, it's dark, it's just absolutely horrible. You can see rat droppings and garbage everywhere¹³.

JAMES THOMAS: Makeshift beds by the baggage carousel, dirty sheets on concrete floors. For some shift workers at Australia's busiest airports, this is where they sleep¹⁴.

s.47F(1) It's definitely not conditions that people, in this day and age, especially in Australia, would even think are going on here. It's unimaginable¹⁵.

¹ No evidence provided, despite the assertion.

² No evidence of Aerocare workers doing so, despite the assertion.

³ No evidence of Aerocare workers doing so, despite the assertion.

⁴ No evidence of Aerocare workers doing so, despite the assertion.

⁵ There are safety rules and regulations against such conduct, which is why it is not allowed/ tolerated.

⁶ No proof that the claims come from current Aerocare employees - only persons identified so far are former employees with clear contrary interests (such as **s.47F(1)** working for a direct competitor).

⁷ No evidence of the legitimacy of such claims or objective expert evidence in support.

⁸ There is no such risk with Aerocare

⁹ **s.47F(1)** is labelled by the ABC as an Aerocare worker when he is not.

¹⁰ **s.47F(1)** is not an employee of Aerocare, so he can only mean with his current employer or else this is misleading.

¹¹ No he is not - Not rostered since June 2016, listed internally as abandoned employment as of August 2016 - uncontactable and seen working for a competitor.

¹² Overstates Aerocare's role in safety beyond loading/ unloading.

¹³ Where is **s.47F(1)** referring to? He does not identify where the footage is of (as we do not believe he is the photographer/ taker of the film) or the basis of his identification.

¹⁴ When? The inference is Aerocare workers do - there is no evidence of that.

¹⁵ On what basis does he have knowledge of this? He gives no evidence that he has either participated in or witnessed such behaviour beyond looking at the footage.

JAMES THOMAS: Many Aerocare workers are part-time. They are paid around \$24 an hour¹⁶. But their shifts can be as short as just three hours. So, to make ends meet, they often do two shifts in one day, without going home in between.

GEORGE ORSARIS: That's barely enough time to sleep¹⁷. By the time you get home and get up and go to work again. So, we¹⁸ end up sleeping underneath the terminal, where all the baggage goes in between, just to catch up on sleep.

JAMES THOMAS: Sometimes, workers spend 14 or 15 hours at the airport for just seven or eight hours of paid work¹⁹.

TONY SHELDON, TRANSPORT WORKERS UNION: This is a terrible, terrible indictment of the Australian workforce of today. You know, the income they're guaranteed each month - a family of two would mean that they'd be earning \$1,500, and they are earning \$1,500 a month below the poverty line.

Well, these workers are operating under a system of both a combination of victimisation²⁰ and also being pressured²¹ to work and stay at work for extraordinary hours²² because of the low income without being paid. They get short blocks of time to be...which they're fully engaged. They can't afford to go home²³, because they can't afford fuel or the tolls²⁴. And they have to be ready for the next shift.

UNIDENTIFIED MAN 1, AEROCARE WORKER: Homeless people, people in Third World countries, you could see sleeping like that. But people working permanent hours, people going to university and working 25-30 hours casually - you wouldn't expect them to be roughing like that. But just to be able to do the job and do everything else, that's what they have to do.

JAMES THOMAS: So, that's what's happening at Aerocare?

UNIDENTIFIED MAN: Yes. Yeah. We're just getting ground down. It's all about the money. It stopped being about people long ago and it's just about the money. And we're just a means to an end²⁵.

JAMES THOMAS: We have hidden this Aerocare worker's identity because he fears losing his job for speaking out²⁶.

UNIDENTIFIED MAN: If even a whiff of what I was doing here came across to my employers, on the spot - not even a moment's notice - just job gone. Gone²⁷.

JAMES THOMAS: He believes conditions at Aerocare, and fatigue levels, are so bad, travellers are

¹⁶ No reference to the current Aerocare enterprise agreement.

¹⁷ Why does an employee need sleep after 3 hours work and when the average gap between shifts at Sydney airport is less than 2 hours?

¹⁸ S.47F(1) never worked a split shift so he never did/ would have.

¹⁹ This is inconsistent with the data set out above.

²⁰ There is no evidence of victimisation provided in the story or at all.

²¹ Untrue - the current enterprise agreement states no coercion and no dispute as to its operation has been raised under its provisions.

²² This is inconsistent with the data set out above.

²³ There is no evidence of this and due to the small average gap between shifts, they would be unlikely to do so.

²⁴ This is no evidence of this. Additionally there is no reference to the fact that Aerocare paid all bar \$2 of their car parking.

²⁵ If this is the current Aerocare employee, the indications are that it is a Brisbane airport employee and there is no allegation of similar arrangements occurring at Brisbane Airport.

²⁶ What proof does the ABC have that he is a current Aerocare worker? Did they sight his current roster or payslip to prove it?

²⁷ On what basis does he say that or does the ABC report that?

at risk²⁸.

UNIDENTIFIED MAN: We could cause a serious accident. We could cause possible harm and damage to airline or people travelling on that airline²⁹.

JAMES THOMAS: The workers cite a number of instances. In 2015, a wheelchair lift that looks like this was driven into a bridge by an Aerocare worker. Snapped in half, this is what was left³⁰.

On the 28th of November, 2014, at Brisbane Domestic Airport, an Aerocare team had begun pushing back a fully-loaded Tigerair A320 in preparation for take-off, with one crucial problem - the cargo door was still wide open³¹.

s.47F(1) Word gets spread around quite quickly that Aerocare boys left the cargo door open on pushback³².

JAMES THOMAS: As the plane was being pushed towards the runway, the open door was detected by the plane's crew and air-traffic control. The take-off was aborted.

s.47F(1) If it was missed and the plane was to take off down the runway, I'd hate to think what would happen. It's extremely serious³³.

JAMES THOMAS: Tigerair says it did report the incident to the Australian Transport Safety Bureau. Three days ago, the bureau told 7.30 the incident wasn't a safety matter because the door was closed, just not locked.

But today, the bureau backtracked, conceding the door was open. It said there was no need, however, to investigate further because the problem was detected before take-off.

The Aerocare workers we spoke to strongly disagree with the safety bureau's assessment.

UNIDENTIFIED MAN 2, FORMER AEROCARE WORKER: They would have fallen out of the sky³⁴.

JAMES THOMAS: That serious?

UNIDENTIFIED MAN 2: Yes.

JAMES THOMAS: Fearing repercussions, this former Aerocare worker asked us to obscure his identity. How did we get to a situation where a plane was getting pushed back with a cargo door open?

UNIDENTIFIED MAN 2: If someone said to me fatigue, exhaustion, it would not surprise me one bit³⁵.

JAMES THOMAS: Aerocare say that neither incident endangered the public, and they describe their safety record as "impeccable"³⁶. The company declined an interview and says that it believes that this story is being driven by the union, which is trying to place pressure on Aerocare because they're in the midst of a negotiation for a new workplace agreement. It says its pay levels exceed the award, and that it is striving to improve shift conditions and strongly refutes any suggestion that it treats its workers poorly.

²⁸ How? Why? Where is the evidence of fatigue levels or of independent expert/ professional research establishing any such link/ connection?

²⁹ How? Spurious assertions with no substance or evidence.

³⁰ Apparently not a photograph of the relevant incident and raises question as to the source of the photograph (breach of security/ confidentiality)

³¹ This commentary is without access to any eyewitness.

³² s.47F(1) was not employed at Aerocare at this time (until over 1 year later).

³³ No evidence of any knowledge or expertise in relation to any aspect of this incident.

³⁴ No evidence of any knowledge or expertise to make this assertion.

³⁵ Absolutely no evidence that was the cause

³⁶ Objectively it is impeccable.

s.47F(1) Aerocare prides itself on safety, and the complete opposite is happening³⁷. And they don't advertise that. The airlines won't know about it.

JAMES THOMAS: What should the major airlines do?

s.47F(1) Well, I would be ending the contracts with Aerocare immediately, because it's not worth putting your brand down, risking the safety of your passengers and, in the long run, costing you money³⁸.

LEIGH SALES: We'll keep an eye on what happens there.

³⁷ On what basis can he assert same?

³⁸ Strong suggestion of injurious falsehood.

Appendix 5 – s.47F(1) Final Shift Records

Name: s.47F(1)

Employee

Fortnight: 24/04/2017 - 07/05/2017

Filter

Timesheet entries for 06/06/2016 - 19/06/2016

Date	Start Time	End Time	Meal Break	ActivityCode	Higher Duties	Comment	Supervisor Comment	Total	Status
s.47F(1)									

Showing 15 records.

Appendix 6 – Dnata Memo 1 March 2017

Attached



1 March, 2017

Memo from the CEO ALL STAFF ANNOUNCEMENT

For a while now I have openly communicated the challenges we face here at dnata, both financially and operationally, and the need for change. So while this may not come as a surprise, it is still a difficult message to share.

Due to our cost base we are increasingly unable to compete in this market despite our level of service. Our competitors are targeting our customers, enticing them with bonuses, free services and other incentives to win their contracts. Airlines are under great pressure to reduce costs wherever possible, while maintaining or increasing service levels.

We've lost several contracts and others are open which are at risk; we have tendered unsuccessfully for 20 key airline contracts and are losing out every time on cost. While we've won some contracts recently, this has been on the back of dnata's global relationships and they are not enough to offset our contract losses or improve our current position. We have not recorded a profit since 2012. In the last two years, our losses have amounted to over \$20 million dollars and we have had to take out bank loans just to keep afloat.

We are now in an unsustainable situation so something significant needs to happen, and soon. The dnata board wants to maintain a presence in the Australian market if possible. The board has instructed us to explore ways in which we can ensure a sustainable, viable future for dnata and our people, and we have been considering and evaluating a number of options.

Cutting overheads and investing in our business will continue to be part of the solution. We have recently opened our new cargo facility in Adelaide and made some significant investments in our Sydney cargo facility and GSE fleet. We are also looking into outsourcing options, reviewing all our agreements and testing new operating models.

Due to the urgency of the situation and as one of our options, dnata has set up another company called Airport Handling Services Australia (AHSA). AHSA will co-exist with dnata Australia, but with different terms and conditions of employment which are currently in the Fair Work Commission.

The thinking behind this option is that if we lose a current airline customer, AHSA may be able to win or retain that customer, thus keeping it with a dnata-owned business.

Next week, we will be conducting briefing sessions and presentations in all our Ports on this announcement to provide more information. We will also be looking to you, our employees, to provide your suggestions and feedback on our recovery efforts. Every idea will be explored, no matter how small. We are also meeting with the relevant Unions to discuss this announcement.

Soon we will start discussions on renegotiating our ramp & cargo, and passenger services agreements. We will invite the relevant unions and bargaining agents to help us meet the challenges we face so that we can jointly develop new and sustainable outcomes in order to ensure our viability.

We are in this together. Like you, I am disappointed and saddened by the situation, but we must remain committed to our customers and the Australian market and be realistic about how we can maintain a viable presence. Please keep the lines of communication open so that we can work on a solution as a team.

s.47F(1)

Chief Executive Officer
dnata Airport Services Pty. Limited

Australia

321 Link Road
Mascot NSW 2020

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dnata.com

Appendix 7 – Decision AG217/589

Attached

AE878720 PR591153



ORDER

Fair Work Act 2009

s.318 - Application for an order relating to instruments covering new employer and transferring employees

Aero-Care Flight Support Pty Ltd
(AG2017/589)

OCEANIA AVIATION SERVICES STAFF AGREEMENT 2010-2013
[AE878720]

Airport operations

SENIOR DEPUTY PRESIDENT HAMBERGER

SYDNEY, 20 MARCH 2017

Order relating to instruments covering new employer and transferring employees.

A. Pursuant to s.318(1)(a) of the *Fair Work Act 2009* (Cth) (the Act), the *Oceania Aviation Services Staff Agreement 2010-2013* [AE878720] will not cover the applicant or employees transferring from Oceania Aviation Services Pty Ltd to the applicant (the transferring employees) during the period of their employment with the applicant.

B. Pursuant to s.318(1)(b) of the Act, the *Aero-Care Collective Agreement 2012* [AE899834] will cover the transferring employees.



SENIOR DEPUTY PRESIDENT

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Appendix 8 – TWU Rights of Entry to Aerocare workplaces at Brisbane, Gold Coast, Sydney, Melbourne, Canberra, Adelaide, Perth

Attached

[illegible]

**Appendix 9 – Photos of Disabled Lift Incident – Brisbane Airport
2015**









Appendix 11 – Correspondence with ABC via media lawyers Johnson Winter Slattery

Attached

JOHNSON WINTER & SLATTERY LAWYERS

Partner: s.47F(1)
Email: [REDACTED]
Our Ref: B6024
DocID: 71786117.1

27 March 2017

s.47F(1)

Executive Producer
7.30 Program
Australian Broadcasting Corporation
ABC Ultimo Centre
700 Harris Street
ULTIMO NSW 2007

Dear s.47F(1)

Aerocare Pty Limited - 7.30 Program

We act for Aerocare Pty Limited (Aerocare).

Aerocare was the subject of a story on 7.30 broadcast on 20 March 2017 entitled "Airport workers speak out about poor work conditions" (the Story).

Aerocare has real concerns about the Story and its preparation.

Sources

Ms Sales introduces the Story as follows:

And tonight, workers are risking their jobs to speak out publically for the first time.

The viewer is immediately introduced to s.47F(1)

James Thomas, Reporter: *What sort of risk are you taking, speaking publically?*

s.47F(1) **Aerocare Worker:** *Yeah, I... I will... I will lose my job.*

James Thomas: s.47F(1) *is a truck driver employed by Aerocare.*

s.47F(1) is not an employee of Aerocare. In fact, he is employed by Alpha Flight Services, a direct competitor and subsidiary of the Dubai based air services supplier, Dnata. s.47F(1) left Aerocare nine months ago, part way through his training. He was a trainee and employee over a two-month period ending June 2016 during which time he undertook only 28 continuous shifts each averaged approximately 7 hours in duration, with regular rest breaks and no split shifts. His employment was exclusively in the catering truck segment of Aerocare, which had no involvement in the baggage areas that he speaks about in the Story.

Having been presented as a current Aerocare employee, speaking under risk of retribution, s.47F(1) is used in the Story to make statements about the conditions of Aerocare workers:

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SYDNEY NSW 2000
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www.jws.com.au

That's barely enough time to sleep. By the time you get home and get up and go to work again. So, we end up sleeping underneath the terminal, where all the baggage goes in between, just to catch up on sleep.

As the conclusion of the Story, s.47F(1) the employee of a competitor dressed as a threatened insider, is allowed to make an extraordinary, gratuitous and malicious comment about Aerocare:

Well, I would be ending the contracts with Aerocare immediately, because it's not worth putting your brand down, risking the safety of your passengers and, in the long run, costing you money.

s.47F(1) is the only identifiable person presented as an Aerocare employee in the Story. In the circumstances it is understandable Aerocare has real concerns about the bona fides of the other unidentified "employees" that appear.

The sleepout footage

As well as the reliance upon s.47F(1) footage of makeshift bedding beside baggage carousels and an individual sleeping in a luggage unit load container (the Footage) is shown and described:

s.47F(1) *It's filthy, it's cold, it's dark, it's just absolutely horrible. You can see rat droppings and garbage everywhere.*

James Thomas: *Makeshift beds by the baggage carousel, dirty sheets on concrete floors. For some shift workers at Australia's business airports, this is where they sleep.*

s.47F(1) *It's definitely not conditions that people, in this day and age, especially in Australia, would even think are going on here. It's unimaginable.*

The Story connects the Footage directly to Aerocare:

Unidentified Aerocare Worker: *Homeless people, people in Third World countries, you could see sleeping like that. But people working permanent hours, people going to university and working 25-30 hours casually – you wouldn't expect them to be roughing like that. But just to be able to do the job and do everything else, that's what they have to do.*

James Thomas: *So, that's what's happening at Aerocare?*

Unidentified Aerocare Worker: *Yes. Yeah. We're just getting ground down. It's all about the money. It stopped being about people long ago and it's just about the money. And we're just a means to an end.*

James Thomas: *We have hidden this Aerocare worker's identity because he fears losing his job for speaking out.*

Aerocare had no knowledge of the sleeping arrangements depicted in the Footage. Enquiries that Aerocare has made with Sydney Airport confirm that no such practices are in place.

We are instructed that split shifts are common in the aviation industry and were favoured with a 97% employee vote in the negotiation of the last Aerocare Enterprise Bargaining Agreement.

Aerocare provides a comfortable, air conditioned, catered lounge for use by its staff. Aerocare is not aware of its employees sleeping between shifts in the manner depicted and does not permit its employees to do so.

Baggage handling areas are accessed and used by employees from the many companies that service an airport and are patrolled by Australian Border Force and Sydney Airport Security.

The individual shown in the Footage is not an Aerocare employee and has been identified as an employee of an Aerocare competitor.

7.30 did not provide the Footage to Aerocare prior to broadcast of the Program which meant that Aerocare was given no opportunity to consider or comment upon the Footage.

The presentation of the Footage while making a baseless association with Aerocare, its employees and their working arrangements does not meet the essential requirement that the ABC be fair and honest in its dealings with Aerocare in circumstances where it is directly affected by the Story.

Allegations in relation to safety

The Story casts the Aerocare operation as a threat to passenger safety from its introduction by Ms Sales to the concluding comments by s.47F(1). Despite that emphasis, the story presents no valid evidence of safety concerns, instead mischaracterising two events as safety issues.

The first event was in 2015 when a disabled lift was knocked on its side after colliding with an aerobridge whilst it was being moved. It was a vehicle accident caused by driver error with no suggestion that fatigue was a contributor. No aircraft was involved, there was no material damage to the aerobridge and it is dishonest for 7.30 to cite this, as an instance of "a serious accident" which could cause "harm and damage to airline (sic) or people travelling on that airline".

The second event was an incident in November 2014. The Story gives only lip service to the authoritative and considered conclusion of the Australian Transport Safety Bureau (ATSB) that this was not a safety matter before deferring an unidentified person said to be an Aerocare worker to make the baseless and alarming assessment "They would have fallen out of the sky" and insinuating that fatigue was a factor.

Prior to broadcast (and without being provided an opportunity to review or respond to the events) Aerocare provided detailed information to 7.30 including advising that:

- Aerocare handles over 170,000 flight turns each year in complex airport environments.
- In 22 years and despite handling over a million flights, Aerocare has never been penalised for a safety related issue.
- In 2016 Aerocare passed all of more than 180 safety and security-related audits.
- Aerocare is the only Australian-owned handler registered to the top global standard – IATA Safety Audit for Ground Operations (ISAGO).

In the circumstances, it is clear that 7.30 has broadcast a misleading and alarmist picture of the safety of the Aerocare business.

Concern

For the reasons outlined above the Story does not meet the ABC commitment to integrity, responsibility and accuracy in its journalism.

Whether or not 7.30 was aware prior to broadcast of the misrepresentation of its source, s.47F(1) and the dishonest characterisation of the Footage, it is now aware of these matters. 7.30 sidelined evidence provided by Aerocare and the ATSB to raise dramatic safety concerns that have no proper foundation.

JOHNSON WINTER & SLATTERY

27 March 2017

In the interests of accuracy the ABC has committed to correcting errors and clarifying ambiguous or otherwise misleading information. Such a correction must be swift in order to reduce the harmful dissemination of these damaging errors.

Aerocare expects 7.30 to broadcast (and publish online) a correction to the following effect:

On Tuesday night we broadcast a story about the pay and conditions of workers for Airport services company Aerocare. The story featured an interview with a s.47F(1) who we said was an Aerocare employee speaking under risk of retribution. 7.30 accepts that s.47F(1) s.47F(1) has not worked for Aerocare for nine months and is currently employed by a competitor.

The Story also featured footage of makeshift sleeping arrangements in Australian Airports. 7.30 acknowledges that there is nothing to link those sleeping arrangements with Aerocare workers.

We are aware that 7.30 continues to be engaged with Aerocare and its representatives in relation to this matter. We do not have any difficulties with those communications continuing.

We would however ask that you respond to this letter by 4pm on Tuesday 28 March 2017 confirming that the correction will be published.

Yours faithfully



Cc. Alan Sunderland
ABC Head of Editorial Policy

Cc. Tim Latham
Executive Producer Media watch

JOHNSON WINTER & SLATTERY LAWYERS

Partner: s.47F(1)
Email: [REDACTED]
Our Ref: B6898
DocID: 71823455.1

30 March 2017

s.47F(1)

Executive Producer
7.30 Program
Australian Broadcasting Corporation
ABC Ultimo Centre
700 Harris Street
ULTIMO NSW 2007

Dear s.47F(1)

Aerocare Pty Limited - 7.30 Program

We refer to our letter of 27 March 2017 (**our first letter**).

No response to Aerocare concerns

Our first letter raised the concerns of Aerocare arising from the story on 7.30 broadcast on 20 March 2017 (**the Story**). Aerocare requested the broadcast of a correction to meet the commitment that ABC has to accuracy and highlighted the need for the correction to be swift to reduce the harmful dissemination of the errors and misleading information in the Story.

Our first letter also outlined reasons why Aerocare, a party directly affected by the Story, considered the Story as failing to demonstrate the integrity, responsibility and accuracy required of the ABC.

We asked that 7.30 respond to our first letter by 4pm on Tuesday 28 March 2017.

We have had no response to our letter at all and there has been no correction to the Story. At the same time 7.30 has made it clear to Aerocare that it intends to broadcast a further story concerning the company (**Further Story**).

7.30 has contacted Aerocare on numerous occasions concerning the Further Story. It does so in a context where 7.30 has not broadcast an apology or responded to our first letter. The response of Aerocare to your ongoing engagement with it needs to be considered in that context. It is also in the context in which we are instructed to write this further letter.

New concern – The Brisbane event

Our first letter raised concerns about the serious mischaracterisation and dramatisation of two events – a disabled lift colliding with an aerobridge in 2015 (**disabled lift incident**) and an event in November 2014 involving a cargo door (**cargo door incident**).

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www.jws.com.au

Despite the disabled lift incident having no bearing on airline safety and the ATSB concluding that the cargo door incident was not a safety matter, 7.30 described the events (respectively) as "a serious accident... [potentially causing] harm and damage to airline (sic) or people travelling on that airline" and insinuating that the plane "would have fallen out of the sky".

After engaging with 7.30 Aerocare has been given notice by the journalist, James Thomas, of a new event being investigated by 7.30 – the premature closure of a cargo hold door on 23 November 2014 in Brisbane (**the Brisbane event**).

Aerocare is concerned that 7.30 may give baseless, damaging and alarmist treatment to the Brisbane event in an upcoming program, as it did with the cargo door incident and disabled lift incident.

Mr Thomas summarised the Brisbane event:

"Aerocare employees unknowingly locking a supervisor, s.47F(1) into the cargo hold of an outward bound Virgin flight at Brisbane International during push back preparations."

Aerocare has communicated with 7.30 directly in relation to the Brisbane event and advised 7.30 that:

- (a) s.47F(1) Supervisor and Pit Crew Advanced team member for the Virgin flight in question, entered the hold of an airplane stationed at the gate to retrieve an item of cargo for offload at the direction of the Flight Captain. s.47F(1) placed his clipboard and radio in the doorway and left the cargo netting undone to indicate his presence.
- (b) An Aerocare employee, s.47F(1) closed the hold door.
- (c) It is not possible to "lock" a person inside the cargo hold. s.47F(1) went straight to the door and opened it using the controls which are inside the door.
- (d) Upon exit, s.47F(1) counselled s.47F(1) highlighting the error of closing the door despite the open cargo netting, and presence of s.47F(1) radio and clipboard.
- (e) As s.47F(1) was concerned to ensure s.47F(1) took the counselling seriously he escalated it to his manager, s.47F(1) who also met with s.47F(1)
- (f) An Aerocare Safety Specialist assessed the report with an independent Operational Risk Classification of "Minor Severity" with an overall risk rating of "Very Low".
- (g) Fatigue is not considered a contributing or cause or factor in the Brisbane event. s.47F(1) s.47F(1) had performed 29 hours of work that week with 21.5 hours between his previous shift, having finished at 10am the previous day and starting work at 7am on the day of the Brisbane event.
- (h) The occurrence is not Australian Transport Safety Bureau (ATSB) or Civil Aviation Authority reportable. The ATSB has reviewed the incident and confirmed that "the ATSB considers the event not to be a reportable matter (ATSB emphasis)".
- (i) The Brisbane event was included as a "Toolbox" Training Meeting agenda item for approximately 2 weeks.
- (j) There has been no repeat of the Brisbane event or any similar incident in the interim.
- (k) The Brisbane event is well documented:

- A report was written and submitted with full details of the occurrence.
 - Supervisor and manager actions are recorded in the report;
 - Supervisor and manager discussions with s.47F(1) are recorded in the employees employment history.
 - Aerocare has obtained a written statement from s.47F(1)
- (l) The airline, Virgin Australia, were advised of the Brisbane event and agree that it is not ATSB reportable.

It follows from the matters outlined above that there was never any risk to Aerocare staff, the aircraft or passengers. The Brisbane event was appropriately dealt with.

In the context of the concerns in our first letter, Aerocare seeks the assurance of 7.30 that, if the Brisbane event is to be presented, it be in a way that is accurate, objective and avoids sensationalism.

Perth allegations

Mr Thomas has also advised Aerocare that 7.30 intends to broadcast allegations from a former employee in Perth, s.47F(1) (Perth allegations).

Aerocare bears s.47F(1) no ill will, but has expressed to 7.30 its concerns with how s.47F(1) has presented himself and the Perth allegations. The matters that Aerocare has raised with 7.30 include:

- (a) that s.47F(1) was employed and paid as an Airline Service Trainee (AST) under the provisions of the Aerocare Collective Agreement 2008 for 71 shifts over a period of 17.4 weeks. He worked no more than 5 shifts in a week with an average shift of 4 hours. He worked only 1 "split shift". Since leaving Aerocare s.47F(1) has made two written applications for reemployment.
- (b) that Aerocare takes employee injury seriously, including in relation to the two injuries raised by s.47F(1)
 - (i) on 13 December 2010 an injury report prepared by s.47F(1) (13 minutes after the injury), supervisor comments prepared that day and manager notes from the following day show that s.47F(1) was injured when he was hit in the face by a piece of cargo, sustaining a cut to his upper lip. He had one day off as a result of the injury and returned to work as rostered on 17 December 2010; and
 - (ii) s.47F(1) injured his wrist while unloading a bag from an aircraft loaded by another ground handling organisation. s.47F(1) report refers to the strain occurring while lifting a "small but heavy bag (most likely tools)". There is no record as to whether the bag was >20kg in which case the organisation loading the bag should have attached a "Heavy Tag" under the applicable guidelines. Contrary to s.47F(1) claims as to the prevalence of wrist injuries, no other reports relating to wrist injuries in Perth were lodged during the term of s.47F(1) employment. Indeed, no injury management programs or wrist injuries were recorded over financial year 2010/11.

- (c) s.47F(1) statements in relation to lightning and safety are unqualified, incorrect and out-of-date. At the time of s.47F(1) employment Aerocare responded to lightning in accordance with its customer airline policies and based upon information provided by the Bureau of Meteorology representatives. Aerocare is now partnered with UBIMET Australia, a company specialising in professional advanced weather services, particularly via its UBIMET lightning detection system. This ensures that Aerocare has the best available information to inform its response to adverse weather conditions. Aerocare is recognised as a driver in developing and harmonising positive policy across airlines, other service providers and airports.
- (d) s.47F(1) makes other allegations that either strain credibility (*"personally witnessed multiple crew asleep or falling asleep during work hours on almost every shift"*) or are made without precision or evidence (failure to supply personal protective equipment). He is also given to generalisations, referring to a single formal process in relation to bullying/harassment as evidencing "a culture of bullying and workplace harassment". There has only been one such process in the 25 year history of Aerocare. In that case the individual withdraw the complaint.

Aerocare expects that if it 7.30 intends to present the Perth allegations it will discharge its duty to do so in a way that meets the objective standard of factual accuracy.

This would require appropriate weight be given to s.47F(1) limited expertise and understanding of the approach that Aerocare takes to lightning prone conditions – particularly given that his information is over five years old. On the other hand, 7.30 has been provided by Aerocare with a detailed and up-to-date account of its approach to lightning detection and response. Aerocare has also provided a detailed account of the two injuries sustained by s.47F(1)

Summary

Our first letter outlined concerns about the way the footage of makeshift bedding beside luggage carousels was presented, your reliance upon s.47F(1) the treatment of the disabled lift incident and alarmist presentation of the Brisbane event. In this letter (and through your direct contact with Aerocare) 7.30 has full information about the Brisbane event and the Perth allegations. 7.30 has not advised of any other allegations or Footage to be aired in the Further Story.

In these circumstances a Further Story which amounts to a an unwarranted attack on an Australian-owned baggage handling company with 2000 Australian employees with a best-in-class safety record over 25 years will amount to a failure to provide content which fulfils the functions of the ABC under the *Australian Broadcasting Act 1983* to the required standard.

Request for response

Aerocare asks that you respond to the serious concerns raised in our first letter without further delay.

In doing so Aerocare also asks that 7.30 confirm its commitment to fair and honest dealing in any Further Story about Aerocare, including in relation to any presentation of the Brisbane event and/or Perth allegations.

Aerocare and its representatives continue to be engaged directly with 7.30 in relation to this matter and has no difficulty in those communications continuing. The level of comfort that Aerocare has in those dealings is likely to be informed by your response to our first letter and this letter. Aerocare expects that it will be informed of any allegations or Footage to be included in any Further Story with sufficient time to provide its considered response.

JOHNSON WINTER & SLATTERY

30 March 2017

Aerocare reserves its rights in this matter.

Yours faithfully

A handwritten signature in blue ink, appearing to read "Johnson Winter & Slattery", with a stylized flourish at the end.

Cc. Alan Sunderland
ABC Head of Editorial Policy

Appendix 12 – Aerocare's 2016 Workplace Gender Equity Report (filed and public record)

Attached



Workplace
Gender Equality
Agency

Public report

Submitted by

Legal Name:

Aero-Care Flight Support Pty Ltd



Workplace
Gender Equality
Agency

Date submitted: 10-Jun-2016 15:39:44
Unique report number: yc2kmiuk2e

Organisation and contact details

Submitting organisation details	Legal name	Aero-Care Flight Support Pty Ltd
	ABN	32103196701
	ANZSIC	I Transport, Postal and Warehousing 5220 Airport Operations and Other Air Transport Support Services
	Business/trading name/s	
	ASX code (if applicable)	
	Postal address	31 Longland Street Newstead QLD 4006 AUSTRALIA
Reporting structure	Organisation phone number	(07) 3107 1920
	Ultimate parent	3GSL Pty Ltd
	Number of employees covered by this report	2,757



All organisations covered by this report

Legal name	Business/trading name/s
Aero-Care Flight Support Pty Ltd	
Australian Ground Services Pty Ltd	
Next Capital Pty Limited	
Aero-Care Operations Pty Ltd	
Prime Vantage Pty Ltd	

Workplace profile

Manager

Manager occupational categories	Reporting level to CEO	Employment status	No. of employees		
			F	M	Total employees
CEO/Head of Business in Australia	0	Full-time permanent	0	1	1
		Full-time contract	0	0	0
		Part-time permanent	0	0	0
		Part-time contract	0	0	0
Key management personnel	-1	Casual	0	0	0
		Full-time permanent	1	2	3
		Full-time contract	0	0	0
		Part-time permanent	0	0	0
Other executives/General managers	-1	Part-time contract	0	0	0
		Casual	0	0	0
		Full-time permanent	0	7	7
		Full-time contract	0	0	0
Senior Managers	-2	Part-time permanent	0	0	0
		Part-time contract	0	0	0
		Casual	0	0	0
		Full-time permanent	6	17	23
Other managers	-3	Full-time contract	0	1	1
		Part-time permanent	2	0	2
		Part-time contract	0	0	0
		Casual	0	0	0
	-4	Full-time permanent	14	18	32
		Full-time contract	0	0	0
		Part-time permanent	2	0	2
		Part-time contract	0	0	0
		Casual	0	0	0
		Full-time permanent	21	30	51
		Full-time contract	0	0	0
		Part-time permanent	0	0	0
		Part-time contract	0	0	0
		Casual	0	0	0

Manager occupational categories	Reporting level to CEO	Employment status	No. of employees		
			F	M	Total employees
Grand total: all managers			45	78	122

Workplace profile

Non-manager

Non-manager occupational categories	Employment status	No. of employees (excluding graduates and apprentices)		No. of graduates (if applicable)		No. of apprentices (if applicable)		Total employees
		F	M	F	M	F	M	
Professionals	Full-time permanent	0	0	0	0	0	0	0
	Full-time contract	0	0	0	0	0	0	0
	Part-time permanent	0	0	0	0	0	0	0
	Part-time contract	0	0	0	0	0	0	0
Technicians and trade	Casual	0	0	0	0	0	0	0
	Full-time permanent	0	0	0	0	0	0	0
	Full-time contract	0	0	0	0	0	0	0
	Part-time permanent	0	0	0	0	0	0	0
Community and personal service	Part-time contract	0	0	0	0	0	0	0
	Casual	0	0	0	0	0	0	0
	Full-time permanent	0	0	0	0	0	0	0
	Full-time contract	0	0	0	0	0	0	0
Clerical and administrative	Part-time permanent	0	0	0	0	0	0	0
	Part-time contract	0	0	0	0	0	0	0
	Casual	0	0	0	0	0	0	0
	Full-time permanent	14	5	0	0	0	0	19
Sales	Full-time contract	0	0	0	0	0	0	0
	Part-time permanent	0	0	0	0	0	0	0
	Part-time contract	0	0	0	0	0	0	0
	Casual	0	0	0	0	0	0	0
Machinery operators and drivers	Full-time permanent	0	0	0	0	0	0	0
	Full-time contract	0	0	0	0	0	0	0
	Part-time permanent	0	0	0	0	0	0	0
	Part-time contract	0	0	0	0	0	0	0
Total	Casual	0	0	0	0	0	0	0
	Full-time permanent	11	31	0	0	0	0	42
	Full-time contract	0	0	0	0	0	0	0
	Part-time permanent	379	561	0	0	0	0	940
	Part-time contract	0	0	0	0	0	0	0
	Casual	608	1,026	0	0	0	0	1,634

Non-manager occupational categories	Employment status	No. of employees (excluding graduates and apprentices)		No. of graduates (if applicable)		No. of apprentices (if applicable)		Total employees
		F	M	F	M	F	M	
Labourers	Full-time permanent	0	0	0	0	0	0	0
	Full-time contract	0	0	0	0	0	0	0
	Part-time permanent	0	0	0	0	0	0	0
	Part-time contract	0	0	0	0	0	0	0
Others	Casual	0	0	0	0	0	0	0
	Full-time permanent	0	0	0	0	0	0	0
	Full-time contract	0	0	0	0	0	0	0
	Part-time permanent	0	0	0	0	0	0	0
Grand total: all non-managers	Part-time contract	0	0	0	0	0	0	0
	Casual	0	0	0	0	0	0	0
		1,012	1,523	0	0	0	0	2,535

Reporting questionnaire

Gender equality indicator 1: Gender composition of workforce

This indicator seeks information about the gender composition of relevant employers in a standardised format, to enable the aggregation of data across and within industries. The aggregated data in your workplace profile assists relevant employers in understanding the characteristics of their workforce, including in relation to occupational segregation, the position of women and men in management within their industry or sector, and patterns of potentially insecure employment.

1. Do you have formal policies and/or formal strategies in place that SPECIFICALLY SUPPORT GENDER EQUALITY in relation to:

1.1 Recruitment?

- ☒ Yes (you can select policy and/or strategy options)
- ☐ Standalone policy
 - ☒ Policy is contained within another policy
 - ☐ Standalone strategy
 - ☐ Strategy is contained within another strategy
- ☐ No
- ☐ No, currently under development
 - ☐ No, insufficient human resources staff
 - ☐ No, don't have expertise
 - ☐ No, not a priority

1.2 Retention?

- ☐ Yes (you can select policy and/or strategy options)
- ☐ Standalone policy
 - ☐ Policy is contained within another policy
 - ☐ Standalone strategy
 - ☐ Strategy is contained within another strategy
- ☒ No
- ☐ No, currently under development
 - ☐ No, insufficient human resources staff
 - ☐ No, don't have expertise
 - ☐ No, not a priority

1.3 Performance management processes?

- ☒ Yes (you can select policy and/or strategy options)
- ☐ Standalone policy
 - ☒ Policy is contained within another policy
 - ☐ Standalone strategy
 - ☒ Strategy is contained within another strategy
- ☐ No
- ☐ No, currently under development
 - ☐ No, insufficient human resources staff
 - ☐ No, don't have expertise
 - ☐ No, not a priority

1.4 Promotions?

- ☒ Yes (you can select policy and/or strategy options)

- ☐ Standalone policy
- ☒ Policy is contained within another policy
- ☐ Standalone strategy
- ☒ Strategy is contained within another strategy
- ☐ No
- ☐ No, currently under development
- ☐ No, insufficient human resources staff
- ☐ No, don't have expertise
- ☐ No, not a priority

1.5 Talent identification/identification of high potentials?

- ☒ Yes (you can select policy and/or strategy options)
 - ☐ Standalone policy
 - ☒ Policy is contained within another policy
 - ☐ Standalone strategy
 - ☒ Strategy is contained within another strategy
- ☐ No
- ☐ No, currently under development
- ☐ No, insufficient human resources staff
- ☐ No, don't have expertise
- ☐ No, not a priority

1.6 Succession planning?

- ☒ Yes (you can select policy and/or strategy options)
 - ☐ Standalone policy
 - ☒ Policy is contained within another policy
 - ☐ Standalone strategy
 - ☒ Strategy is contained within another strategy
- ☐ No
- ☐ No, currently under development
- ☐ No, insufficient human resources staff
- ☐ No, don't have expertise
- ☐ No, not a priority

1.7 Training and development?

- ☒ Yes (you can select policy and/or strategy options)
 - ☐ Standalone policy
 - ☒ Policy is contained within another policy
 - ☐ Standalone strategy
 - ☒ Strategy is contained within another strategy
- ☐ No
- ☐ No, currently under development
- ☐ No, insufficient human resources staff
- ☐ No, don't have expertise
- ☐ No, not a priority

1.8 Resignations?

- ☐ Yes (you can select policy and/or strategy options)
 - ☐ Standalone policy
 - ☐ Policy is contained within another policy
 - ☐ Standalone strategy
 - ☐ Strategy is contained within another strategy
- ☒ No
- ☐ No, currently under development
- ☐ No, insufficient human resources staff
- ☐ No, don't have expertise
- ☐ No, not a priority

1.9 Key performance indicators for managers relating to gender equality?

- ☐ Yes (you can select policy and/or strategy options)
- ☐ Standalone policy
 - ☐ Policy is contained within another policy
 - ☐ Standalone strategy
 - ☐ Strategy is contained within another strategy
- ☒ No
- ☐ No, currently under development
 - ☐ No, insufficient human resources staff
 - ☐ No, don't have expertise
 - ☐ No, not a priority

1.10 Gender equality overall?

- ☒ Yes (you can select policy and/or strategy options)
- ☐ Standalone policy
 - ☒ Policy is contained within another policy
 - ☐ Standalone strategy
 - ☒ Strategy is contained within another strategy
- ☐ No
- ☐ No, currently under development
 - ☐ No, insufficient human resources staff
 - ☐ No, don't have expertise
 - ☐ No, not a priority

1.11 You may provide details of other formal policies or formal strategies that specifically support gender equality that may be in place:
1.12 In the table below, please provide the NUMBER of new appointments made during the reporting period (by gender and manager/non-manager categories). This should include appointments from both external and internal sources such that if an existing employee is appointed to another role within the organisation (promotion or not), they would need to be included.

All appointments need to be included regardless of how they were made, for example through recruitment exercises, cold canvassing, previously-submitted resumes.

	Managers		Non-managers	
	Female	Male	Female	Male
NUMBER of appointments made	11	11	457	930

1.13 In the table below, please provide the NUMBER of employees who were awarded promotions during the reporting period (by gender, employment status and manager/non-manager categories).

('Promotion' means where a person has advanced or been raised to a higher office or rank on an ongoing basis. Temporary higher duties are not considered a promotion. This does not typically include movement within a salary band unless it involves a move to higher office or rank.)

No cell should be left blank, please enter '0' (zero) where there is no data.

	Managers		Non-managers	
	Female	Male	Female	Male
Permanent/ongoing full-time employees	2	1	0	1
Permanent/ongoing part-time employees	0	0	64	112
Fixed-term contract full-time employees	0	0	0	0
Fixed-term contract part-time employees	0	0	0	0
Casual employees	0	0	112	187



- 1.14 In the table below, please provide the NUMBER of employees who have resigned during the reporting period (by gender, employment status, and manager/non-manager categories).

('Resigned' refers to employees who have given up their employment voluntarily, not those who are subject to employer-initiated terminations or redundancies.)

No cell should be left blank, please enter '0' (zero) where there is no data.

	Managers		Non-managers	
	Female	Male	Female	Male
Permanent/ongoing full-time employees	4	16	6	5
Permanent/ongoing part-time employees	0	0	149	158
Fixed-term contract full-time employees	0	0	0	0
Fixed-term contract part-time employees	0	0	0	0
Casual employees	0	0	225	482

- 1.15 Should you wish to provide additional information on any of your responses under gender equality indicator 1, please do so below:

Gender equality indicator 2: Gender composition of governing bodies

Gender composition of governing bodies is an indicator of gender equality at the highest level of organisational leadership and decision-making. This gender equality indicator seeks information on the representation of women and men on governing bodies. The term "governing body" in relation to a relevant employer is broad and depends on the nature of your organisation. It can mean the board of directors, trustees, committee of management, council or other governing authority of the employer.

2. Your organisation, or organisations you are reporting on, will have a governing body/board as defined in the Workplace Gender Equality Act 2012 (Act). (In the Act, a governing body is defined as "the board of directors, trustees, committee of management, council or other governing authority of the employer".) For the purposes of reporting under the Act, this question relates to the ultimate or 'highest' governing body for your organisation. NB: if your governing body/board is located overseas, it still needs to be included.
- o For private or publicly listed companies, you will have one or more directors or a board of directors.
 - o For trusts, the trustee is the governing body/board.
 - o For partnerships, the governing body/board is likely to comprise all or some (if elected) partners.
 - o For organisations whose governing body/board is the same as their parent entity's governing body/board, it is still deemed to have a governing body/board.
 - o For religious structures, you may have a canonical advisor, bishop or archbishop.
 - o For other structures that do not fall into any of the above categories, your committee of management would be considered your governing body/board.

- 2.1 Please complete the table below, ensuring data entered is based on the instructions in each column header. For each organisation, enter the number of women and men on that governing body/board (not percentage). If a target has been set to increase the representation of women on any of the governing bodies listed, please indicate the % target and the year it is to be reached.

If your organisation's governing body/board is the same as your parent entity's governing body/board, you will need to enter your organisation's name but the details of your parent entity's governing body/board in the table below.

Organisation name	Gender and NUMBER of chairperson/s (NOT percentage)		Gender and NUMBER of other governing body/board members (NOT percentage)		% target for representation of women on each governing body/board (enter 0 if no target has been set, or enter a % between 1-100)	Year to be reached (in YYYY format; if no target has been set, leave blank)
	F (Chair)	M (Chair)	F	M		
01 Aerocare Services Pty Ltd	0	1	0	3	0	
02						
03						
04						
05						
06						
07						
08						
09						
10						
11						
12						
13						
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24						
25						
26						
27						
28						
29						
30						

2.2 If a target relating to the representation of women has not been set for any of the governing bodies listed above, you may specify why below:

- ☐ Governing body/board has gender balance (e.g. 40% women/40% men/20% either)
- ☐ Currently under development
- ☐ Insufficient human resources staff
- ☐ Don't have expertise
- ☒ Do not have control over governing body/board appointments (provide details why):
Board is appointed by shareholders
- ☐ Not a priority
- ☐ Other (provide details):

2.3 Do you have a formal selection policy and/or formal selection strategy for governing body/board members for ALL organisations covered in this report?

- ☐ Yes (you can select policy and/or strategy options)
- ☐ Standalone policy
 - ☐ Policy is contained within another policy
 - ☐ Standalone strategy
 - ☐ Strategy is contained within another strategy
- ☐ No
- ☐ No, in place for some governing bodies/boards
 - ☐ No, currently under development
 - ☐ No, insufficient human resources staff
 - ☒ No, do not have control over governing body/board appointments (provide details why):
Board is appointed by shareholders
 - ☐ No, don't have expertise
 - ☐ No, not a priority
 - ☐ No, other (provide details):

2.4 Partnership structures only: (only answer this question if your organisation operates under a partnership structure, ie is NOT an incorporated entity (ie Pty Ltd, Ltd or Inc), or an unincorporated entity).

Please enter the total number of female and male equity partners (excluding the managing partner) in the following table against the relevant WGEA standardised manager definitions. Non-equity (salaried) partners need to be included in your workplace profile.

Details of your managing partner should be included separately in the CEO row of your workplace profile.

NB: Please ensure that the composition of your governing body/board (which may include all or some of your equity partners below) is also entered in question 2.1.

	Full-time females	Part-time females	Full-time males	Part-time males
Equity partners who ARE key management personnel (KMPs) (excluding your managing partner)	0	0	0	0
Equity partners who are "Other executives/General managers"	0	0	0	0
Equity partners who are "Senior managers"	0	0	0	0
Equity partners who are "Other managers"	0	0	0	0

2.5 Should you wish to provide additional information on any of your responses under gender equality indicator 2, please do so below:

Gender equality indicator 3: Equal remuneration between women and men

Equal remuneration between women and men is a key component of improving women's economic security and progressing gender equality.

3. Do you have a formal policy and/or formal strategy on remuneration generally?

- ☒ Yes (you can select policy and/or strategy options)
- ☒ Standalone policy
 - ☐ Policy is contained within another policy
 - ☐ Standalone strategy
 - ☐ Strategy is contained within another strategy
- ☐ No
- ☐ No, currently under development
 - ☐ No, insufficient human resources staff

- ☐ No, included in workplace agreement
- ☐ No, don't have expertise
- ☐ No, salaries set by awards or industrial agreements
- ☐ No, non-award employees paid market rate
- ☐ No, not a priority
- ☐ No, other (provide details):

3.1 Are specific gender pay equity objectives included in your formal policy and/or formal strategy?

- ☒ Yes (provide details in questions 3.2 and/or 3.3 below)
- ☐ No
- ☐ No, currently under development
- ☐ No, insufficient human resources staff
- ☐ No, don't have expertise
- ☐ No, salaries set by awards or industrial agreements
- ☐ No, non-award employees are paid market rate
- ☐ No, not a priority
- ☐ No, other (provide details):

3.2 You have answered yes to question 3.1. Please indicate whether your formal policy or formal strategy includes the following gender pay equity objectives (more than one option can be selected):

- ☐ To achieve gender pay equity
- ☒ To ensure no gender bias occurs at any point in the remuneration review process (for example at commencement, at annual salary reviews, out-of-cycle pay reviews, and performance pay reviews)
- ☐ To be transparent about pay scales and/or salary bands
- ☐ To ensure managers are held accountable for pay equity outcomes
- ☐ To implement and/or maintain a transparent and rigorous performance assessment process
- ☐ Other (Please provide details in question 3.3 below)

3.3 Provide details of other gender pay equity objectives that are included in your formal policy or formal strategy including timeframes for achieving these objectives:

4. Has a gender remuneration gap analysis been undertaken? (This is a payroll analysis to determine whether there are any gaps between what women and men are paid.)

- ☐ Yes. When was the most recent gender remuneration gap analysis undertaken?
 - ☐ Within last 12 months
 - ☐ Within last 1-2 years
 - ☐ More than 2 years ago but less than 4 years ago
 - ☐ Other (provide details):
- ☐ No
- ☐ No, currently under development
- ☐ No, insufficient human resources staff
- ☐ No, don't have expertise
- ☐ No, salaries for ALL employees (including managers) are set by awards or industrial agreements, AND there is no room for discretion in pay changes (for example because pay increases occur only when there is a change in tenure or qualifications)
- ☒ No, salaries for SOME or ALL employees (including managers) are set by awards or industrial agreements and there IS room for discretion in pay changes (because pay increases can occur with some discretion such as performance assessments)
- ☐ No, non-award employees are paid market rate
- ☐ No, not a priority
- ☐ No, other (provide details):

- 4.2 Should you wish to provide additional information on any of your responses under gender equality indicator 3, please do so below:

Gender equality indicator 4: Flexible working and support for employees with family and caring responsibilities

This indicator will enable the collection and use of information from relevant employers about the availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities. One aim of this indicator is to improve the capacity of women and men to combine paid work and family or caring responsibilities through such arrangements. The achievement of this goal is fundamental to gender equality and to maximising Australia's skilled workforce.

5. Do you provide employer funded paid parental leave for PRIMARY CARERS, in addition to any government funded parental leave scheme for primary carers?

- ☐ Yes. (Please indicate how employer funded paid parental leave is provided to the primary carer):
- ☐ By paying the gap between the employee's salary and the government's paid parental leave scheme
 - ☐ By paying the employee's full salary (in addition to the government's paid scheme), regardless of the period of time over which it is paid. For example, full pay for 12 weeks or half pay for 24 weeks
 - ☐ As a lump sum payment (paid pre- or post- parental leave, or a combination)
 - ☐ No
 - ☐ No, currently being considered
 - ☐ No, insufficient human resources staff
 - ☒ No, government scheme is sufficient
 - ☐ No, don't know how to implement
 - ☐ No, not a priority
 - ☐ No, other (provide details):

6. Do you provide employer funded paid parental leave for SECONDARY CARERS, in addition to any government funded parental leave scheme for secondary carers?

- ☐ Yes, one week or greater (please go to 6.1)
- ☐ Yes, less than one week (please go to 6.2)
- ☒ No
- ☐ No, currently being considered
 - ☐ No, insufficient human resources staff
 - ☐ No, government scheme is sufficient
 - ☐ No, don't know how to implement
 - ☐ No, not a priority
 - ☐ No, other (provide details):

7. How many female and male managers, and female and male non-managers, have utilised parental leave (paid and/or unpaid) during the past reporting period (this is to include employees still on parental leave who commenced this leave in another reporting period)?

No cell should be left blank, please enter '0' (zero) where there is no data.

		Primary carer's leave			Secondary carer's leave	
		Female	Male		Female	Male
Managers	2	0	0		3	
Non-managers	32	0	0		19	

8. Provide the NUMBER of employees who, during the reporting period, ceased employment during, or at the end of, parental leave (by gender and manager/non-manager categories).

This includes employees on parental leave that had commenced in another reporting period. Include situations where the parental leave was taken continuously with any other leave type. For example, a person may have utilised paid/unpaid parental leave, annual leave or other unpaid leave during a single block of 'parental leave'.

'Ceased employment' means anyone who has exited the organisation for whatever reason, including resignations, redundancies and dismissals.

No cell should be left blank, please enter '0' (zero) where there is no data.

		Female	Male
Managers	0	0	
Non-managers	4	2	

9. Do you have a formal policy and/or formal strategy on flexible working arrangements?

- ☒ Yes (you can select policy and/or strategy options)
- ☐ Standalone policy
 - ☒ Policy is contained within another policy
 - ☐ Standalone strategy
 - ☐ Strategy is contained within another strategy
- ☐ No
- ☐ No, currently under development
 - ☐ No, insufficient human resources staff
 - ☐ No, included in workplace agreement
 - ☐ No, don't have expertise
 - ☐ No, don't offer flexible arrangements
 - ☐ No, not a priority
 - ☐ No, other (provide details):

10. Do you have a formal policy and/or formal strategy to support employees with family or caring responsibilities?

- ☐ Yes (you can select policy and/or strategy options)
- ☐ Standalone policy
 - ☐ Policy is contained within another policy
 - ☐ Standalone strategy
 - ☐ Strategy is contained within another strategy
- ☐ No
- ☐ No, currently under development
 - ☐ No, insufficient human resources staff
 - ☒ No, included in workplace agreement
 - ☐ No, don't have expertise
 - ☐ No, not a priority
 - ☐ No, other (provide details):

11. Do you have any non-leave based measures to support employees with family or caring responsibilities (e.g. employer-subsidised childcare, breastfeeding facilities, referral services)?

- ☐ Yes
- ☒ No
- ☐ No, currently under development
 - ☐ No, insufficient human resources staff
 - ☐ No, don't have expertise
 - ☐ No, not a priority
 - ☐ No, other (provide details):

12. Do you have a formal policy and/or formal strategy to support employees who are experiencing family or domestic violence?

- ☐ Yes (you can select policy and/or strategy options)

- ☐ Standalone policy
- ☐ Policy is contained within another policy
- ☐ Standalone strategy
- ☐ Strategy is contained within another strategy
- ☐ No
- ☒ No, currently under development
- ☐ No, insufficient human resources staff
- ☐ No, included in workplace agreement
- ☐ No, not aware of the need
- ☐ No, don't have expertise
- ☐ No, not a priority
- ☐ No, other (please provide details):

13. Other than a policy and/or strategy, do you have any measures to support employees who are experiencing family or domestic violence?

- ☒ Yes - please indicate the type of measures in place (more than one option can be selected):
 - ☐ Employee assistance program (including access to a psychologist, chaplain or counsellor)
 - ☐ Training of key personnel
 - ☐ A domestic violence clause is in an enterprise agreement or workplace agreement
 - ☒ Workplace safety planning
 - ☐ Access to paid domestic violence leave (contained in an enterprise/workplace agreement)
 - ☐ Access to unpaid domestic violence leave (contained in an enterprise/workplace agreement)
 - ☐ Access to paid domestic violence leave (not contained in an enterprise/workplace agreement)
 - ☒ Access to unpaid leave
 - ☒ Confidentiality of matters disclosed
 - ☒ Referral of employees to appropriate domestic violence support services for expert advice
 - ☒ Protection from any adverse action or discrimination based on the disclosure of domestic violence
 - ☒ Flexible working arrangements
 - ☐ Provide financial support (e.g. advance bonus payment or advanced pay)
 - ☐ Offer change of office location
 - ☐ Emergency accommodation assistance
 - ☐ Access to medical services (e.g. doctor or nurse)
 - ☐ Other (provide details):
- ☐ No
- ☐ No, currently under development
- ☐ No, insufficient human resources staff
- ☐ No, not aware of the need
- ☐ No, don't have expertise
- ☐ No, not a priority
- ☐ No, other (provide details):

14. Please tick the checkboxes in the table below to indicate which employment terms, conditions or practices are available to your employees (please note that not ticking a box indicates that a particular employment term, condition or practice is not in place):

	Managers				Non-managers			
	Female		Male		Female		Male	
	Formal	Informal	Formal	Informal	Formal	Informal	Formal	Informal
Flexible hours of work	☒	☐	☒	☐	☒	☐	☒	☐
Compressed working weeks	☒	☐	☒	☐	☒	☐	☒	☐
Time-in-lieu	☒	☐	☒	☐	☒	☐	☒	☐
Telecommuting	☒	☐	☒	☐	☐	☐	☐	☐
Part-time work	☒	☐	☒	☐	☒	☐	☒	☐
Job sharing	☒	☐	☒	☐	☒	☐	☒	☐
Carer's leave	☒	☐	☒	☐	☒	☐	☒	☐
Purchased leave	☒	☐	☒	☐	☒	☐	☒	☐
Unpaid leave	☒	☐	☒	☐	☒	☐	☒	☐

14.1 If there are any other employment terms, conditions or practices that are available to your employees, you may provide details of those below:

14.2 Where employment terms, conditions or practices are not available to your employees for any of the categories listed above, you may specify why below:

- ☐ Currently under development
☐ Insufficient human resources staff
☐ Don't have expertise
☒ Not a priority
☐ Other (provide details):

14.3 Should you wish to provide additional information on any of your responses under gender equality indicator 4, please do so below:

Gender equality indicator 5: Consultation with employees on issues concerning gender equality in the workplace

This gender equality indicator seeks information on what consultation occurs between employers and employees on issues concerning gender equality in the workplace.

15. Have you consulted with employees on issues concerning gender equality in your workplace?

- ☐ Yes
☐ No
☒ No, not needed (provide details why):
 We have policies and strategies that ensure that neither gender is discriminated
☐ No, insufficient human resources staff
☐ No, don't have expertise
☐ No, not a priority
☐ No, other (provide details):

15.3 Should you wish to provide additional information on any of your responses under gender equality indicator 5, please do so below:

Gender equality indicator 6: Sex-based harassment and discrimination

The prevention of sex-based harassment and discrimination (SBH) has been identified as important in improving workplace participation. Set by the Minister, this gender equality indicator seeks information on the existence of a SBH policy and/or strategy and whether training of managers on SBH is in place.

16. Do you have a formal policy and/ or formal strategy on sex-based harassment and discrimination prevention?

- ☒ Yes (you can select policy and/or strategy options)
- ☒ Standalone policy
 - ☐ Policy is contained within another policy
 - ☐ Standalone strategy
 - ☐ Strategy is contained within another strategy
- ☐ No
- ☐ No, currently under development
 - ☐ No, insufficient human resources staff
 - ☐ No, included in workplace agreement
 - ☐ No, don't have expertise
 - ☐ No, not a priority
 - ☐ No, other (provide details):

16.1 Do you include a grievance process in any sex-based harassment and discrimination prevention policy and/or strategy?

- ☒ Yes
- ☐ No
- ☐ No, currently under development
 - ☐ No, insufficient human resources staff
 - ☐ No, don't have expertise
 - ☐ No, not a priority
 - ☐ No, other (provide details):

17. Does your workplace provide training for all managers on sex-based harassment and discrimination prevention?

- ☒ Yes – please indicate how often this training is provided ('At induction' AND one of the other options can be selected):
- ☒ At induction
 - ☐ At least annually
 - ☐ Every one-to-two years
 - ☐ Every three years or more
 - ☒ Varies across business units
 - ☐ Other (provide details):
- ☐ No
- ☐ No, currently under development
 - ☐ No, insufficient human resources staff
 - ☐ No, don't have expertise
 - ☐ No, not a priority
 - ☐ No, other (provide details):

17.1 Should you wish to provide additional information on any of your responses under gender equality indicator 6, please do so below:



Workplace
Gender Equality
Agency

Date submitted: 10-Jun-2016 15:39:44
Unique report number: yc2kmiuk2e

Other

18. Should you wish to provide details of any initiatives that you feel are particularly outstanding, or that have resulted in improved gender equality outcomes in your workplace, please enter this information below. (As with all of the questions in this questionnaire, any information you provide here will appear in your public report.)



Workplace
Gender Equality
Agency

Date submitted: 10-Jun-2016 15:39:44
Unique report number: yc2kmluk2e

Gender composition proportions in your workplace

Important notes:

1. Proportions are based on the data contained in your workplace profile and reporting questionnaire.
2. Some proportion calculations will not display until you press Submit at step 6 on the reporting page in the portal. When your CEO signs off the report prior to it being submitted, it is on the basis that the proportions will only reflect the data contained in the report.
3. If any changes are made to your report after it has been submitted, the proportions calculations will be refreshed and reflect the changes after you have pressed Re-submit at step 6 on the reporting page.

Based upon your workplace profile and reporting questionnaire responses:

Gender composition of workforce

1. the gender composition of your workforce overall is 38.4% females and 61.6% males.

Promotions

2. 37.2% of employees awarded promotions were women and 62.8% were men
 - i. 68.7% of all manager promotions were awarded to women
 - ii. 37.0% of all non-manager promotions were awarded to women.
3. 34.2% of your workforce was part-time and 36.7% of promotions were awarded to part-time employees.

Resignations

4. 38.7% of employees who resigned were women and 63.3% were men
 - i. 20.0% of all managers who resigned were women
 - ii. 37.1% of all non-managers who resigned were women.
5. 34.2% of your workforce was part-time and 29.4% of resignations were part-time employees.

Employees who ceased employment before returning to work from parental leave

- i. 11.8% of all women who utilised parental leave ceased employment before returning to work
- ii. 9.1% of all men who utilised parental leave ceased employment before returning to work
- iii. N/A - managers who utilised parental leave and ceased employment before returning to work were women
- iv. 66.7% of all non-managers who utilised parental leave and ceased employment before returning to work were women.

Notification and access

List of employee organisations:

ASU
TWU

CEO sign off confirmation

Name of CEO or equivalent:

Glenn Rutherford

CEO signature:

Confirmation CEO has signed the report:

Date:

LANGE Jacqueline

From: s.47F(1)
Sent: Thursday, 20 April 2017 6:40 PM
To: CHESTER Darren
Cc: s.47F(1)
Subject: Aerocare update from Department of Employment [SEC=UNCLASSIFIED]

UNCLASSIFIED

Dear Minister

Following my conversation with s.47F(1) in your office please see below an update provided by Minister Cash's department for your information;

Latest developments

- The proposed agreement put forward by Aerocare was voted up by a majority of employees.
- 88% of employees covered by the agreement voted in the ballot with 83% of those voting Yes.
- The company issued a [statement on its website](#) saying "the new agreement include increased pay rates across the board of at least five per cent, an increase in minimum shift length from three hours to four hours, significant long service recognition, and broadening of eligibility for specialist duties payments."
- The TWU and ASU have publicly stated that it will challenge the approval of the agreement when it comes before the Fair Work Commission. The TWU issued a media release yesterday stating, "This vote was neither open nor transparent and we have serious concerns as to whether it was a secret ballot. Low paid staff were forced to vote over Easter weekend with minimal notice." The ASU is reported as saying, "casuals were not allowed to vote on the new agreement, even though they were believed to comprise about half the workforce. We maintain our position that it doesn't meet the BOOT and we will no doubt challenge it."
- The agreement will be lodged with the Fair Work Commission in the coming week.
- The ABC has published a story earlier today that [claims a worker was locked in an aircraft cargo hold](#) and it was never reported. We understand the claims by former employees around safety will be part of a 7:30 piece to air this evening. The company is preparing a response to this story and will provide the Department with it in due course.

Background

- Aerocare Flight Support Pty Ltd (Aerocare) provides baggage handling, aircraft loading, towing and other aviation services for Australian and International airlines. Aerocare has operated for more than 20 years providing ground support services to airlines at major city and regional airports across Australia.
- Aerocare commenced bargaining in 2016 to replace the [Aero-Care Collective Agreement 2012](#) (2012 Agreement). the key sticking points in the negotiations for the TWU and ASU were hours of work and roster arrangements.
- The 2012 Agreement was approved with undertakings by Vice President Graeme Watson of the Fair Work Commission on 12 February 2013. The approval of the 2012 Agreement was opposed by the TWU and the ASU claiming the roster arrangements did not pass the better-off overall test (BOOT).
- The unions' main concern was that the minimum engagement period of three hours under the 2012 Agreement compared to the minimum four hours under the *Operations Ground Staff Award 2013* was a disadvantage. Vice President Watson agreed with that submission, however in his approval of the 2012 Agreement he noted,

[26] I have weighed the respective advantages and disadvantages under the Agreement compared to the Award. In my view the benefits of the Agreement are substantial. I have also considered the detailed evidence and calculations provided in the proceedings which assists in assessing the extent of the benefits and the disadvantages. I note that in relation to minimum shift lengths the basis of these calculations adopt the unions' proposals regarding financial impact. Having regard to all of the circumstances I am satisfied that each Award covered employee and each prospective Award covered employee would be better off

overall if the agreement applied than if the Award applied. In my view the Agreement satisfies the BOOT.

- On 20 March 2017, the ABC 7:30 program reported that workers were working 'split-shifts' and as a result sleeping at airport terminals in makeshift beds. Footage obtained by the TWU and provided to the ABC showed bed rolls behind a baggage carousel. The report also featured a person claiming he was a current employee and feared for his job.
- Aerocare Chief Executive Glenn Rutherford made the following statement to the ABC on 20 March 2017: *Aerocare is deeply concerned by any allegations of system deficiency and will further investigate any claims thoroughly. That said, we want to ensure it is on record that in 22 years, and despite handling over a million flights, Aerocare has never been penalised for a safety related issue. Aerocare has and will always be fully compliant with laws and regulations and as part of that the company is again committed to providing its employees with significant wage increases as part of the current round of wage negotiations.*
- The *Sydney Morning Herald* reported on 21 March 2017 alleging that workers were subject to 'squalid third world conditions' while they wait for their next shift.
- The TWU alleges that under the 'split-shift' arrangement workers are spending more than 14 hours per day at the airport and in some cases workers can be required to work more than one shift in a single day. The TWU claimed the split shifts were threatening the safety of passengers.
- A worker is quoted in the article that sometimes there was a six-hour wait between shifts and workers "made little nests with airline blankets and waited", because it wasn't worth going home.
- On 21 March 2017, Aerocare issued a further statement in relation to the allegations made on in the 7:30 report:

The ABC 7.30 story prominently featured an interview with a s.47F(1) who was described as an Aerocare employee and spoke about fearing that he would lose his job. In fact s.47F(1) left Aerocare nine month ago, partway through training. He was a trainee and employee over a two month period ending June 2016 during which time he undertook only 28 shifts that each averaged approximately 7 hours in duration with regular rest breaks and with no split shifts. His employment was exclusively in the catering truck segment of the business, which had no overlap with or access to the baggage claim areas that were the subject of his complaints. He left the company of his own volition and is now employed by a competitor. The opportunity to work two shifts in a day is offered to employees where the company does not have the contract coverage to provide a longer continuous shift. This was included in the last EBA that was approved by 97% of our workforce. Such shifts are entirely at the employees' option.

- On 30 March 2017, the Minister was asked a question and two supplementary questions by Senator Gallacher (SA) about the Aerocare conditions (attached Hansard excerpt refers).
- On 4 April 2017, the company issued a further statement stating: *Aerocare, alongside Australian airport authorities, today confirmed that claims of employee sleeping "camps" at its airport facilities were totally without foundation. The Company provided the results of an extensive investigation into recent disturbing media footage of improvised sleeping arrangements, allegedly within one of its airport areas, having worked in parallel with Sydney, Melbourne, Brisbane and Perth airports and the Australian Border Force to conduct the investigation. All parties confirm that after careful physical inspection and review of surveillance footage and digital records they have found nothing to substantiate the existence of "camps" where people are sleeping on site or any similar practices at any of these locations.*
- On 5 April 2017, the ABC issued the following [correction and clarification](#) about its 20 March 2017 report: *On 20 March 2017, 7.30 broadcast a story concerning alleged poor working conditions at Aerocare. A worker interviewed for the story, s.47F(1) has informed 7.30, and Aerocare has confirmed that s.47F(1) had not had a shift with the company for nine months prior to his interview for this program and had done less than two months work for the company. He maintains he was, none the less, still on the books and showed 7.30 a current Aerocare security card. The company maintains, therefore, that it was unreasonable to suggest he was risking his job. 7.30 also advises it has confirmed that a worker shown sleeping worker in a luggage container was not an employee of Aerocare.*

- On 14 April 2017 the access period for consideration of the proposed agreement ended. The ASU attempted to bring urgent good faith bargaining orders against Aerocare for not provided information relevant to the bargaining process.
- The ASU and TWU ran 'Vote No' campaigns. The Department understands that the unions have very low membership at Aerocare and has limited ability to exert any industrial pressure on the company at the bargaining table or through industrial action. They have used the media as a means of exerting pressure.
- The ballot on the proposed agreement opened on 15 April 2017 and closed 18 April 2017.
- On 19 April 2017, the company declared that a majority of employees had endorsed the agreement.
- Media statements by both the ASU and TWU indicate that they will challenge the approval of the agreement before FWC.
- The company anticipates that it will lodge the agreement with FWC in the coming week.
- On 20 April 2017, the ABC reported that former employees had come forward to claim that safety incidents had not been reported and that Aerocare had a poor safety record.

Kind regards

s.47F(1)

ASSISTANT MEDIA ADVISER

Office of Senator the Hon. Michaelia Cash
Senator for Western Australia
Minister for Employment
Minister for Women
Minister Assisting the Prime Minister for the Public Service

Parliament House, Canberra ACT 2600

T s.47F(1)

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Aerocare: Aviation Safety Issues

KEY ISSUES/QUESTION

- Allegations made by Aerocare employees on *ABC 7.30 Report* programs that current terms and conditions of employment are impacting on aviation safety at Australian airports.

GOVERNMENT POSITION

- I am aware of the most recent concerns raised in relation to operations by Aerocare, an Australian ground handling company working for many of the major airlines at our major airports.
- In relation to aviation safety, airline operations, including the provision of ground handling services, are subject to regular auditing by the Civil Aviation Safety Authority (CASA), the aviation safety regulator.
- CASA has confirmed that the allegations raised on the 7.30 Program on 20 April 2017, including the alleged falsification of documentation, are concerning and CASA will be investigating these allegations.
- Depending on the outcome of these investigations, appropriate safety and other actions will be put in place noting that CASA holds airline certificate holders responsible for the operations of their subcontractors.

OCCUPATIONAL HEALTH AND SAFETY AND INDUSTRIAL MATTERS (IF RAISED)

- The Occupational Health and Safety (OH&S) issues raised in these programs are matters for the respective state OH&S oversight agencies.

Contact Officer:	s.47F(1) Director, Aviation Safety, Policy and Governance, Aviation and Airports	Work Phone: s.47F(1)	Mobile: s.47F(1)
Cleared by:	s.47F(1) General Manager, Air Traffic Policy, Aviation and Airports	Work Phone: s.47F(1)	Mobile: s.47F(1)

BACKGROUND

On 20 March 2017, the ABC 7.30 television program ran a story based on interviews with several Aerocare workers and the Transport Workers Union which raised safety concerns caused by the terms and conditions of employment used by Aerocare.

The ABC program heavily focussed on the terms and conditions of Aerocare workers and linked this with safety concerns caused by fatigue given some part-time staff were working several shifts and hence having to sleep at the airport in between shifts in makeshift, poor conditions.

Senior management from Aerocare, including CEO Glen Rutherford met with Minister Chester after the first report was aired, to respond to the claims made on the 7:30 program. They confirmed their commitment to providing safe services at our airports.

On 20 April 2017 the program aired further interviews with former Aerocare employees over the locking in of a baggage handling supervisor at Brisbane Airport, the dehydration of an employee and the falsification of reports.

Aerocare, an Australian-owned company, provides contracted ground handling services at around 35 of Australia and New Zealand's major airports for several Air Operator's Certificate (AOC) holders including Qantas, Jetstar, Virgin, Tiger and Singapore Airlines. The company has responded to the program noting that it turns around over 170,000 flights per year and has an IATA accredited safety rating for ground services.

Aerocare has operated for 22 years and has not had any safety notices issued against them.

Aviation Safety Regulation

Part of the regulatory compliance obligations of the AOC holder require the holder to have comprehensive operating procedures in place with which the ground services organisation must comply. The airlines are also required to have in place an effective audit regime, as part of their safety management systems, to ensure the operations of the ground services organisation are in compliance with the airline's stipulated procedures.

CASA oversees the airlines that contract Aerocare to perform services in accordance with the airlines' operating procedures. CASA routinely conducts surveillance of the airline operations, including those services that Aerocare performs for the airline.

In particular, CASA will determine, through regular surveillance activity, the maturity of the airline to appropriately oversight and manage third-party contractors such as Aerocare. Any CASA audit findings are issued to the airline and if these relate to the services provided by the ground service organisation, the airline is required to ensure appropriate remedial action is taken by the third party. CASA in turn assesses the efficacy of the remedial action.

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Aviation Safety Incidents

The 20 March 2017 program also raised two alleged safety incidents involving Aerocare – a cargo door that was not properly shut before pushback at Brisbane Airport on 28 November 2014 and the top of a disabled persons lift being towed hitting an aerobridge in 2015.

On 1 December 2014, the ATSB was notified of an event involving a Tigerair A320 aircraft during push back—as opposed to take-off as reported by 7.30—while a cargo door was open at Brisbane airport.

Before push back, both pilots viewed the door page as closed and ground crew confirmed ground checks were completed.

The aircraft pushed back and the flight crew were then made aware via an automatic alert that the door was not fully closed. At the completion of the push back, the pilots queried the door with the ground crew and the cargo door was secured.

The flight crew are not made aware of the extent to which the door isn't shut, just that it's not closed and locked and therefore not in a safe condition for take-off.

The airline notified the ATSB of this event on 1 December 2014, which is within the timeframe required for reporting this type of event.

Based on the notification, the ATSB assessed that the system worked as designed to detect the anomaly and the event was not a transport safety matter. The ATSB, therefore, did not investigate the event.

In relation to the 2015 disabled persons lift incident, Aerocare has stated this was investigated by the company and the airline incident auditors.

The incident involved a lift being towed between airport gates in preparation for a later flight and, in contravention of operating procedures, the tow driver took a "short-cut" and the top of the lift hit the aerobridge. The incident was reported to CASA and the airport.

The incident auditors did not find any systemic evidence of deficient procedures or that training or fatigue were contributing factors. The incident led to the employee involved being provided with coaching to improve future performance.

On 20 April 2017 the 7.30 Report program aired further interviews with former Aerocare employees over the alleged "locking in" of a baggage handling supervisor in the hold of an aircraft at Brisbane Airport, the dehydration of an employee and the falsification of reports.

Aerocare has responded to both of the initial allegations, including pointing out that the ATSB specifically confirmed that the allegedly locking in of the baggage handling supervisor was not a reportable event (noting that Aerocare has indicated that the supervisor in fact opened the door from the inside and exited the plane).

Contact Officer:	S.47F(1) Director, Aviation Safety, Policy and Governance, Aviation and Airports	Work Phone: S.47F(1)	Mobile:
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QB17-000061

Date QTB created: 21 March 2017

Last updated by Department: 21 April 2017

Last updated by Adviser: day month year

The most serious allegation from the program was the alleged falsification of baggage reporting, including weight measurement, and CASA has indicated it will be investigating these allegations.

Aviation Security

While no security issues were raised in these ABC programs, the Office of Transport Security will, as part of its regulatory regime, examine any issues arising out of these programs if there are any aviation security concerns.

Industrial Relations

Aerocare has indicated it has received overwhelming support from employees for the recently negotiated enterprise bargaining agreement which includes a pay increase of at least 5% and to increase minimum shift duration.

The Transport Workers Union (TWU) has indicated that Aerocare's shorter shifts and part-time hiring policy at airports is consistent with the "Americanisation" of work practices in Australia. In its most recent media release on 21 April 2017, the TWU has claimed that "the system is broken" and "requires an industry wide award that protects wages and conditions, gives workers rights and protections and ensures high training, safety and security standards".

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Cleared by:	s.47F(1) General Manager, Air Traffic Policy, Aviation and Airports	Work Phone: s.47F(1)	Mobile: s.47F(1)

s.47F(1)

From: s.47F(1)
Sent: Friday, 21 April 2017 4:04 PM
To: s.47F(1) CHESTER Darren; s.47F(1)
Cc: s.47F(1)
Subject: RE: Aerocare [DLM=For-Official-Use-Only]

Thanks s.47F(1) - have passed on to PMO media too.

This material contains information that, if disclosed inappropriately, may cause limited damage to national security, Australian Government agencies, commercial entities or members of the public. Recipients should ensure they handle and store this material appropriately.

From: s.47F(1)
Sent: Friday, 21 April 2017 3:58 PM
To: CHESTER Darren <Darren.Chester@infrastructure.gov.au>; s.47F(1)
Cc: s.47F(1)
Subject: Aerocare [DLM=For-Official-Use-Only]

DC, updated talking points on Aerocare for your reference. CASA will be investigating allegations around falsification of documents and putting out a short media statement to this effect. The TPs below refer. We are sharing this with the Cash office as well.

- CASA has confirmed that the allegations raised on the 7.30 Program on 20 April 2017, including the alleged falsification of documentation, are concerning and CASA will be investigating these allegations.
- Depending on the outcome of these investigations, appropriate safety and other actions will be put in place noting that CASA holds airline certificate holders responsible for the operations of their subcontractors.

This material contains information that, if disclosed inappropriately, may cause limited damage to national security, Australian Government agencies, commercial entities or members of the public. Recipients should ensure they handle and store this material appropriately.

AEROCARE - AVIATION SAFETY ISSUES

KEY ISSUES/QUESTION

- Allegations made by Aerocare employees on *ABC 7.30 Report* programs that current terms and conditions of employment are impacting on aviation safety at Australian airports.

GOVERNMENT POSITION

- I am aware of the most recent concerns raised in relation to operations by Aerocare, an Australian ground handling company working for many of the major airlines at our major airports.
- In relation to aviation safety, airline operations, including the provision of ground handling services, are subject to regular auditing by the Civil Aviation Safety Authority (CASA), the aviation safety regulator.
- CASA has examined the allegations raised on the 7.30 Program on 20 April 2017, including the alleged falsification of documentation, and at this time has not identified any aviation safety issues.
- CASA will continue to include ground handling services in its audit and surveillance of air operator certificate holders, to ensure appropriate aviation safety standards are maintained.

[IF RAISED] OCCUPATIONAL HEALTH AND SAFETY AND INDUSTRIAL MATTERS

- The Occupational Health and Safety (OH&S) issues raised in these programs are matters for the respective state OH&S oversight agencies.

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Cleared by:	s.47F(1) General Manager, Air Traffic Policy, Aviation and Airports	Work Phone: s.47F(1)	Mobile Phone: s.47F(1)

BACKGROUND

On 20 March 2017, the ABC 7.30 television program ran a story based on interviews with several Aerocare workers and the Transport Workers Union which raised safety concerns caused by the terms and conditions of employment used by Aerocare.

The ABC program heavily focussed on the terms and conditions of Aerocare workers and linked this with safety concerns caused by fatigue given some part-time staff were working several shifts and hence having to sleep at the airport in between shifts in makeshift, poor conditions.

Senior management from Aerocare, including CEO Glen Rutherford met with Minister Chester after the first report was aired, to respond to the claims made on the 7:30 program. They confirmed their commitment to providing safe services at our airports.

On 20 April 2017 the program aired further interviews with former Aerocare employees over the locking in of a baggage handling supervisor at Brisbane Airport, the dehydration of an employee and the falsification of reports.

Aerocare, an Australian-owned company, provides contracted ground handling services at around 35 of Australia and New Zealand's major airports for several Air Operator's Certificate (AOC) holders including Qantas, Jetstar, Virgin, Tiger and Singapore Airlines. The company has responded to the program noting that it turns around over 170,000 flights per year and has an IATA accredited safety rating for ground services.

Aerocare has operated for 22 years and has not had any safety notices issued against them.

Aviation Safety Regulation

Part of the regulatory compliance obligations of the AOC holder require the holder to have comprehensive operating procedures in place with which the ground services organisation must comply. The airlines are also required to have in place an effective audit regime, as part of their safety management systems, to ensure the operations of the ground services organisation are in compliance with the airline's stipulated procedures.

CASA oversees the airlines that contract Aerocare to perform services in accordance with the airlines' operating procedures. CASA routinely conducts surveillance of the airline operations, including those services that Aerocare performs for the airline.

In particular, CASA will determine, through regular surveillance activity, the maturity of the airline to appropriately oversight and manage third-party contractors such as Aerocare. Any CASA audit findings are issued to the airline and if these relate to the services provided by the ground service organisation, the airline is required to ensure appropriate remedial action is taken by the third party. CASA in turn assesses the efficacy of the remedial action.

Contact Officer:	s.47F(1) Director, Aviation Safety, Policy and Governance, Aviation and Airports	Work Phone: s.47F(1)	Mobile Phone:
Cleared by:	s.47F(1) General Manager, Air Traffic Policy, Aviation and Airports	Work Phone: s.47F(1)	Mobile Phone:

Aviation Safety Incidents

The 20 March 2017 program also raised two alleged safety incidents involving Aerocare – a cargo door that was not properly shut before pushback at Brisbane Airport on 28 November 2014 and the top of a disabled persons lift being towed hitting an aerobridge in 2015.

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Before push back, both pilots viewed the door page as closed and ground crew confirmed ground checks were completed.

The aircraft pushed back and the flight crew were then made aware via an automatic alert that the door was not fully closed.

At the completion of the push back, the pilots queried the door with the ground crew and the cargo door was secured.

The flight crew are not made aware of the extent to which the door isn't shut, just that it's not closed and locked and therefore not in a safe condition for take-off.

The airline notified the ATSB of this event on 1 December 2014, which is within the timeframe required for reporting this type of event.

Based on the notification, the ATSB assessed that the system worked as designed to detect the anomaly and the event was not a transport safety matter. The ATSB, therefore, did not investigate the event.

In relation to the 2015 disabled persons lift incident, Aerocare has stated this was investigated by the company and the airline incident auditors.

The incident involved a lift being towed between airport gates in preparation for a later flight and, in contravention of operating procedures, the tow driver took a "short-cut" and the top of the lift hit the aerobridge. The incident was reported to CASA and the airport.

The incident auditors did not find any systemic evidence of deficient procedures or that training or fatigue were contributing factors. The incident led to the employee involved being provided with coaching to improve future performance.

On 20 April 2017 the 7.30 Report program aired further interviews with former Aerocare employees over the alleged "locking in" of a baggage handling supervisor in the hold of an aircraft at Brisbane Airport, the dehydration of an employee and the falsification of reports.

Aerocare has responded to both of the initial allegations, including pointing out that the ATSB specifically confirmed that the allegedly locking in of the baggage handling supervisor was not a reportable event (noting that Aerocare has indicated that the supervisor in fact opened the door from the inside and exited the plane).

Contact Officer:	s.47F(1) Director, Aviation Safety, Policy and Governance, Aviation and Airports	Work Phone: s.47F(1)	Mobile Phone:
Cleared by:	s.47F(1) General Manager, Air Traffic Policy, Aviation and Airports	Work Phone: s.47F(1)	Mobile Phone:

QB17-000114

Date QTB created: 21 April 2017
Last updated by Department: 9 May 2017
Last updated by Adviser: 9 May 2017

The most serious allegation from the program was the alleged falsification of baggage reporting, including weight measurement, and CASA has indicated it will be investigating these allegations.

On 9 May 2017 CASA advised that at this time they had not identified any aviation safety issues arising from these allegations. CASA will continue to include ground handling services in its audit and surveillance of AOC holders.

Aviation Security

While no security issues were raised in these ABC programs, the Office of Transport Security will, as part of its regulatory regime, examine any issues arising out of these programs if there are any aviation security concerns.

Industrial Relations

Aerocare has indicated it has received overwhelming support from employees for the recently negotiated enterprise bargaining agreement which includes a pay increase of at least 5% and to increase minimum shift duration.

The Transport Workers Union (TWU) has indicated that Aerocare's shorter shifts and part-time hiring policy at airports is consistent with the "Americanisation" of work practices in Australia. In its most recent media release on 21 April 2017, the TWU has claimed that "the system is broken" and "requires an industry wide award that protects wages and conditions, gives workers rights and protections and ensures high training, safety and security standards".

Contact Officer:	s.47F(1) Director, Aviation Safety, Policy and Governance, Aviation and Airports	Work Phone: s.47F(1)	Mobile Phone:
Cleared by:	s.47F(1) General Manager, Air Traffic Policy, Aviation and Airports	Work Phone: s.47F(1)	Mobile Phone:



9 May 2017

The Hon Darren Chester MP
Minister for Infrastructure and Transport
Parliament House
Canberra ACT 2600

Senator the Hon Michaelia Cash
Minister for Employment, Minister for Women and Minister Assisting the Prime Minister for the Public Service
Parliament House
Canberra ACT 2600

Dear Ministers

I am making contact given your interest in our operations, and unfounded and misleading claims that have been made in two recent stories on ABC's 7.30 program.

As an initial issue, Aerocare is a business with a long and established track record over a 25 year period and has never previously faced any adverse media reports or regulatory penalties. In relation to our operational and compliance performance, we would draw the following facts to your attention:

- The company has an industry-leading safety record;
- Aerocare's Lost Time Frequency Injury Rate is less than one-third the industry average using Safe Work Australia's own definition and benchmarks;
- The Company has never been penalised for a single safety or workplace injury issue across its 25 year history of handling over one million flights;
- Last year alone, the Company was subjected to over 180 audits by regulators, customers and airports and there is a similar level of scrutiny every year;
- Aerocare is frequently awarded for its safety performance and is the only Australian-owned ground handler with the top global safety accreditation, ISAGO;
- We pay above award rates and conditions;
- 83% of our workforce have just voted to approve the latest EBA which delivers increased pay and improved conditions;
- Previous EBAs were all similarly approved with very strong votes and all were explicitly ratified by the Fair Work Commission as offering better-than-award conditions;
- Aerocare is increasing wages and growing its workforce while global competitors are cutting back and looking to reduce pay rates.

In our view, the recent 7.30 stories were motivated and specifically-timed attempts by the Transport Workers Union (TWU) to negatively influence the outcome of the latest Aerocare enterprise bargaining agreement. Three weeks ago, and a full month after the initial 7.30 story, Aerocare's new enterprise agreement was overwhelming approved by Aerocare's workforce, with a strong 83% vote in favour of the new compact which will deliver pay increases across the board. This vote is clearly a strong endorsement of Aerocare's operations by its employees.

Safety • Efficiency • Integrity

Disappointingly, the 7.30 Report stories were marred by false, misconceived and malicious accusations, brought forward by anonymous sources or disgruntled former employees, most of which now work for our foreign commercial competitors. Significantly, both of the independent experts and a number of other sources depicted in the stories have subsequently expressed concern directly to Aerocare about the way their views were presented in that they were misled or that the data and scenarios put to them by the reporter did not match the scenarios or facts then outlined in the story. One of the more prominently featured former employees has also stated in writing that 7.30 itself falsified flight file documents when it could not find any evidence for one of the core accusations aired.

We note that the ABC's own independent internal review has found that 7.30's first story in relation to our company breached the ABC editorial standards for accuracy. We believe the same conclusion is likely to be reached for the review that is ongoing into the second story.

The deeply held concerns that Aerocare has in relation to the 7.30 stories have also been notified to the Australian Communications and Media Authority (**ACMA**). Aerocare has asked the ACMA to conduct an investigation of its complaint under s150 of the *Broadcasting Services Act 1992*.

Importantly, we have been in regular dialogue with all Federal and State regulators and safety agencies, our airline customers, and the airports themselves to offer "open book" access should they have any concerns. We are encouraged by their ongoing support, their confidence in our operations and our trained workforce, and our strong focus on workplace safety. Whilst many of these entities naturally had questions in the wake of the two 7.30 stories, they have all subsequently been provided with detailed responses and facts and none have articulated to Aerocare any extant concerns. Indeed, we have since commenced or been awarded a number of new contracts.

As regards the motivation of the TWU, and as a former TWU delegate myself, I would like to point out my disappointment that the union has never made any contact with Aerocare about the allegations which it is circulating. This is confusing given that the TWU claims to represent the best interests of its members employed in the industry and yet it does not engage with the company on any level to identify any work health and safety concerns or seek to work collaboratively to assess and address them. It is also disappointing that the TWU has publicly criticised Aerocare for certain features of our enterprise agreements – e.g. offering split shifts at the employee's option – when they themselves have ratified the same features of the agreements of our foreign-owned competitors.

Should you have any questions around Aerocare's operations, and more specifically around the misleading and false allegations that were raised in the 7.30 stories, please don't hesitate to contact me directly.

I have attached the five press releases that we have issued on this matter for your convenience, the detail of which I would be very happy to walk you through in person. I think it is important that you understand the facts before you draw any conclusions from the 7.30 stories and associated TWU positioning.

We are very appreciative of the wide level of support that has been expressed by the aviation industry over the last few weeks and we intend to continue to provide industry-leading levels of safety and service as we focus on growing our business in Australia.

Thank you for your interest in this matter.

Yours sincerely

s.47F(1)

Glenn Rutherford

CEO

Safety • Efficiency • Integrity

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MEDIA STATEMENT

ABC 7.30 REPORTS ALLEGATIONS AND PASSES OVER THE FACTS IN AEROCARE STORY

The story about Aerocare in the 7.30 Report of 20 April amounted to a second unwarranted attack upon Aerocare's operations and record.

The story reflected misleading allegations made by the Transport Workers Union during a multi-week campaign, and are timed to attempt to influence the negotiation and development of the latest Aerocare Enterprise Bargaining Agreement.

In the face of this campaign, Aerocare employees voted this week in a landslide to adopt the latest EBA - an endorsement of Aerocare employee and workplace conditions from those who are in the best place to judge.

The 7.30 Report program was underpinned by the claims of two former Aerocare employees. Their accusations were baseless, misconceived and/or demonstrably false.

Aerocare provided extensive factual material and context to the 7.30 Report in response to these allegations. This was all but passed over in the uncritical airing of claims by a handful of individuals who are no longer part of the business.

CARGO DOOR CLOSURE

For example, 7.30 showed a former Aerocare worker claiming that his baggage handling supervisor was accidentally "locked" in the cargo hold of a plane "about to take off" from Brisbane Airport. As the ABC was made aware weeks ago with copies of the extensive incident reports and the supervisors' own detailed statement, the supervisor was in fact not locked in the hold or in any way desperate. He opened a prematurely-closed door from the inside and exited the plane.

The incident occurred when the plane was being loaded. The plane was not about to take off and could not have taken off without clearance from the supervisor himself. The relevant regulator, the Australian Transport Safety Bureau, has specifically confirmed that the event was not reportable but, despite being aware of this key fact, the ABC has chosen to misleadingly portray this as a safety issue and a failure in incident reporting.

ALLEGED DEHYDRATION INCIDENT

The ABC also reported on an incident involving a former employee, s.47F(1) who claimed he had to leave a shift on 2 December 2014 because of severe dehydration.

At no time did s.47F(1) or anyone else report this incident or any associated issues to Aerocare. There is no record of s.47F(1) reporting this alleged incident as a workplace injury to anyone or at any time.

When this allegation was first put to Aerocare last week, investigations identified that s.47F(1) was heavily involved in a State Emergency Service operation in the days leading up to the 2 December and, on the day, it was confirmed that he worked for less than two hours before leaving his shift with an infection.

He returned to work in an unrestricted capacity and reporting no issues only 36 hours after leaving his prior shift. To attribute severe dehydration to less than two hours work is implausible. These facts, and others, were put to 7.30 but ignored.

Aerocare has investigated these and other claims that the ABC has put to it and in every instance provided comprehensive facts and rebuttals. 7.30 chose to report sensationalist allegations while ignoring or giving lip service to the truth and has failed in its commitment to fair and accurate reporting.

Aerocare Chief Executive Mr Rutherford said: *"I have had strong feedback from a huge number of employees stating that they resent the TWU's concerted campaign to undermine our company. Aerocare goes to extraordinary lengths to engage with, look after and reward our employees, and senior management have direct contact with our front-line workers and conduct monthly staff surveys for any feedback."*

Aerocare has made significant investment in rostering practices and technology to maximise roster likability and minimise fatigue, as well as allowing flexibility for individuals. Any notion that Aerocare doesn't care about people is ludicrous. Our employee ballot overwhelmingly supported the latest EBA and obviously provides the best possible evidence as to how Aerocare's entire labour force views wage and overall employment conditions.

As regards the ABC, I find it hard to believe that a program and a broadcaster which commits to independence and integrity has run a story riddled with errors and statements from people who are disgruntled ex-employees of Aerocare in the context of a focussed campaign by the TWU.

The true story of Aerocare is one of a successful Australian employer with an industry-leading safety record, not the misleading claims of ex-employees now working for competitors or those seeking to undermine the company."

21 April 2017

-ENDS-

Media Contacts: Peter Brookes, 0407 911 389 or Helen McCombie 0411 756 248 – Citadel-MAGNUS



MEDIA STATEMENT

AEROCARE REJECTS CLAIMS IN ABC STORY

Aerocare rejects the allegations published by the ABC on its website today.

Aerocare takes employee concerns and workplace conditions seriously. The allegations are sensational and inaccurate and ignore the factual material which Aerocare has provided to the ABC.

With regard to the specific allegations, Aerocare provides the following information.

CARGO HOLD

Allegation

A former Aerocare worker inaccurately told 7.30 that a baggage handling supervisor was accidentally "locked" in the cargo hold of a plane about to take off from Brisbane airport, but that the incident was never reported to safety authorities.

Fact

As the ABC is aware, the supervisor was not locked in the hold. He opened the door from the inside and exited the plane. It is not possible to lock someone in the cargo hold.

The incident occurred when the plane was being loaded. It was not about to take off and could not have taken off without clearance from the supervisor himself. Importantly the ABC is fully aware that the regulator, the Australian Transport Safety Bureau, has confirmed that the incident was not reportable but it seems this key fact has been misleadingly omitted.

WASTE AND WATER

Allegation

A former employee claimed Aerocare put passenger health at risk by using the same staff member to clear toilet waste and then, just hours later, refill drinking water on plane. This is an intentionally misleading and mischievous statement.

Fact

Aerocare typically rosters separate people for waste and water services. Contrary to the intentionally disturbing way that the practice is presented it is also acceptable practice for waste and water services to be delivered by the same employee, provided adequate hygiene practices are followed, as trained by Aerocare and mandated by customers.

SAFETY

Aerocare takes the safety of its workers seriously and has a strong audited safety record in all of its operations without a single penalty over 25 years. It is frequently awarded for its safety performance and is the only Australian-owned ground handler with the top global safety accreditation, ISAGO.

Aerocare's Lost Time Frequency Injury Rate is less than one third the industry average: i.e. staff are three times more likely to be injured working for a competitor.

EBA

Most importantly, Aerocare's staff this week voted overwhelmingly in favour of a new Enterprise Bargaining Agreement. There was a high participation rate of 88 per cent, with a resounding 83 per cent vote in favour of a new four-year agreement. This will deliver pay rises and additional new benefits across the board.

The vote was conducted in an appropriate and auditable manner, which was previously specifically approved by the Fair Work Commission.

20th April 2017

-ENDS-

Media Contacts: Peter Brookes, 0407 911 389 or Helen McCombie 0411 756 248 – Citadel-MAGNUS



MEDIA STATEMENT

AEROCARE PROVIDES UPDATE ON CURRENT ISSUES

- Aerocare provides detail of low injury rates and strong safety culture
- Australian airport authorities and Aerocare confirm that claims of employee sleeping "camps" are totally without foundation
- The ABC acknowledges fundamental errors in the story broadcast on the 7.30 Report on 20 March 2017
- TWU makes misleading statements during Enterprise Bargaining Agreement negotiations
- At Aerocare, split shifts are available at the employee's option and have been supported by 97% of the Company's employees
- Key employee ballot to approve the latest EBA to will begin this Saturday with management confident of strong support

As part of a calculated campaign by the Transport Workers Union ("TWU") initiated in the lead-up to an employee vote to adopt a new Enterprise Bargaining Agreement ("EBA"), Aerocare has been questioned by the ABC on the Company's injury performance in recent years.

Aerocare confirms that it has one of the lowest, if not the lowest, injury frequency and severity in the industry. Aerocare employees are, on average, over three times less likely to lose time to injury than peers employed elsewhere in the sector under Safe Work Australia's own definition.

Although not typically published, for the sake of transparency, Aerocare's provides below its audited workcover injury data as proof of its excellent track record.

June Year End	2012/13	2013/14	2014/15	2015/16	2016/17 YTD FEB
Total Aerocare Australian Aircraft Turnarounds⁽¹⁾	71,012	99,692	114,972	134,408	95,954
Total Aerocare Australian Injury Claims	20	34	44	68	39
<i>Injury Claims per 1,000 Turnarounds</i>	0.3	0.3	0.4	0.5	0.4
Major Injuries (Lost-Time Injury (LTI) > 7 days)	5	4	8	10	2
Workcover Statistics					
Aerocare Insurance Premium %	2.14%	1.89%	1.57%	1.70%	1.70%
Industry Premium Average Benchmark - Transport and Storage	2.60%	2.50%	2.30%	2.40%	
Aerocare Outperformance	17.9%	24.6%	31.6%	29.0%	
LTI/FR (Incidents Per Million Hours Worked)⁽²⁾					
Aerocare LTIFR (LTI > 7 days)	2.9	1.9	3.2	3.1	0.9
Industry Benchmark (Transport, Postal and Warehousing) ⁽³⁾	10.6	9.6	9.1	9.1	9.1
Industry Benchmark (Airport + Air Transport Support Services) ⁽⁴⁾	10.1	10.5	10.5	10.5	10.5
Occupation Benchmark (Air and Marine Transport Professionals) ⁽⁵⁾	9.7	9.1	9.1	9.1	9.1

(1) An aircraft turnaround is defined as a single aircraft arrival and departure

(2) Using Safe Work Australia definition: <http://www.safeworkaustralia.gov.au/sites/swa/statistics/litfr/pages/lost-time-injury-frequency-rates>

(3) <http://www.safeworkaustralia.gov.au/sites/swa/about/Publications/Documents/994/awcs-2014-15-data-tables.xlsx>

(4) <http://www.safeworkaustralia.gov.au/sites/swa/statistics/Documents/Table-2-1-number-frequency-rate-and-incidence-rate-of-serious-claims-by-industry-2009-10-2013-14.pdf>

(5) <http://www.safeworkaustralia.gov.au/sites/swa/statistics/Documents/Table-1-1-number-frequency-rate-and-incidence-rate-of-serious-claims-by-occupation-2009-10-2013-14.pdf>

In 25 years of handling more than a million flights, the Company has never had a penalty imposed on it by a workcover entity, underscoring that there is no basis for suggesting that the culture and work practices of the Aerocare are unsafe.

To the contrary, the business is regularly audited and awarded on its achievements and record. Aerocare's overall lost-time injury frequency rate (using Safe Work Australia's definition) for the current financial year is <1 incident per million hours worked, which is an outstanding result, particularly in a complex industrial environment like an airport where incidents can and do happen.

As regards Sydney International, which has been the focus of much attention, the Company affirms an overall low injury rate recorded for Aerocare employees, with zero major injuries where lost-time was above 7 days recorded for that port in the current financial year, and only four in total since January 2015.

During this period a total of over 650 employees were part of the overall Sydney International workforce and collectively serviced over 12,000 flights. Reflective of this strong performance, the Company's NSW workcover insurance premium is in line with the national average rate.

CLAIMS OF SLEEPING "CAMPS" AT AIRPORTS DEBUNKED

On Monday 3rd April, Australian airport authorities, alongside Aerocare, confirmed that claims of employee sleeping "camps" at airport facilities were totally without foundation.

The Company provided the results of an extensive investigation into recent disturbing media footage of improvised sleeping arrangements, allegedly within one of its airport areas, having worked in parallel with Sydney, Melbourne, Brisbane and Perth airports to conduct the investigation.

Aerocare Chief Executive Glenn Rutherford said: "All parties confirmed explicitly to Aerocare that after careful inspection and review of footage and records nothing was found to substantiate the existence of "camps" where people are sleeping on site or any similar practices at any of these locations.

Aerocare and Sydney Airport have also reviewed all their records over the last three years and were only able to uncover a single instance, in April 2016, of personal belongings being left against policy in an unauthorised area of the airport."

ABC ACKNOWLEDGES FUNDAMENTAL ERRORS IN STORY

The ABC has clarified several errors in the story broadcast on the 7.30 on 20 March 2017, which contained misleading and sensationalist reporting about working conditions at Aerocare. An acknowledgement was posted on the ABC's website on 5 April 2017 (<http://www.abc.net.au/news/2017-04-05/aerocare-pty-ltd/8419082>).

The ABC admitted that a key person who appeared on 7.30 had misrepresented himself as an Aerocare employee.

The program introduced s.47F(1) as a whistle-blower who was "risking his job to speak out publicly."

In fact, s.47F(1) only worked at Aerocare for two months in the first half of 2016 and has since been employed by an Aerocare competitor.

He was a trainee in the catering truck segment of the business, which has no involvement with the baggage areas that he spoke about whilst 7.30 concurrently showed images of purported employee sleeping "camps," which have themselves been thoroughly disproven after a full investigation involving Australian airport authorities.

The ABC correction also concedes that 7.30 Report misrepresented footage as showing an Aerocare worker sleeping in a luggage container. The ABC now confirms that the person shown was not an employee of Aerocare.

When combined with the results of the parallel investigations that have rejected the "camp" allegations, confirmations that the safety incidents raised on the program were not considered risks by the regulator mean the errors conceded by 7.30 leave the entire story with no credibility.

Subsequent to the initial episode the ABC has continued to put various unfounded and unsubstantiated allegations to Aerocare based upon hearsay of former employees and a TWU delegate. Aerocare has provided strong rebuttal and detailed and factual responses to all claims, including unsubstantiated generalized attacks on Aerocare's document management procedures and audit processes.

Aerocare reaffirms that its practices are regularly audited by regulators and customers and strongly refutes any claims that its systems and processes are in any way deficient, as evidenced by the Company's outstanding 25 year track record.

INTENTIONALLY MISLEADING STATEMENTS BY TWU DURING EBA NEGOTIATIONS

Aerocare has called out the TWU for making misleading statements during Enterprise Bargaining Agreement negotiations.

Employees working more than one shift in a day ("split shifts") occurs regularly in the aviation industry in Australia, and elsewhere in the world, given that rosters are determined by fluctuating flight schedules and aircraft turn-around times.

Many Aerocare competitors and other industry participants allow for and engage in split shifts in their rostering. Split-shifting is also common in the hospitality and transport industries.

At Aerocare, split shifts are only provided at the employee's option and have been supported by 97% of the company's employees in the last EBA.

Aerocare Chief Executive, Glenn Rutherford said the TWU was involved in a calculated campaign with regard to the availability of split shifts.

As part of that campaign the TWU has claimed that Aerocare is the "only aviation company whose agreement allows for split shifts, which is specifically excluded under the award."

Mr Rutherford said: "This is a dishonest statement. The TWU itself has endorsed enterprise agreements that include split shifts for its competitors, including Skystar, which is a subsidiary of UK giant Menzies Aviation."

ENTERPRISE BARGAINING BALLOT

The key employee ballot to approve the latest EBA, which includes a four-hour minimum shift, will commence this Saturday and will obviously provide the best possible proof as to how Aerocare's entire labour force views wage and overall employment conditions.

Management are confident of strong support, as with the last vote, and note that they are increasing wage conditions and other benefits at a time that competitors are publicly confirming an intention to cut back.

13th April 2017

-ENDS-

Media Contacts: Peter Brookes, 0407 911 389 or Helen McCombie 0411 756 248 – Citadel-MAGNUS

Note: This release clarifies earlier language linking Border Force to parallel investigations conducted independently by Australian airport authorities and Aerocare. Australian Border Force did not conduct a special investigation into the sleeping "camp" claims but they do routinely patrol and carefully monitor all relevant airport areas to ensure security and customs regulations are strictly adhered to.



MEDIA STATEMENT

AEROCARE REJECTS CLAIMS OF SLEEPING "CAMPS" AT AIRPORTS AND HIGHLIGHTS EXCELLENT SAFETY CREDENTIALS

Aerocare, alongside Australian airport authorities, today confirmed that claims of employee sleeping "camps" at its airport facilities were totally without foundation.

The Company provided the results of an extensive investigation into recent disturbing media footage of improvised sleeping arrangements, allegedly within one of its airport areas, having worked in parallel with Sydney, Melbourne, Brisbane and Perth airports and the Australian Border Force to conduct the investigation.

All parties confirm that after careful physical inspection and review of surveillance footage and digital records they have found nothing to substantiate the existence of "camps" where people are sleeping on site or any similar practices at any of these locations.

Aerocare and Sydney Airport have also reviewed all their records over the last three years and were only able to uncover a single instance, in April 2016, of personal belongings being left against policy in an unauthorised area of the airport.

Records show that an Aerocare employee, who remains with the business, had been identified as storing personal belongings inappropriately and was officially cautioned for the infraction. Items belonging to other parties were also found at that time. The area was cleared and there is no other evidence of such conduct over that three year period.

Aerocare's Chief Executive, Glenn Rutherford, said: "These claims of our employees sleeping rough at Sydney Airport never made sense. Airport security and Border Force regularly patrol all of our areas and we would act immediately if any evidence of unsanctioned behaviour was discovered."

"We provide heated, air-conditioned and furnished facilities at each of our ports for employee rest breaks and our first priority has been, and will always be, an absolute commitment to ensuring that all employees are fully trained, well informed and given the best possible safety conditions in what is a complex and potentially hazardous working environment."

SAFETY RECORD

Aerocare takes the safety of its workers seriously and has a strong safety record in all of its operations.

Aerocare's Lost Time Frequency Injury Rate is less than one third the industry average (2.7 events per million hours versus benchmark of 9.1 events) – in other words, on average, you are three times more likely to be injured working for one of Aerocare's competitors.

Mr Rutherford said: "While ground handling is a complex industrial service and incidents can and do happen, Aerocare has operated for 25 years and handled over 1,000,000 flights without a single safety or workcover-related penalty. Last year alone, we passed over 180 audits performed by the regulators, customers, and airports. There is a similar level of scrutiny every year."

A detailed review of incident reports over a two year period demonstrated that fatigue or fatigue-related terms are not cited as a factor in almost any (<0.2%) report. Reports are completed by employees themselves in a culture of regular, open and honest reporting that is commended by customers.

The leading specialist aviation insurance broker, Aerosure, has confirmed that Aerocare's outstanding safety track record has meant that Aerocare remains one of the most "sought out" accounts by insurers in its sector on a global basis with its premiums reflective of that superior status

Aerocare's workers' compensation insurance premium is 29% less than the industry average, reflective of a strong track record and safety management system.

SAFETY ISSUES

A number of incidents were referred to in a recent ABC 7.30 Report relating to a disabled lift being damaged, and an open cargo door. Aerocare and the relevant authorities have confirmed the two incidents were not safety events.

The 7.30 Report has since sought more information of two additional incidents, one involving a premature closing of a cargo door and another an adverse weather event. Both of the incidents were investigated by the regulator – the ATSB.

In the first case, a cargo door prematurely closed and was then immediately re-opened by the employee inside using internal controls. The plane was stationary, the aircraft door was still open and, as with any opening or closing of a passenger door, the ATSB confirmed there was never any need for an associated safety review.

With regard to the adverse weather (lightning) event that saw two employees injured, after detailed review, the ATSB's report did not find any deficiency in Aerocare procedures and instead highlighted Aerocare's proactive actions.

Mr Rutherford said: "These few well documented and handled incidents should be considered in the context of over 170,000 flights being handled this year by over 3,000 employees across the Aerocare system. We are committed to continuing to provide the travelling public with efficient baggage handling and turnaround of planes in a safe workplace environment.

While we treat any of the concerns of our employees or former employees seriously we are concerned by significant factual inaccuracies in the 7.30 Report story. In particular claims made by a person who said he was an employee but is in fact employed by a competitor, and another who provided a statement based upon baseless rumours, misunderstandings and inaccuracies."

Aerocare has also provided the 7.30 Report with information around two other incidents which appear to have been sensationalised. The first involves an employee who suffered a major but rare workplace accident at Sydney Airport when his toe was crushed. The incident was investigated by Safework NSW,

with the Safework inspector fully satisfied with the actions taken by Aerocare. The second involved a parked bus catching fire in freak circumstances. The bus had passed all safety checks prior to the incident and subsequent reviews by various authorities confirmed there were no deficiencies in Aerocare's maintenance programs.

On all the incidents that have been raised, Aerocare has advised the ABC to check in with the regulators, including relevant workcover authorities, given they regularly scrutinise, regulate and audit the Company.

Finally, the 7.30 Report has presented Aerocare with inaccurate and misleading data that purports to reflect internal information regarding Aerocare's workplace injury incidence. Having reviewed the data submitted by the 7.30 Report in detail, Aerocare can confirm that there is no correlation between the asserted statistics and the injury performance of the Company, which is regularly audited by workcover authorities and insurers.

In light of the 7.30 Report's continued presentation of inaccurate and misleading material, and the fact that the program has not acknowledged the errors in its program last month, Aerocare has declined the program's request to provide a spokesman or Aerocare-provided footage to appear on air.

TWU

The TWU has publicly stated two key ambitions in its negotiations with Aerocare: to make split shifts optional, when they already are, and to increase minimum shift lengths to four hours, which Aerocare had already proactively proposed to staff two months ago.

Given these claims are satisfied and that investigations have shown no basis to their claims regarding poor employment conditions, Aerocare believes the TWU is conducting a concerted campaign to damage the Company's good standing and business prospects, which is a clear demonstration that the union does not represent the views or interests of Aerocare employees.

EBA NEGOTIATIONS

Aerocare is looking forward to finalising its EBA which will continue to provide above award conditions and with split shifts continuing to be provided at the employee's option.

The latest draft agreement proposes increasing wage rates this year across the board by at least 5%, on top of additional tenure-based increases. These commitments come at a time where the business' large global competitors are actively announcing their intention to cut costs and reduce wages.

-ENDS-

Tuesday 4th April 2017

Media Contacts: Peter Brookes, 0407 911 389 or Helen McCombie 0411 756 248 – Citadel-MAGNUS



MEDIA STATEMENT

AEROCARE ROSTERING ARRANGEMENTS

Employees working more than one shift in a day ("split shifts") occurs regularly in the aviation industry in Australia, and elsewhere in the world, given rosters are determined by fluctuating flight schedules and aircraft turn-around times.

It generally takes three hours to fully service an international aircraft, highlighting that shorter shifts are sometimes required to meet the demands of airline customers.

Many of Aerocare's competitors and other industry participants allow for and engage in split shifts in their rostering. Some larger players are able to sustain a higher proportion of longer single shifts as they have more contracts that deliver more consistent flight schedules and higher revenue.

It bears noting that split-shifting is also common in the hospitality and transport industries, amongst others.

Aerocare Chief Executive Glenn Rutherford said that the company has spent millions of dollars improving its rostering system to maximise the duration of employee shifts:

"It is an industry-wide issue but we are making significant progress. Since the last EBA (**Enterprise Bargaining Agreement**), which was fully ratified by the Fair Work Commission, Aerocare has seen average shift lengths increase as we've won more contracts and work.

"Months ago, under the EBA currently in negotiation we therefore proactively offered to increase minimum shifts from 3 hours to 4 hours. Our intent, as always, is to make individual shifts last as long as possible.

"The employee's option to work split shifts was included in our last EBA, which was voted in favour for by 97% of our staff.

"Having spent much of the last three months personally canvassing over 1,000 employees, the overwhelming feedback is that they want the option of split shifts to remain in the next EBA and, so, we will look to retain that option again as we are sympathetic to the very real economic needs of our employees and want to provide them with every opportunity we have to sustainably increase their income.

"As we win more contracts our goal is to further reduce the time between shifts.

"As regards media claims regarding work practices at Sydney and Brisbane airports, our staff there, as with our other ports, are provided with comfortable, furnished, air conditioned and heated lounge areas to utilise for breaks or in between shifts. If we can find evidence, at any of our ports, that our staff are engaged in any un-safe or against-policy practices between shifts, we and the airport authorities will act swiftly.

"That said, we are confident that fatigue is not a factor in our workforce. In 22 years where we have handled over one million flights, Aerocare has never been penalised for a safety related issue. That is not to refute that incidents can and do occur but, importantly, they are proven to occur much less frequently at Aerocare than in the broader industry and, when they do occur, are well documented, correctly processed and reported, as required, to airline customers and regulatory authorities.

"We have one of the lowest lost-time injury frequency rates in our industry, with our latest annual result totalling <2.7 events across the company per million hours worked, which is less than a third of the published industry average. In other words, on average, competitor employees are three times more likely to lose time to injury than Aerocare employees are. In addition, Aerocare passed every one of the over 180 safety and security related audits which we were subjected to last year and we are the only Australian-owned ground handler to be awarded the top global ISAGO safety accreditation," Mr Rutherford said.

Aerocare continues to investigate all recent media reports that claim that some workers have been sleeping on site or in their cars because of the length of time between split shifts. As regards the unverified footage purported to depict working conditions at Sydney International Airport, Aerocare's investigations, alongside those of Sydney Airport and Australian Border Force, confirm that there is no evidence of the alleged employee "camps" depicted in the media last week.

To illustrate the prevalence and nature of split shifts in its system, Aerocare has conducted a detailed analysis of Sydney International Airport rosters over the last six months, which has confirmed that the overwhelming majority of shifts worked by its employees were single shifts.

- Of the 30,653 shifts worked, approximately 12% (or 3,829 shifts) were shifts worked by someone who had worked another shift that day. The average gap between the two shifts was 1.7 hours.
- On 2,732 occasions, out of the 3,829 split shifts, the gap between shifts was less than 2 hours. On only 204 occasions (ie <1% of total shifts) was the gap between the shifts more than five hours.
- On average, the overall "span" of a split shift (ie the combination of a first shift, plus a gap break taken either on or off site, plus a second shift) totalled 10.5 hours.
- Many of the longer "spans" tend to be associated with flight delays, which mean the team regrettably works a longer span than originally rostered.

-ENDS-

Monday 27 March 2017

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13 June 2017

s.47F(1)

Office of the Hon Darren Chester MP
Minister for Infrastructure and Transport
Deputy Leader of the House
Suite M1 26 Parliament House
CANBERRA ACT 2601

EMAIL: s.47F(1)

Dear s.47F(1)

MINISTERIAL UPDATE NUMBER 3

Please find below our updated briefing to your Minister.

SUMMARY

In summary, we wish to reiterate the following key points:

ABC Reports

1. The ABC's independent legal review of the two 7.30 episodes has admitted to various "breaches of editorial standards" and retracted and/or apologised for some aspects of both episodes. However, the ABC has failed to:
 - (a) Sufficiently highlight or address the omissions made by it;
 - (b) Properly respond to significant issues raised by Aerocare, including Aerocare's complaint that 7.30 altered and broadcast illegally-obtained official documents, resulting in an incorrect story and false impression at a critical juncture in Aerocare's enterprise bargaining negotiations.
 - (c) Acknowledge that all of the independent experts interviewed by 7.30 (including one who withdrew their ability to use his footage once he became convinced of their bias) have subsequently confirmed they were either misled or misquoted by the program.

CONFIDENTIALITY

"This message together with any attachments is intended for the use of the person to whom it is addressed and contains information that is privileged and confidential. If you are not the intended recipient, or the employee or agent responsible for its delivery to the intended recipient, you are hereby notified that any dissemination, distribution or copying of it is strictly prohibited. Please notify us if you have received it in error, and otherwise take all necessary steps to delete it from any transient or permanent storage, viewing or medium."

Q-5380369:1

Consequently, the ABC and the Australian media regulator, ACMA, continue to investigate these various serious admissions.

2. The response to Aerocare by industry stakeholders (i.e. regulators / airports / airlines) post the ABC 7.30 coverage has been universally positive and none have articulated any concerns regarding Aerocare. In fact, Aerocare has been commended for its proactive and "open book" approach in responding to the matter. In particular, Aviation regulators have also confirmed that the various incidents reported in dramatised and sensationalised fashion as serious safety risks by the ABC were for the most part, in fact, not risks at all. Regulators have also confirmed that no individual or union has ever raised with them any of the various complaints aired regarding Aerocare's work practices (even after the ABC's reports).

Safety Standards of Aerocare

3. Of particular note given the focus placed on Sydney Airport is that, since the ABC report was published, SafeWork NSW has conducted a comprehensive review of Aerocare's Sydney operations and provided confirmation that they had no resultant concerns and therefore had no intention to conduct further investigation. No complaints related to the claims made in the media have been lodged with them.
4. Aerocare has a three times lower long-term injury frequency rate than the industry average.
5. Aerocare has no open regulatory issues and maintains a 25 year record of zero penalties for either aviation or workplace safety issues despite handling over one million flights in that time and despite a huge number of audits (180 last year and 80 this year to date).
6. Aerocare is the only Australian ground handler with the top global safety accreditation – IATA Safety Audit for Ground Operations (ISAGO).

TWU & ASU

7. The TWU has never approached Aerocare to discuss its concerns or made any complaints to regulators. It was effectively silent on all matters relating to Aerocare for the four years prior to the latest EBA negotiation.
 - (a) It is important to note that the TWU has repeatedly attacked Aerocare for continuing to provide its employees with the option of working "split shifts" despite the fact that the TWU itself ratified enterprise agreements that include split shifts for (more heavily unionized) competitors of Aerocare, including Skystar, which is a subsidiary of UK giant Menzies Aviation.
8. On this basis, it is the opinion of Aerocare that the TWU has taken the course of disputing the new EBA purely as a result of its very low membership rate with Aerocare staff (estimated at less than 5% and noting that the TWU itself states that it currently only has a "handful" of members at the company).

9. The unions have raised issues regarding Aerocare's engagement with casual employees under the latest EBA, although they have failed in their attack to acknowledge that:
 - (a) Aerocare has made a standing, open offer to convert all casual employees to permanent positions to provide greater security and to address the typical union complaint regarding "casualisation" of the workforce; and
 - (b) The fact that the vast majority of Aerocare employees are, in fact, permanent employees (greater than 80% and increasing through conversion and attrition).
10. Confidentially, Aerocare is investigating an individual in relation to allegations of misconduct brought forward by concerned / fearful co-workers, who also happens to be a TWU delegate. An independent investigator has been appointed and the employee, who has not been subject to disciplinary action, has been stood down on full pay, while the investigation continues.
11. Given union propaganda alleging a "culture of fear" at Aerocare, in addition to the landslide EBA vote and outstanding satisfaction ratings, it is important to note that Aerocare has never been subject to a general protections claim or unfair dismissal claim that in any way correlates to the idea that employees are adversely treated for being union members or voicing concerns over Aerocare business.

Fair Work / CA17 Hearing

12. Notwithstanding complaints of unfair process by the TWU, an overwhelming majority of employees (82.9%) voted in favour of the latest EBA (CA17), with a participation rate of 89%.
 - (a) If all employees who abstained cast a 'NO' vote, then there would have still been an absolute majority (with 100% participation). Similarly, if all Casual employees were eligible to vote, and cast a 'NO' vote, there would have still been an absolute majority.
 - (b) The balloting system that was used was the same that has been used for previous collective agreements, including the last Aero-Care Collective Agreement 2012. The voting mechanism used has historically been approved by the Fair Work Commission and never contested by any employee. In addition, the vote timing was approved by the Fair Work Commission despite the unions seeking to delay the ballot.
13. Aerocare is keen to have CA17 approved for the benefit, and at the desire, of its employees.

14. Aerocare is confident that it will demonstrate at the BOOT hearing listed this Friday, 16 June 2017, that CA17 is better than the Award.

ADDITIONAL DETAIL

BOOT Hearing

15. Further to our telephone message of last week, we confirm that CA17 has been listed to be heard before Commissioner Wilson in Melbourne on 16 June 2017 at 3.00pm.
16. In this respect, we enclose our Form F17 – Employer’s statutory declaration in support of an application for approval of an enterprise agreement (Form 17) for your review.
17. Whilst we have absolutely no issue with Commissioner Wilson, it is to be observed/noted that:
- (a) Our client’s Head Office is in Brisbane;
 - (b) Our client’s BOOT application was filed by us in Brisbane;
 - (c) Deputy President Asbury (Brisbane) is on the aviation industry panel;
 - (d) Commissioner Wilson (Melbourne) is not on the aviation industry panel;
 - (e) Deputy President Clancy (Melbourne) was recently involved in a good faith bargaining application related to the BOOT process and is on the aviation panel;
 - (f) The TWU’s and ASU’s National Head Offices are in Melbourne.
18. We have not sought any explanation as to the reasons for the allocation of Commissioner Wilson or for our client being put to the inconvenience of having to fly all of its witnesses, representatives and relevant managers to Melbourne (with no such cost or inconvenience to the unions) despite the connection of the application to Brisbane.
19. While we anticipate being picketed at Exhibition Street for the hearing, you are of course welcome to send an observer to the open hearing. If the attendee identifies themselves, we will endeavour to assist their understanding of the hearing and matters being raised.

ABC 7.30 Report update

20. We advise that our client has received a less than satisfactory response from the ABC regarding their previous written complaints about the two broadcast stories as detailed in the two previous Ministerial briefings. While the ABC did retract and/ or apologise for some minor aspects of both stories, the balance were either ignored or demurred. Those unresolved/ unaddressed complaints are now in the process of being referred to ACMA.

21. In summary of our client's chief concerns:
- (a) Both of the independent experts interviewed by 7.30 have subsequently confirmed they were either misled or misquoted by the ABC reporter; and a third independent expert not depicted confirmed to Aerocare that he withheld the use of his footage as he was of the view that the ABC reporter had no real interest in his opinion and only in soundbites intended to show Aerocare in a poor light;
 - (b) The ABC's independent legal review of the two 7.30 episodes has admitted to various "breaches of editorial standards", however the ABC has not indicated any intention to highlight these admissions to a similar degree of prominence as the original stories. Our client's complaint that the 7.30 team falsified various illegally-obtained official documents as part of its coverage has gone unaddressed publicly to date;
 - (c) The ABC and ACMA continue to investigate our client's various serious concerns; however our client is reserving its rights as to how to progress given the gravity of the complaints and their consequences/ implications;
 - (d) Since the last 7.30 story in May 2017, the Company has proactively engaged with all industry stakeholders on an "open book" basis to ensure all regulators / airports / airlines / employees and other interested parties can ask whatever questions and perform whatever reviews they would like to reassure themselves of Aerocare's performance. Our client's management can confirm that all of these stakeholders remain supportive and that there are no open actions / questions on the matters raised by the ABC. Of particular note given the prominence afforded to Sydney Airport in the coverage is that SafeWork NSW has in recent weeks visited and reviewed Aerocare's safety management; and management are pleased to confirm that SafeWork NSW has advised that no further action is required. In fact, Aerocare has been commended for its proactive cooperation, and the regulator's confirmation underscores Aerocare's disappointment that the ABC (and TWU) made no enquiry of the regulator before publishing its inaccurate and misleading stories.

Regulatory Matters

22. Our clients continue to be bedevilled with misinformation and miscommunication from the TWU in relation to safety matters at various airports at which our client provides services.
23. In order to highlight the inaccuracy of the information the unions continue to publish in relation to the safety regime of our client, we are instructed to disclose the following interactions with following regulatory bodies:

Civil Aviation Safety Authority (CASA)

24. Three CASA Regional Managers, representing all Air Operator Certificates that Aerocare handles, attended on our client on 3 May 2017, along with a CASA Safety Assurance Team Leader. CASA were provided with an overview of the 7.30 report and the events raised in the broadcast stories. The CASA representatives were then invited to raise any concerns they might have in relation to Aerocare. In response the CASA representatives advised they did not have any concerns with Aerocare. Indeed since the first broadcast story on 20 March 2017, CASA has undertaken 5 audits of airlines utilising Aerocare (PERx2, SYD, BNE, MEL). Our client is also aware that CASA has engaged direct with its customer airlines regarding safety at Aerocare and that these airlines have expressed their support.
25. CASA has previously indicated that it is reluctant to provide any formal statement commenting on the adequacy or audit of aviation safety matters, however if such correspondence is provided, copies will be supplied to you.

Aerocare Safety Assurance Activities

26. To date this year, our client has conducted 80 audits across its customer base, including 28 in APR/ MAY following the initial 7.30 broadcast.
27. Despite concerns raised by the TWU regarding safety at Aerocare, our client is aware from company disclosure that following successful handover of ground handling operations, safety and resulting safety statistics have improved under Aerocare as compared to the airline itself. This includes operations in Melbourne, Sydney, Brisbane, Perth and Hobart.

Safework NSW

28. Our client continues to actively engage with Safework NSW, who have visited Aerocare at Sydney airport on 2 occasions - 28th April and 30th May 2017. Safework NSW on both occasions spoke direct with airport operational staff and worker representatives; and were provided with safety related information and documentation. Documentation supplied to Safework NSW included:
- (a) Workers Compensation Insurance Policy Currency
 - (b) Manual Handling Training
 - (c) Human Factors Program, including Fatigue Management
 - (d) Safety Consultation
 - (e) Injury rates
 - (f) Airport driving program
29. On 30th May, a Safework NSW inspector spent approximately 3 hours in the Sydney Operation reviewing Aerocare activities and speaking with staff and

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trainers. At the conclusion of this visit, Safework NSW has advised that they do not see the need for any ongoing investigations into their operations.

30. To be clear, Safework NSW has NOT received any complaints regarding our client – these meetings and attendances were at the invitation of our client.

Worksafe VIC

31. Our client has actively engaged with Worksafe VIC since the story broadcasts; especially since the ABC advised our clients that they had obtained 12 years of Worksafe VIC information and reports through FOI. Initially Worksafe VIC advised that they do not respond to media reports and as there had been no complaints made against our client they would not be looking into the matter; however they were prepared to advise that they have no current safety concerns regarding our client.

Safework WA

32. Safework WA have advised that they also do not respond to media reports; and as there had been no complaints made against our client, they had no reason to investigate or meet with our client.

Worksafe QLD

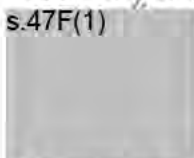
33. Similar to the other regulators, Worksafe QLD has indicated that they only respond to complaints or notified events and not to media reports. As no complaints had been made, Worksafe QLD had no concerns with or proposals to take action in relation to our clients.

WH&S Regulator Summary

34. No safety complaints have been made by staff, unions, or any other party to any regulator regarding safety at Aerocare.
35. Despite former staff appearing on camera citing safety concerns, none of those staff have made safety complaints to any regulator.
36. Despite the union claiming safety concerns, they have not formally raised any concerns with any state safety regulators.

Yours faithfully

s.47F(1)


Macpherson Kelley
s.47F(1)
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FAIR WORK COMMISSION

Form F17 – Employer's statutory declaration in support of an application for approval of an enterprise agreement (other than a greenfields agreement)

Form F17 – Employer's statutory declaration in support of an application for approval of an enterprise agreement (other than a greenfields agreement)

Fair Work Act 2009, s.185; Fair Work Commission Rules 2013, rule 24 and Schedule 1

This is a declaration in support of an application to the Fair Work Commission for approval of an enterprise agreement in accordance with Part 2-4 of the Fair Work Act 2009.

I,

Name

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Postal address

Suburb

State or territory

Occupation

General Manager Employee Relations

make the following declaration under the *Statutory Declarations Act 1959*

Part 1 – Preliminary

1.1 What is the name of the employer?

Legal name

Aerocare Flight Support Pty Ltd ABN 32 103 196 701 and Aero-Care Flight Support Unit Trust ABN 67 498 323 240

Trading name

Aerocare Flight Support (referred to collectively as "Aerocare")

Specify whether the employer is a "designated emergency management body" as defined in s.195A(4) and (5) of the Fair Work Act 2009.

No

1.2 What is the name of the agreement (write the name exactly as it appears in the title clause of the agreement)?

Aerocare Collective Agreement 2017

1.3 Are you aware of any other agreement(s) that has been filed or dealt with by the Commission that has identical or substantially identical terms?

☐ Yes

☒ No

If you have answered Yes to question 1.3 – specify the name of the identical agreement, the name of the employer covered by the identical agreement, the agreement ID number, the date

of the Commission’s decision and the name of the Commission Member who dealt with such agreement.

1.4 Was that agreement approved with undertakings?

- ☐ Yes
☐ No
☐ Don’t know

1.5 Has a scope order, a low paid authorisation or a majority support determination been issued in relation to this agreement?

- ☐ Yes
☒ No

If Yes – Provide the unique print number (PR) and the date the order was made

Print number

Date of order

Part 2 – Requirements for approval

Nominal expiry date

2.1 What is the nominal expiry date of the agreement? Provide the clause number in the agreement that specifies the date.

Clause number 4.1

Expiry date 4 years from the date of approval by the Fair Work Commission

Scope of the agreement

2.2 Does the agreement cover all the employees of the employer (other than senior executives)?

- ☐ Yes
☒ No

If No – what group(s) of employees are covered by the agreement. Explain why you think the Commission should be satisfied that this group(s) was fairly chosen. If appropriate, describe any geographical, operational or organisational qualities that make the group(s) distinct.

This agreement covers operational employees of the Applicant who are Permanent Secure Employees (PSE) (permanent part-time and permanent full-time). It does not cover casual employees, or employees of the applicant who are employed in non-operational roles, such as managerial, and administrative support functions conducted at the company’s headquarters.

It does not cover all operational employees.

The distinction between the operational employees so covered and operational employees not covered is on the basis of the seniority of the different roles. The Agreement covers employees in less

senior roles and to this extent, these employees are operationally distinct to employees in more senior roles.

The Commission can be satisfied that the distinction between casual employees, who are not covered by the Agreement and PSEs who are covered by the agreement is fairly chosen because of the following reasons;

- a) The Applicant has a stated preference that all employment in its operational arm is to be permanent in nature; and
- b) The Applicant will only be offering PSE jobs and will not be offering casual employment in the future; and
- c) Any existing employee who prefers to not take up a PSE position will continue to receive the benefits provided by the Aero-Care Collective Agreement 2012 (AE899834)

2.3 Did the employer take all reasonable steps to give notice of their right to be represented by a bargaining representative to each employee who will be covered by the agreement?

☒ Yes – please attach a copy of the notice given to employees

☐ No

Aerocare operates an internal network (Aero-Net) which is used to communicate to all employees. A copy of the attached notice was sent to each employee, via Aero-Net on 27 January 2017. All employees must access this internal network to view rosters and information from their employer. Each employee was required to acknowledge that they had seen the notice as posted on 27 January 2017. Additionally a copy of the attached notice was posted on the staff notice board at each work site.

On 3 March the employer reissued the NERR to all employees, including employees that had been employed between 27 January 2017 and the date of this second notice. It is this second NERR that is attached to this declaration.

Agreement genuinely approved

2.4 What steps were taken by the employer and on what date were they taken to ensure that the relevant employees were either:

- a. given a copy of the written text of the agreement and any other material incorporated by reference into the agreement (must be provided during the 7 days before the start of the voting process), or
- b. had access to the above materials (must have access throughout the whole 7 day period)?

Describe the steps taken

Date

Aerocare Flight Support used Aero-Net to provide each employee a copy of the proposed agreement. Each employee had to acknowledge that they had received a copy of the proposed EA. 07 April 2017

The Agreement does not incorporate any external material.

2.5 When did you notify the relevant employees of the date and place at which the vote was to occur and the voting method to be used?

Aerocare produced a notice that included details of how, when and where the ballot was to be conducted. This memo was placed on Aero-Net at the same time as a copy of the proposed agreement. A copy of this memo dated 7 April 2017 is attached.

2.6 What steps were taken by the employer to explain the terms of the agreement, and the effect of those terms, to the relevant employees?

From January 2017, senior executives of Aerocare began a series of meetings with employees regarding the proposed agreement. These meetings included a Q+A component.

All relevant employees were provided with a series of memos from management, throughout the bargaining period, explaining the terms of the agreement and the progress of negotiations.

Additionally, all employees received copies of draft agreements on 15 March 2017 and an updated draft agreement on 29 March 2017. The actual agreement that employees voted on in April evolved from these earlier draft agreements.

Aerocare management continued to meet with employees, at each location throughout March and April to explain the terms of the various drafts and the effects of those terms to employees.

From the start of the access period on 7 April 2017 additional meetings were held in each location between the port managers of the Applicant and all employees.

On 13 April a further document, explaining in brief terms the differences between the proposed agreement and the existing agreement was also circulated to all employees.

2.7 When you explained the terms of the agreement to the employees, what did you do to take into account the particular circumstances and needs of the relevant employees?



Examples of employees who have 'particular circumstances and needs' include employees from non-English speaking backgrounds, young employees, employees who don't have a bargaining representative, etc.

All employees are competent in English and the steps taken to explain the agreement were appropriate having regard to the long history of enterprise bargaining in the company and the usual methods of the company in communicating with employees.

2.8 Please provide the following dates:

Event	Date
The date of notification time (that is, either the date that the employer initiates or agrees to bargain or the date of a majority support determination, scope order or low paid authorisation).	13 January 2017
The date of the last notice of representational rights given to an employee who will be covered by the agreement.	3 March 2017
The date voting for the agreement commenced (voting commences on the first date that an employee is able to cast a vote).	15 April 2017
The date that the agreement was made (that is, the date on which the voting process by which the employees approved the agreement concluded).	18 April 2017

2.9 Is the agreement lodged within 14 calendar days of the date the agreement was made?

☒ Yes

☐ No

If you have answered **No** to question 2.9 – Please provide details of the circumstances the Commission should take in to account in deciding if it is fair to extend the time for lodging this application.

2.10 Please provide the following details about the vote on the agreement:

How many employees will be covered by the agreement?	1370
How many employees cast a valid vote?	1207
How many employees voted to approve the agreement?	1001

Interaction with the National Employment Standards

2.11 List any terms of the agreement that exclude in whole, or in part, the National Employment Standards?

No terms of the proposed agreement exclude the National Employment Standards

2.12 List any terms of the agreement that are detrimental to an employee in any respect when compared to the National Employment Standards.

FAIR WORK COMMISSION

Form F-12 – Employer's statutory declaration (support of an application for approval of a bargaining agreement under the Fair Work Act 2009)

No terms of the proposed agreement are detrimental in any respect when compared with the terms of the National Employment Standards.

Right of entry

2.13 Does the agreement contain any terms that deal with the rights of officials or employees of employee organisations to enter the employer's premises?

☐ Yes

☒ No

If you have answered **Yes** to question 2.13 – Please identify the clauses in the agreement dealing with right of entry.

Unlawful terms

2.14 Does the agreement contain any of the following:

☐ discriminatory terms – s186(4), s194(a), s195

☐ objectionable terms – s12, s186(4), s194(b)

☐ terms dealing with employee rights in relation to unfair dismissal – s186(4), s194(c)-(d)

☐ designated outworkers terms – s186(4)

☐ terms that deal with the taking of industrial action that are inconsistent with Part 3-3 of Chapter 3 of the *Fair Work Act 2009* – s186(4), s194(a)

☐ a term that does not comply with the superannuation contribution requirements for default fund employees – s194(h)

☐ objectionable emergency management terms – s195A

If you have selected any of the above please identify the relevant terms of the agreement.

Required terms

2.15 Please provide the clause numbers in the agreement for these required terms:

Dispute resolution procedure – s186(6) Clause 28

Flexibility term – s202(1), s203 Clause 17

Consultation term – s205(1) s205(1A) Clause 38

Particular types of workers

2.16 Can shift workers be employed under the agreement?

☒ Yes

☐ No – Go to question 2.17

Please identify the clause(s) in the agreement that define shift workers for the purpose of the NES.

Clause 5 - Definitions

Please advise if the agreement provides for an additional week of annual leave for shift workers and identify the relevant clause(s) number of the agreement.

Yes – Clause 22.2

2.17 Does the agreement?

☐ cover any pieceworkers – s197

☐ cover any outworkers – s200

☐ contain terms for school based apprentices or trainees that provide for loadings in lieu of paid leave – s199

Part 3 – Better off overall test

Reference instruments

3.1 List the modern award(s), if any, that currently cover the employer and any of the employees covered by this agreement.

Airline Operations – Ground Staff Award 2010

3.2 List the pre-reform award(s) or NAPSA(s) that covered the employer and any of the employees covered by this agreement as at 31 December 2009.

Not applicable

Translating classifications

3.3 Are any of the classifications in the agreement different from the classifications in any of the reference instrument(s) listed in questions 3.1 and 3.2?

☒ Yes

☐ No

If you have answered **Yes** to question 3.3 – Please attach a table that identifies how the classifications in the agreement relate to the classifications in the reference instrument(s).

Improvements and reductions

3.4 Does the agreement contain any terms or conditions of employment that are more beneficial than equivalent terms and conditions in the reference instrument(s) listed in questions 3.1 and 3.2 and/or does the agreement confer any entitlements that are not conferred by those reference instruments?

☒ Yes

☐ No

If you have answered **Yes** to question 3.4 – Identify the terms and conditions of the agreement that are **more beneficial** than, or are **not conferred** by the reference instruments. Your answer should indicate whether all or only some of the employees are affected and, if only some employees are affected, identify the groups of employees affected.

Term of Agreement	Term of Award	Employees Affected
7.8 – Payments for specific duties as detailed in Schedules A 1.4 and A 2.1	No equivalent provision	Employees performing Special Duties
7.11-7.14 – Priority Leave Day and Long Tenure Bonus	No equivalent term	All agreement covered employees with at least 5 years of service
9.4 – provides for minimum 60 hours in any 4 week period	11.4(c)(i) – provides for agreed hours per week, without any minimum specified.	All agreement covered employees
9.5.2 – transition to full time	No equivalent term	All agreement covered employees
9.9.2 – ordinary hours can only be worked on 20 out of 28 days	No equivalent term	All agreement covered employees
10 – limit on rostering power of the Applicant	No equivalent term	All agreement covered employees
11.2.2 – penalty rate of 150% of EA rate in excess 150% rate under the award	32.1(a) 150% for first 2 hours of overtime	All agreement covered employees working up to 2 hours of supplementary hours per day
18.3 – annual service increments	No equivalent provision	All employees who complete at least 1 year of service.
19 SGC on higher loaded rates	No equivalent provision	All agreement covered employees.
22.2 All employees accrued 5 weeks of annual leave	34.4 Only employees who work in accordance with a 24/7 roster are entitled to the 5 th of annual leave.	All agreement covered employees.
22.4 Cashing out of annual leave is at a higher rate	34.10	All agreement covered employees.
22.7 Long service leave is at a higher loaded rate	No LSL provision – relies on NES	All agreement covered employees.
22.9 Employees on personal leave receive a higher payment due to the loaded rates	35.1	All agreement covered employees.
22.25 Employees on compassionate leave	No Compassionate Leave provision – relies on NES	All agreement covered employees.

receive a higher payment to the loaded rates		
22.37 Domestic Violence Leave	No equivalent provision	All agreement covered employees.
23.2 Rates of pay for public holidays are higher under Agreement than Award excepting for Good Friday and Xmas Day	37.2(a)	Employees working a Public Holiday except employees who work on Good Friday or Xmas Day.
24.1 – Payment for notice is at a higher rate of pay due to the loaded rates	12.1 – per the NES	All agreement covered employees.
25 – Redundancy is at a higher rate of pay. Employees with at least 10 years of service have a higher entitlement than under the NES	13.1 – per the NES 13.1 – per the NES	All agreement covered employees who are made redundant.
29.2 – overnight meal allowance	No equivalent provision	All agreement covered employees.
36 – For hours worked in that span, the rates under the Agreement are higher than the rates under the Award	Clause 30.3	Employees working an early morning shift
37 – Provision of car parking without cost	No equivalent provision	All agreement covered employees.
38.2 – Paid Town Hall Style Consultation meetings	No equivalent provision	All agreement covered employees.
Schedule A 2.1 Rates of pay	15 – Minimum wages 17 – Junior Rates	All agreement covered employees including employees under the age of 21

3.5 Does the agreement contain any terms that are *less beneficial* than equivalent terms and conditions in the reference instrument(s) listed in questions 3.1 and 3.2 and/or does the agreement confer any entitlements that are not conferred by those reference instruments?

☒ Yes

☐ No

If you have answered **Yes** to question 3.5 – Identify the terms and conditions of the agreement that are **less beneficial** and are **not conferred** by the reference instruments. Your answer should indicate whether all or only some of the employees are affected and, if only some employees are affected, identify the groups of employees affected.

Term of Agreement	Term of Award	Employees Affected
9.4 Minimum of 60 hours per roster period (4 weeks)	11.4(c)(i) requires a guarantee of hours per week. No minimum is expressed	All part-time PSEs
No equivalent term	11.4(c)(iii) requires overtime payment where hours worked in a day exceed hours rostered in a day.	All part-time PSEs
No equivalent term	12.3 Job search entitlement	Employees who are required to work during their notice period.
No equivalent term	13.4 Job search entitlement during notice for redundancy	Employees who are required to work during their notice period.
6.2.8 Reimbursement for ongoing employees.	21.5 Reimbursement for new employee's ASIC	New employees
No equivalent term	21.6 Coffin allowance	Employees required to handle a coffin containing human remains
No equivalent term	21.7 Disability allowance	Contingent on circumstances
No equivalent term	21.9 Nightsoil Allowance	Contingent on circumstances
29.3 no entitlement until travel time is in excess of 2.5 hours	21.10(b) Travelling time Entitlement to be paid for all travelling time up to a daily cap	Contingent on circumstances
No equivalent term	21.13(b) laundry allowance	All employees engaged in ramp operations
No equivalent term	21.15 Money collection	All employees engaged in ramp operations who handle money. At the time of the making of the Agreement there were no employees in this category.
No equivalent term	21.16 Leading Hand Allowance	Ramp employees who perform those tasks
No equivalent term	23 Accident make up pay	Clerical employees who may be injured and are eligible to make a

		workers' compensation claim
14.3 employer can require an employee to work a split shifts for first 6 months of operation of agreement. See also clause 9.8.	28.3(d) an employee cannot be required to work more than 1 shift in a day	Employees in first 6 months of the operation of the agreement.
No equivalent term	29.2(a) paid meal break of 20 minutes	All employees who are <i>continuous shiftworkers</i> as defined in the award. At the time of the making of the Agreement there were no employees in this category.
15.4 no overtime rates are payable	29.2(c) where a shift worker does not receive an unpaid meal break, the employee is entitled to overtime rates	Employees who work more than 5 or 6 hours without a break
No equivalent term	29.3 Crib breaks	All employees who are <i>continuous shiftworkers</i> , as defined in the award, who are working full-time hours on that shift. At the time of the making of the Agreement there were no employees in this category.
No equivalent term	29.4 Overtime meal breaks	Contingent on circumstances
No equivalent term	30.2(c) requirement for notice of change to shift	Contingent on circumstances
Clause 36	30.3 Shift loadings	Contingent on circumstances
No equivalent term	30.4 permanent night shift loading	Contingent on circumstances
No equivalent term	30.5 penalty for non-continuous afternoon/night shift	Contingent on circumstances
No equivalent term	30.6(a) multiple shift allowance	Contingent on circumstances
No equivalent term	30.6(b) multiple shift allowance	Contingent on circumstances
Schedule 2.1 are not expressed in terms of percentages but rates.	30.7 Expressed percentage terms for shift allowances	All employees

11.2.2 Overtime at 150% of higher rates in Schedule 2.1	32.1 Overtime at 150% then 200%. 200% rate under award is higher than Agreement rate 32.1(a) Overtime at 200% for continuous shift workers.	Contingent on circumstances All employees who are <i>continuous shiftworkers</i> , as defined in the award, who are working full-time hours on that shift. At the time of the making of the Agreement there were no employees in this category.
No equivalent term	32.4 Recall	Contingent on circumstances
No equivalent term	32.6 Transport of employees after overtime	Contingent on circumstances
No equivalent term	34.5(a)(ii) Annual Leave Loading	All employees

Exceptional circumstances (where the agreement fails the better off overall test)

3.6 Do you think that the agreement passes the better off overall test?

☒ I think the agreement **does** pass the better off overall test

☐ I don't think the agreement passes the better off overall test

If the employer considers that the Agreement **does not** pass the better off overall test – Identify any exceptional circumstances that the Commission should consider when deciding whether approving the Agreement would not be contrary to the public interest.

Part 4 – Statistical information

4.1 What is the primary activity of the employer?



For example music retailer, plumbing contractor, steel fabricator, etc.

Airline, ground operations including ticketing, baggage handling and associated services

4.2 What states and territories will this agreement be operating in?

- ☒ Australian Capital Territory
- ☒ New South Wales
- ☒ Northern Territory
- ☒ Queensland
- ☒ South Australia
- ☒ Tasmania
- ☒ Victoria
- ☒ Western Australia

4.3 Of the employees covered by this agreement, how many employees are in the following demographic groups?

Demographic group	Number of employees
Female	566
Non-English speaking background	Unknown
Aboriginal or Torres Strait Islander	Unknown
Disabled	Unknown
Part-time	1370
Casual	0
Under 21 years of age	138
Over 45 years of age	229

4.4 Please list the full and precise name of all collective agreement(s) (including ID numbers) that covered any employees covered by this agreement immediately prior to the time this agreement was made.

Aero-Care Collective Agreement 2012 (AE 899834)

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

Signature of person making the declaration

Signature

Declared at (place)

on (day) of (month) (year)

Signature of person making the declaration

Signature

s.47F(1)

Declared at (place)

KOGARAH NSW

on (day) of (month) (year)

24/4/2017

Before me,

Signature of person before whom the declaration is made

s.47F(1)

Full name of person before whom declaration is made

Qualification of person before whom declaration is made

Police officer

Address of person before whom declaration is made

13 Montgomery St, ~~Kogarah~~

Suburb

Kogarah

State or territory

NSW

Postcode

2217

Phone number

s.47F(1)

Note 1: A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment of which is imprisonment for a term of 4 years – see section 11 of the *Statutory Declarations Act 1959*.

Note 2: Chapter 2 of the *Criminal Code* applies to all offences against the *Statutory Declarations Act 1959* – see section 5A of the *Statutory Declarations Act 1959*.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS



9 May 2017

The Hon Darren Chester MP
Minister for Infrastructure and Transport
Parliament House
Canberra ACT 2600

Senator the Hon Michaelia Cash
Minister for Employment, Minister for Women and Minister Assisting the Prime Minister for the Public Service
Parliament House
Canberra ACT 2600

Dear Ministers

I am making contact given your interest in our operations, and unfounded and misleading claims that have been made in two recent stories on ABC's 7.30 program.

As an initial issue, Aerocare is a business with a long and established track record over a 25 year period and has never previously faced any adverse media reports or regulatory penalties. In relation to our operational and compliance performance, we would draw the following facts to your attention:

- The company has an industry-leading safety record;
- Aerocare's Lost Time Frequency Injury Rate is less than one-third the industry average using Safe Work Australia's own definition and benchmarks;
- The Company has never been penalised for a single safety or workplace injury issue across its 25 year history of handling over one million flights;
- Last year alone, the Company was subjected to over 180 audits by regulators, customers and airports and there is a similar level of scrutiny every year;
- Aerocare is frequently awarded for its safety performance and is the only Australian-owned ground handler with the top global safety accreditation, ISAGO;
- We pay above award rates and conditions;
- 83% of our workforce have just voted to approve the latest EBA which delivers increased pay and improved conditions;
- Previous EBAs were all similarly approved with very strong votes and all were explicitly ratified by the Fair Work Commission as offering better-than-award conditions;
- Aerocare is increasing wages and growing its workforce while global competitors are cutting back and looking to reduce pay rates.

In our view, the recent 7.30 stories were motivated and specifically-timed attempts by the Transport Workers Union (TWU) to negatively influence the outcome of the latest Aerocare enterprise bargaining agreement. Three weeks ago, and a full month after the initial 7.30 story, Aerocare's new enterprise agreement was overwhelming approved by Aerocare's workforce, with a strong 83% vote in favour of the new compact which will deliver pay increases across the board. This vote is clearly a strong endorsement of Aerocare's operations by its employees.

Safety - Efficiency - Integrity

Disappointingly, the 7.30 Report stories were marred by false, misconceived and malicious accusations, brought forward by anonymous sources or disgruntled former employees, most of which now work for our foreign commercial competitors. Significantly, both of the independent experts and a number of other sources depicted in the stories have subsequently expressed concern directly to Aerocare about the way their views were presented in that they were misled or that the data and scenarios put to them by the reporter did not match the scenarios or facts then outlined in the story. One of the more prominently featured former employees has also stated in writing that 7.30 itself falsified flight file documents when it could not find any evidence for one of the core accusations aired.

We note that the ABC's own independent internal review has found that 7.30's first story in relation to our company breached the ABC editorial standards for accuracy. We believe the same conclusion is likely to be reached for the review that is ongoing into the second story.

The deeply held concerns that Aerocare has in relation to the 7.30 stories have also been notified to the Australian Communications and Media Authority (**ACMA**). Aerocare has asked the ACMA to conduct an investigation of its complaint under s150 of the *Broadcasting Services Act 1992*.

Importantly, we have been in regular dialogue with all Federal and State regulators and safety agencies, our airline customers, and the airports themselves to offer "open book" access should they have any concerns. We are encouraged by their ongoing support, their confidence in our operations and our trained workforce, and our strong focus on workplace safety. Whilst many of these entities naturally had questions in the wake of the two 7.30 stories, they have all subsequently been provided with detailed responses and facts and none have articulated to Aerocare any extant concerns. Indeed, we have since commenced or been awarded a number of new contracts.

As regards the motivation of the TWU, and as a former TWU delegate myself, I would like to point out my disappointment that the union has never made any contact with Aerocare about the allegations which it is circulating. This is confusing given that the TWU claims to represent the best interests of its members employed in the industry and yet it does not engage with the company on any level to identify any work health and safety concerns or seek to work collaboratively to assess and address them. It is also disappointing that the TWU has publicly criticised Aerocare for certain features of our enterprise agreements – e.g. offering split shifts at the employee's option – when they themselves have ratified the same features of the agreements of our foreign-owned competitors.

Should you have any questions around Aerocare's operations, and more specifically around the misleading and false allegations that were raised in the 7.30 stories, please don't hesitate to contact me directly.

I have attached the five press releases that we have issued on this matter for your convenience, the detail of which I would be very happy to walk you through in person. I think it is important that you understand the facts before you draw any conclusions from the 7.30 stories and associated TWU positioning.

We are very appreciative of the wide level of support that has been expressed by the aviation industry over the last few weeks and we intend to continue to provide industry-leading levels of safety and service as we focus on growing our business in Australia.

Thank you for your interest in this matter.

Yours sincerely

s.47F(1)

Glenn Rutherford
CEO

Safety • Efficiency • Integrity



MEDIA STATEMENT

ABC 7.30 REPORTS ALLEGATIONS AND PASSES OVER THE FACTS IN AEROCARE STORY

The story about Aerocare in the 7.30 Report of 20 April amounted to a second unwarranted attack upon Aerocare's operations and record.

The story reflected misleading allegations made by the Transport Workers Union during a multi-week campaign, and are timed to attempt to influence the negotiation and development of the latest Aerocare Enterprise Bargaining Agreement.

In the face of this campaign, Aerocare employees voted this week in a landslide to adopt the latest EBA - an endorsement of Aerocare employee and workplace conditions from those who are in the best place to judge.

The 7.30 Report program was underpinned by the claims of two former Aerocare employees. Their accusations were baseless, misconceived and/or demonstrably false.

Aerocare provided extensive factual material and context to the 7.30 Report in response to these allegations. This was all but passed over in the uncritical airing of claims by a handful of individuals who are no longer part of the business.

CARGO DOOR CLOSURE

For example, 7.30 showed a former Aerocare worker claiming that his baggage handling supervisor was accidentally "locked" in the cargo hold of a plane "about to take off" from Brisbane Airport. As the ABC was made aware weeks ago with copies of the extensive incident reports and the supervisors' own detailed statement, the supervisor was in fact not locked in the hold or in any way desperate. He opened a prematurely-closed door from the inside and exited the plane.

The incident occurred when the plane was being loaded. The plane was not about to take off and could not have taken off without clearance from the supervisor himself. The relevant regulator, the Australian Transport Safety Bureau, has specifically confirmed that the event was not reportable but, despite being aware of this key fact, the ABC has chosen to misleadingly portray this as a safety issue and a failure in incident reporting.

ALLEGED DEHYDRATION INCIDENT

The ABC also reported on an incident involving a former employee, s.47F(1) who claimed he had to leave a shift on 2 December 2014 because of severe dehydration.

At no time did s.47F(1) or anyone else report this incident or any associated issues to Aerocare. There is no record of s.47F(1) reporting this alleged incident as a workplace injury to anyone or at any time.

When this allegation was first put to Aerocare last week, investigations identified that s.47F(1) was heavily involved in a State Emergency Service operation in the days leading up to the 2 December and, on the day, it was confirmed that he worked for less than two hours before leaving his shift with an infection.

He returned to work in an unrestricted capacity and reporting no issues only 36 hours after leaving his prior shift. To attribute severe dehydration to less than two hours work is implausible. These facts, and others, were put to 7.30 but ignored.

Aerocare has investigated these and other claims that the ABC has put to it and in every instance provided comprehensive facts and rebuttals. 7.30 chose to report sensationalist allegations while ignoring or giving lip service to the truth and has failed in its commitment to fair and accurate reporting.

Aerocare Chief Executive Mr Rutherford said: *"I have had strong feedback from a huge number of employees stating that they resent the TWU's concerted campaign to undermine our company. Aerocare goes to extraordinary lengths to engage with, look after and reward our employees, and senior management have direct contact with our front-line workers and conduct monthly staff surveys for any feedback.*

Aerocare has made significant investment in rostering practices and technology to maximise roster likability and minimise fatigue, as well as allowing flexibility for individuals. Any notion that Aerocare doesn't care about people is ludicrous. Our employee ballot overwhelmingly supported the latest EBA and obviously provides the best possible evidence as to how Aerocare's entire labour force views wage and overall employment conditions.

As regards the ABC, I find it hard to believe that a program and a broadcaster which commits to independence and integrity has run a story riddled with errors and statements from people who are disgruntled ex-employees of Aerocare in the context of a focussed campaign by the TWU.

The true story of Aerocare is one of a successful Australian employer with an industry-leading safety record, not the misleading claims of ex-employees now working for competitors or those seeking to undermine the company."

21 April 2017

-ENDS-

Media Contacts: Peter Brookes, 0407 911 389 or Helen McCombie 0411 756 248 – Citadel-MAGNUS



MEDIA STATEMENT

AEROCARE REJECTS CLAIMS IN ABC STORY

Aerocare rejects the allegations published by the ABC on its website today.

Aerocare takes employee concerns and workplace conditions seriously. The allegations are sensational and inaccurate and ignore the factual material which Aerocare has provided to the ABC.

With regard to the specific allegations, Aerocare provides the following information.

CARGO HOLD

Allegation

A former Aerocare worker inaccurately told 7.30 that a baggage handling supervisor was accidentally "locked" in the cargo hold of a plane about to take off from Brisbane airport, but that the incident was never reported to safety authorities.

Fact

As the ABC is aware, the supervisor was not locked in the hold. He opened the door from the inside and exited the plane. It is not possible to lock someone in the cargo hold.

The incident occurred when the plane was being loaded. It was not about to take off and could not have taken off without clearance from the supervisor himself. Importantly the ABC is fully aware that the regulator, the Australian Transport Safety Bureau, has confirmed that the incident was not reportable but it seems this key fact has been misleadingly omitted.

WASTE AND WATER

Allegation

A former employee claimed Aerocare put passenger health at risk by using the same staff member to clear toilet waste and then, just hours later, refill drinking water on plane. This is an intentionally misleading and mischievous statement.

Fact

Aerocare typically rosters separate people for waste and water services. Contrary to the intentionally disturbing way that the practice is presented it is also acceptable practice for waste and water services to be delivered by the same employee, provided adequate hygiene practices are followed, as trained by Aerocare and mandated by customers.

SAFETY

Aerocare takes the safety of its workers seriously and has a strong audited safety record in all of its operations without a single penalty over 25 years. It is frequently awarded for its safety performance and is the only Australian-owned ground handler with the top global safety accreditation, ISAGO.

Aerocare's Lost Time Frequency Injury Rate is less than one third the industry average: i.e. staff are three times more likely to be injured working for a competitor.

EBA

Most importantly, Aerocare's staff this week voted overwhelmingly in favour of a new Enterprise Bargaining Agreement. There was a high participation rate of 88 per cent, with a resounding 83 per cent vote in favour of a new four-year agreement. This will deliver pay rises and additional new benefits across the board.

The vote was conducted in an appropriate and auditable manner, which was previously specifically approved by the Fair Work Commission.

20th April 2017

-ENDS-

Media Contacts: Peter Brookes, 0407 911 389 or Helen McCombie 0411 756 248 – Citadel-MAGNUS



MEDIA STATEMENT

AEROCARE PROVIDES UPDATE ON CURRENT ISSUES

- Aerocare provides detail of low injury rates and strong safety culture
- Australian airport authorities and Aerocare confirm that claims of employee sleeping “camps” are totally without foundation
- The ABC acknowledges fundamental errors in the story broadcast on the 7.30 Report on 20 March 2017
- TWU makes misleading statements during Enterprise Bargaining Agreement negotiations
- At Aerocare, split shifts are available at the employee’s option and have been supported by 97% of the Company’s employees
- Key employee ballot to approve the latest EBA to will begin this Saturday with management confident of strong support

As part of a calculated campaign by the Transport Workers Union (“TWU”) initiated in the lead-up to an employee vote to adopt a new Enterprise Bargaining Agreement (“EBA”), Aerocare has been questioned by the ABC on the Company’s injury performance in recent years.

Aerocare confirms that it has one of the lowest, if not the lowest, injury frequency and severity in the industry. Aerocare employees are, on average, over three times less likely to lose time to injury than peers employed elsewhere in the sector under Safe Work Australia’s own definition.

Although not typically published, for the sake of transparency, Aerocare’s provides below its audited workcover injury data as proof of its excellent track record.

June Year End	2012/13	2013/14	2014/15	2015/16	YTD FEB
Total Aerocare Australian Aircraft Turnarounds ⁽¹⁾	71,012	99,692	114,972	134,408	95,954
Total Aerocare Australian Injury Claims	20	34	44	68	39
Injury Claims per 1,000 Turnarounds	0.3	0.3	0.4	0.5	0.4
Major Injuries (Lost-Time Injury (LTI) > 7 days)	5	4	8	10	2
Workcover Statistics					
Aerocare Insurance Premium %	2.14%	1.89%	1.57%	1.70%	1.70%
Industry Premium Average Benchmark - Transport and Storage	2.60%	2.50%	2.30%	2.40%	
Aerocare Outperformance	17.9%	24.6%	31.6%	29.0%	
LTIFR (Incidents Per Million Hours Worked)⁽²⁾					
Aerocare LTIFR (LTI > 7 days)	2.9	1.9	3.2	3.1	0.9
Industry Benchmark (Transport, Postal and Warehousing) ⁽³⁾	10.6	9.6	9.1	9.1	9.1
Industry Benchmark (Airport + Air Transport Support Services) ⁽⁴⁾	10.1	10.5	10.5	10.5	10.5
Occupation Benchmark (Air and Marine Transport Professionals) ⁽⁵⁾	9.7	9.1	9.1	9.1	9.1

(1) An aircraft turnaround is defined as a single aircraft arrival and departure

(2) Using Safe Work Australia definition: <http://www.safeworkaustralia.gov.au/sites/owa/statistics/litfr/pages/lost-time-injury-frequency-rates>

(3) <http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/994/ows-2014-15-data-tables.xlsx>

(4) <http://www.safeworkaustralia.gov.au/sites/SWA/statistics/Documents/Table-2-1-number-frequency-rate-and-incidence-rate-of-serious-claims-by-industry-2009-10-2013-14.pdf>

(5) <http://www.safeworkaustralia.gov.au/sites/SWA/statistics/Documents/Table-1-1-number-frequency-rate-and-incidence-rate-of-serious-claims-by-occupation-2009-10-2013-14.pdf>

In 25 years of handling more than a million flights, the Company has never had a penalty imposed on it by a workcover entity, underscoring that there is no basis for suggesting that the culture and work practices of the Aerocare are unsafe.

To the contrary, the business is regularly audited and awarded on its achievements and record. Aerocare's overall lost-time injury frequency rate (using Safe Work Australia's definition) for the current financial year is <1 incident per million hours worked, which is an outstanding result, particularly in a complex industrial environment like an airport where incidents can and do happen.

As regards Sydney International, which has been the focus of much attention, the Company affirms an overall low injury rate recorded for Aerocare employees, with zero major injuries where lost-time was above 7 days recorded for that port in the current financial year, and only four in total since January 2015.

During this period a total of over 650 employees were part of the overall Sydney International workforce and collectively serviced over 12,000 flights. Reflective of this strong performance, the Company's NSW workcover insurance premium is in line with the national average rate.

CLAIMS OF SLEEPING "CAMPS" AT AIRPORTS DEBUNKED

On Monday 3rd April, Australian airport authorities, alongside Aerocare, confirmed that claims of employee sleeping "camps" at airport facilities were totally without foundation.

The Company provided the results of an extensive investigation into recent disturbing media footage of improvised sleeping arrangements, allegedly within one of its airport areas, having worked in parallel with Sydney, Melbourne, Brisbane and Perth airports to conduct the investigation.

Aerocare Chief Executive Glenn Rutherford said: "All parties confirmed explicitly to Aerocare that after careful inspection and review of footage and records nothing was found to substantiate the existence of "camps" where people are sleeping on site or any similar practices at any of these locations.

Aerocare and Sydney Airport have also reviewed all their records over the last three years and were only able to uncover a single instance, in April 2016, of personal belongings being left against policy in an unauthorised area of the airport."

ABC ACKNOWLEDGES FUNDAMENTAL ERRORS IN STORY

The ABC has clarified several errors in the story broadcast on the 7.30 on 20 March 2017, which contained misleading and sensationalist reporting about working conditions at Aerocare. An acknowledgement was posted on the ABC's website on 5 April 2017 (<http://www.abc.net.au/news/2017-04-05/aerocare-pty-ltd/8419082>).

The ABC admitted that a key person who appeared on 7.30 had misrepresented himself as an Aerocare employee.

The program introduced s.47F(1) as a whistle-blower who was "risking his job to speak out publically."

In fact s.47F(1) only worked at Aerocare for two months in the first half of 2016 and has since been employed by an Aerocare competitor.

He was a trainee in the catering truck segment of the business, which has no involvement with the baggage areas that he spoke about whilst 7.30 concurrently showed images of purported employee sleeping “camps,” which have themselves been thoroughly disproven after a full investigation involving Australian airport authorities.

The ABC correction also concedes that 7.30 Report misrepresented footage as showing an Aerocare worker sleeping in a luggage container. The ABC now confirms that the person shown was not an employee of Aerocare.

When combined with the results of the parallel investigations that have rejected the “camp” allegations, confirmations that the safety incidents raised on the program were not considered risks by the regulator mean the errors conceded by 7.30 leave the entire story with no credibility.

Subsequent to the initial episode the ABC has continued to put various unfounded and unsubstantiated allegations to Aerocare based upon hearsay of former employees and a TWU delegate. Aerocare has provided strong rebuttal and detailed and factual responses to all claims, including unsubstantiated generalized attacks on Aerocare’s document management procedures and audit processes.

Aerocare reaffirms that its practices are regularly audited by regulators and customers and strongly refutes any claims that its systems and processes are in any way deficient, as evidenced by the Company’s outstanding 25 year track record.

INTENTIONALLY MISLEADING STATEMENTS BY TWU DURING EBA NEGOTIATIONS

Aerocare has called out the TWU for making misleading statements during Enterprise Bargaining Agreement negotiations.

Employees working more than one shift in a day (“split shifts”) occurs regularly in the aviation industry in Australia, and elsewhere in the world, given that rosters are determined by fluctuating flight schedules and aircraft turn-around times.

Many Aerocare competitors and other industry participants allow for and engage in split shifts in their rostering. Split-shifting is also common in the hospitality and transport industries.

At Aerocare, split shifts are only provided at the employee’s option and have been supported by 97% of the company’s employees in the last EBA.

Aerocare Chief Executive, Glenn Rutherford said the TWU was involved in a calculated campaign with regard to the availability of split shifts.

As part of that campaign the TWU has claimed that Aerocare is the “only aviation company whose agreement allows for split shifts, which is specifically excluded under the award.”

Mr Rutherford said: "This is a dishonest statement. The TWU itself has endorsed enterprise agreements that include split shifts for its competitors, including Skystar, which is a subsidiary of UK giant Menzies Aviation."

ENTERPRISE BARGAINING BALLOT

The key employee ballot to approve the latest EBA, which includes a four hour minimum shift, will commence this Saturday and will obviously provide the best possible proof as to how Aerocare's entire labour force views wage and overall employment conditions.

Management are confident of strong support, as with the last vote, and note that they are increasing wage conditions and other benefits at a time that competitors are publicly confirming an intention to cut back.

13th April 2017

-ENDS-

Media Contacts: Peter Brookes, 0407 911 389 or Helen McCombie 0411 756 248 – Citadel-MAGNUS

Note: This release clarifies earlier language linking Border Force to parallel investigations conducted independently by Australian airport authorities and Aerocare. Australian Border Force did not conduct a special investigation into the sleeping "camp" claims but they do routinely patrol and carefully monitor all relevant airport areas to ensure security and customs regulations are strictly adhered to.



MEDIA STATEMENT

AEROCARE REJECTS CLAIMS OF SLEEPING "CAMPS" AT AIRPORTS AND HIGHLIGHTS EXCELLENT SAFETY CREDENTIALS

Aerocare, alongside Australian airport authorities, today confirmed that claims of employee sleeping "camps" at its airport facilities were totally without foundation.

The Company provided the results of an extensive investigation into recent disturbing media footage of improvised sleeping arrangements, allegedly within one of its airport areas, having worked in parallel with Sydney, Melbourne, Brisbane and Perth airports and the Australian Border Force to conduct the investigation.

All parties confirm that after careful physical inspection and review of surveillance footage and digital records they have found nothing to substantiate the existence of "camps" where people are sleeping on site or any similar practices at any of these locations.

Aerocare and Sydney Airport have also reviewed all their records over the last three years and were only able to uncover a single instance, in April 2016, of personal belongings being left against policy in an unauthorised area of the airport.

Records show that an Aerocare employee, who remains with the business, had been identified as storing personal belongings inappropriately and was officially cautioned for the infraction. Items belonging to other parties were also found at that time. The area was cleared and there is no other evidence of such conduct over that three year period.

Aerocare's Chief Executive, Glenn Rutherford, said: "These claims of our employees sleeping rough at Sydney Airport never made sense. Airport security and Border Force regularly patrol all of our areas and we would act immediately if any evidence of unsanctioned behaviour was discovered."

"We provide heated, air-conditioned and furnished facilities at each of our ports for employee rest breaks and our first priority has been, and will always be, an absolute commitment to ensuring that all employees are fully trained, well informed and given the best possible safety conditions in what is a complex and potentially hazardous working environment. "

SAFETY RECORD

Aerocare takes the safety of its workers seriously and has a strong safety record in all of its operations.

Aerocare's Lost Time Frequency Injury Rate is less than one third the industry average (2.7 events per million hours versus benchmark of 9.1 events) – in other words, on average, you are three times more likely to be injured working for one of Aerocare's competitors.

Mr Rutherford said: "While ground handling is a complex industrial service and incidents can and do happen, Aerocare has operated for 25 years and handled over 1,000,000 flights without a single safety or workcover-related penalty. Last year alone, we passed over 180 audits performed by the regulators, customers, and airports. There is a similar level of scrutiny every year."

A detailed review of incident reports over a two year period demonstrated that fatigue or fatigue-related terms are not cited as a factor in almost any (<0.2%) report. Reports are completed by employees themselves in a culture of regular, open and honest reporting that is commended by customers.

The leading specialist aviation insurance broker, Aerosure, has confirmed that Aerocare's outstanding safety track record has meant that Aerocare remains one of the most "sought out" accounts by insurers in its sector on a global basis with its premiums reflective of that superior status

Aerocare's workers' compensation insurance premium is 29% less than the industry average, reflective of a strong track record and safety management system.

SAFETY ISSUES

A number of incidents were referred to in a recent ABC 7.30 Report relating to a disabled lift being damaged, and an open cargo door. Aerocare and the relevant authorities have confirmed the two incidents were not safety events.

The 7.30 Report has since sought more information of two additional incidents, one involving a premature closing of a cargo door and another an adverse weather event. Both of the incidents were investigated by the regulator – the ATSB.

In the first case, a cargo door prematurely closed and was then immediately re-opened by the employee inside using internal controls. The plane was stationary, the aircraft door was still open and, as with any opening or closing of a passenger door, the ATSB confirmed there was never any need for an associated safety review.

With regard to the adverse weather (lightning) event that saw two employees injured, after detailed review, the ATSB's report did not find any deficiency in Aerocare procedures and instead highlighted Aerocare's proactive actions.

Mr Rutherford said: "These few well documented and handled incidents should be considered in the context of over 170,000 flights being handled this year by over 3,000 employees across the Aerocare system. We are committed to continuing to provide the travelling public with efficient baggage handling and turnaround of planes in a safe workplace environment.

While we treat any of the concerns of our employees or former employees seriously we are concerned by significant factual inaccuracies in the 7.30 Report story. In particular claims made by a person who said he was an employee but is in fact employed by a competitor, and another who provided a statement based upon baseless rumours, misunderstandings and inaccuracies."

Aerocare has also provided the 7.30 Report with information around two other incidents which appear to have been sensationalised. The first involves an employee who suffered a major but rare workplace accident at Sydney Airport when his toe was crushed. The incident was investigated by Safework NSW,

with the Safework inspector fully satisfied with the actions taken by Aerocare. The second involved a parked bus catching fire in freak circumstances. The bus had passed all safety checks prior to the incident and subsequent reviews by various authorities confirmed there were no deficiencies in Aerocare's maintenance programs.

On all the incidents that have been raised, Aerocare has advised the ABC to check in with the regulators, including relevant workcover authorities, given they regularly scrutinise, regulate and audit the Company.

Finally, the 7.30 Report has presented Aerocare with inaccurate and misleading data that purports to reflect internal information regarding Aerocare's workplace injury incidence. Having reviewed the data submitted by the 7.30 Report in detail, Aerocare can confirm that there is no correlation between the asserted statistics and the injury performance of the Company, which is regularly audited by workcover authorities and insurers.

In light of the 7.30 Report's continued presentation of inaccurate and misleading material, and the fact that the program has not acknowledged the errors in its program last month, Aerocare has declined the program's request to provide a spokesman or Aerocare-provided footage to appear on air.

TWU

The TWU has publicly stated two key ambitions in its negotiations with Aerocare: to make split shifts optional, when they already are, and to increase minimum shift lengths to four hours, which Aerocare had already proactively proposed to staff two months ago.

Given these claims are satisfied and that investigations have shown no basis to their claims regarding poor employment conditions, Aerocare believes the TWU is conducting a concerted campaign to damage the Company's good standing and business prospects, which is a clear demonstration that the union does not represent the views or interests of Aerocare employees.

EBA NEGOTIATIONS

Aerocare is looking forward to finalising its EBA which will continue to provide above award conditions and with split shifts continuing to be provided at the employee's option.

The latest draft agreement proposes increasing wage rates this year across the board by at least 5%, on top of additional tenure-based increases. These commitments come at a time where the business' large global competitors are actively announcing their intention to cut costs and reduce wages.

-ENDS-

Tuesday 4th April 2017

Media Contacts: Peter Brookes, 0407 911 389 or Helen McCombie 0411 756 248 – Citadel-MAGNUS



MEDIA STATEMENT

AEROCARE ROSTERING ARRANGEMENTS

Employees working more than one shift in a day ("split shifts") occurs regularly in the aviation industry in Australia, and elsewhere in the world, given rosters are determined by fluctuating flight schedules and aircraft turn-around times.

It generally takes three hours to fully service an international aircraft, highlighting that shorter shifts are sometimes required to meet the demands of airline customers.

Many of Aerocare's competitors and other industry participants allow for and engage in split shifts in their rostering. Some larger players are able to sustain a higher proportion of longer single shifts as they have more contracts that deliver more consistent flight schedules and higher revenue.

It bears noting that split-shifting is also common in the hospitality and transport industries, amongst others.

Aerocare Chief Executive Glenn Rutherford said that the company has spent millions of dollars improving its rostering system to maximise the duration of employee shifts:

"It is an industry-wide issue but we are making significant progress. Since the last EBA (Enterprise Bargaining Agreement), which was fully ratified by the Fair Work Commission, Aerocare has seen average shift lengths increase as we've won more contracts and work.

"Months ago, under the EBA currently in negotiation we therefore proactively offered to increase minimum shifts from 3 hours to 4 hours. Our intent, as always, is to make individual shifts last as long as possible.

"The employee's option to work split shifts was included in our last EBA, which was voted in favour for by 97% of our staff.

"Having spent much of the last three months personally canvassing over 1,000 employees, the overwhelming feedback is that they want the option of split shifts to remain in the next EBA and, so, we will look to retain that option again as we are sympathetic to the very real economic needs of our employees and want to provide them with every opportunity we have to sustainably increase their income.

"As we win more contracts our goal is to further reduce the time between shifts.

"As regards media claims regarding work practices at Sydney and Brisbane airports, our staff there, as with our other ports, are provided with comfortable, furnished, air conditioned and heated lounge areas to utilise for breaks or in between shifts. If we can find evidence, at any of our ports, that our staff are engaged in any un-safe or against-policy practices between shifts, we and the airport authorities will act swiftly.

"That said, we are confident that fatigue is not a factor in our workforce. In 22 years where we have handled over one million flights, Aerocare has never been penalised for a safety related issue. That is not to refute that incidents can and do occur but, importantly, they are proven to occur much less frequently at Aerocare than in the broader industry and, when they do occur, are well documented, correctly processed and reported, as required, to airline customers and regulatory authorities.

"We have one of the lowest lost-time injury frequency rates in our industry, with our latest annual result totalling <2.7 events across the company per million hours worked, which is less than a third of the published industry average. In other words, on average, competitor employees are three times more likely to lose time to injury than Aerocare employees are. In addition, Aerocare passed every one of the over 180 safety and security related audits which we were subjected to last year and we are the only Australian-owned ground handler to be awarded the top global ISAGO safety accreditation," Mr Rutherford said.

Aerocare continues to investigate all recent media reports that claim that some workers have been sleeping on site or in their cars because of the length of time between split shifts. As regards the unverified footage purported to depict working conditions at Sydney International Airport, Aerocare's investigations, alongside those of Sydney Airport and Australian Border Force, confirm that there is no evidence of the alleged employee "camps" depicted in the media last week.

To illustrate the prevalence and nature of split shifts in its system, Aerocare has conducted a detailed analysis of Sydney International Airport rosters over the last six months, which has confirmed that the overwhelming majority of shifts worked by its employees were single shifts.

- Of the 30,653 shifts worked, approximately 12% (or 3,829 shifts) were shifts worked by someone who had worked another shift that day. The average gap between the two shifts was 1.7 hours.
- On 2,732 occasions, out of the 3,829 split shifts, the gap between shifts was less than 2 hours. On only 204 occasions (ie <1% of total shifts) was the gap between the shifts more than five hours.
- On average, the overall "span" of a split shift (ie the combination of a first shift, plus a gap break taken either on or off site, plus a second shift) totalled 10.5 hours.
- Many of the longer "spans" tend to be associated with flight delays, which mean the team regrettably works a longer span than originally rostered.

-ENDS-

Monday 27 March 2017

Media Contacts: Peter Brookes, 0407 911 389 or Helen McCombie 0411 756 248 – Citadel-MAGNUS

Our Ref: SGH:267547
Your Ref:

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27 June 2017

s.47F(1)

Office of the Hon Darren Chester MP
Minister for Infrastructure and Transport
Deputy Leader of the House
Suite M1 26 Parliament House
CANBERRA ACT 2601

EMAIL: s.47F(1)

Dear s.47F(1)

MINISTERIAL UPDATE NUMBER 4

Please find below our further updated briefing to your Minister.

Hearings

1. The TWU and the ASU both filed Production of Documents applications against Aerocare in the Commission.
 - (a) Both the TWU and the ASU requested two months of complete un-redacted rosters for all airports in searchable computerised form be produced in order to assist them in determining whether the Collective Agreement 2017 (CA17) passed BOOT; and
 - (b) The TWU also requested a large number of other documents including (but not limited to) job descriptions, standard operating procedures of Aerocare and its clients, safety notices, client notices, fatigue management protocols or codes of practice, and any advice that may have been provided by Aerocare's bargaining representative to Aerocare regarding BOOT.

Copies of both of these applications are **attached** for your information.

2. The TWU filed submissions in support of their application, but filed no supporting affidavit with evidence to support it. The ASU did not file any submissions or supporting evidentiary material.

CONFIDENTIALITY

This message together with any attachments is intended for the use of the person to whom it is addressed and contains information that is privileged and confidential. If you are not the intended recipient, or the employee or agent responsible for its delivery to the intended recipient, you are hereby notified that any dissemination, distribution or copying of it is strictly prohibited. Please notify us if you have received it in error, and otherwise take all necessary steps to delete it from any transient or permanent storage device or medium.

Q-6440969:1



Ms Melissa Inwood


macpherson kelley
27 June 2017

3. On 22 June 2017 a Mention Hearing took place before Commissioner Wilson by telephone to address the Production of Documents applications.
4. As a result of the Mention Hearing, Commissioner Wilson issued an order for the production of documents in the **attached** form, supported by the **attached** Reasons.
5. At the Mention Hearing the Commissioner agreed to transfer the hearing of the BOOT application to Brisbane, at the request of the Applicant.
6. The BOOT application hearing has now been set down for 10am on Thursday 13 July and Friday 14 July 2017 in Brisbane, with video conference access to Melbourne and Sydney available upon request of a party to the Commission.
7. As you will note from the attached Order, the required Aerocare records are only to be provided to the FWC in electronic form, otherwise paper copies are only to be made available for inspection at the registry (without copying) to the TWU and/ or ASU after s.47F(1) (ASU) and/ or s.47F(1) (TWU) provide written undertakings guaranteeing that their union will keep the disclosed information confidential and will not copy or otherwise use or disclose the information in any respect other than to participate in the BOOT process.

It is uncertain, given that the ordered information is not of the nature, content or format sought by either union, whether either union secretary is willing to provide the required undertaking for nominated union staff to view the information once filed in the registry.

Should the Minister wish an advisor to attend the BOOT hearing on 13 and/ or 14 July 2017, please do not hesitate to contact s.47F(1) so that we can ensure that they are properly acknowledged and supported in their understanding of the proceedings.

Yours faithfully

s.47F(1)

Macpherson Kelley

s.47F(1)

Principal

s.47F(1)

FAIR WORK COMMISSION

Form F52—Application for order for production of documents etc to the Fair Work Commission

Form F52—Application for order for production of documents etc to the Fair Work Commission

Fair Work Act 2009, s.590(2)(c); Fair Work Commission Rules 2013, rule 54 and Schedule 1

This is an application to the Fair Work Commission for an order requiring a person to produce documents or records or other information in accordance with s.590(2)(c) of the Fair Work Act 2009.

Party applying for an order



These are the details of the person who is making this application.

Title ☒ Mr ☐ Mrs ☐ Ms ☐ Other please specify:

First name(s) s.47F(1)

Surname

Postal address

Suburb

State or territory

Phone number

Email address

If the party applying for an order is a company or organisation please also provide the following details

Legal name of business Australian Municipal Administrative and Clerical Services Union

Trading name of business Australian Services Union

ABN/ACN 28 519 971 998

Contact person s.47F(1)

How would you prefer us to communicate with you?

☒ Email (you will need to make sure you check your email account regularly)

☐ Post

FAIR WORK COMMISSION

Form F52—Application for order for production of documents etc to the Fair Work Commission

The Commission matter that this application relates to



These are the details of the main matter that the documents relate to

Name of Applicant from main matter	Aerocare Flight Support Pty Ltd ABN: 32 103 196 701 and Aero-Care Flight Support Unit Trust ABN 67 498 323 240
Name of Respondent from main matter	Australian Municipal Administrative and Clerical Services Union; and Transport Workers Union of Australia
Commission Matter Number	AG2017/1424
Your role in main matter	☐ Applicant ☐ Respondent ☒ Other please specify: Oppose Application for approval of Agreement

1. The Application

1.1 What documents are being sought?



Using numbered paragraphs, list the documents etc you are seeking to be produced to the Fair Work Commission.

1. Rosters as described below for each port where Aerocare operate:

- a) The documents must include rosters for each classification by year level for employees that are employed in that port, and for each type of employment;- casual, permanent secure and full time employed in that port.
- b) The documents must encompass rosters for a roster period falling on or around 1 September 2016 and for a roster period falling on or around 1 March 2017.

1.2 Why is each document being sought?



Using numbered paragraphs, provide details specifying why each document is sought and how the documents can assist the Member in deciding the main matter. For instance, what evidence is contained in the documents and what is the apparent relevance of each document to your matter?

1. The ASU seeks the rosters to assist the Commission in assessing the application for approval of the Agreement in order to be satisfied that the Agreement passes the better off overall test.
2. An adequate sample of Rosters for each port that Aerocare operate in must be provided to compare earnings under the Award against earnings under the Agreement.
3. The ASU submits that without such a comparison the Commission could not be satisfied that the agreement passes the better off overall test.

FAIR WORK COMMISSION
Form F52—Application for order for production of documents etc to the Fair Work Commission



You must complete the draft order attached to this form.

FAIR WORK COMMISSION

Form F52—Application for order for production of documents etc to the Fair Work Commission

Disclosure of information

The Commission may provide a copy of this application and any documents you lodge in support of this application to the other parties in this matter.

Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature

s.47F(1)

Name

Date

14 June 2017

Capacity /
Position

Acting National Secretary



Where this form is not being completed and signed by the Applicant, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS



DRAFT ORDER

Fair Work Act 2009

s.590(2)(c) - Order requiring a person to produce documents etc to the Fair Work Commission

Applicant(s):

Aerocare Flight Support Pty Ltd and Aero-Care Flight Support Unit Trust

v

Respondent(s):

Australian Municipal Administrative and Clerical Services Union; and
Transport Workers Union of Australia

Commission Matter No: AG2017/1424

[Insert the Commission matter number.]

COMMISSIONER WILSON

DATE

TO: [Name]

Aerocare Flight Support Pty Ltd and Aero-Care Flight Support Unit Trust

[Address]

31 Longland Street

Newstead Queensland 4006

Pursuant to s.590(2) of the *Fair Work Act 2009* you are **ORDERED** to provide to the Fair Work Commission the documents, records and other information specified in the Schedule to this order before the Fair Work Commission at the following time, date and place:

Time: 12 pm AEST

Date: 19 June 2017

Place: Registry, Fair Work Commission 11 Exhibition Street Melbourne.

Member

- Note:
- This order has been issued at the request of Australian Municipal Administrative and Clerical Services Union.
 - You can apply to have this order set aside or varied.
 - Instead of attending to provide the documents etc. covered by this order at the time and place specified above, you may produce them to an officer of the Commission at the place specified above not later than 4.00 pm on the day before the day specified above.

If you have any queries in relation to this order please contact the associate to Commissioner Wilson on Chambers.Wilson.C@fwc.gov.au

SCHEDULE

1 Rosters as described below for each port where Aerocare operate:

- c) The documents must include rosters for each classification by year level for employees that are employed in that port, and for each type of employment;- casual, permanent secure and full time employed in that port.
- d) The documents must encompass rosters for a roster period falling on or around 1 September 2016 and for a roster period falling on or around 1 March 2017.

FAIR WORK COMMISSION

Form F52—Application for order for production of documents etc to the Fair Work Commission

Form F52—Application for order for production of documents etc to the Fair Work Commission

Fair Work Act 2009, s.590(2)(c); Fair Work Commission Rules 2013, rule 54 and Schedule 1

This is an application to the Fair Work Commission for an order requiring a person to produce documents or records or other information in accordance with s.590(2)(c) of the [Fair Work Act 2009](#).

Party applying for an order



These are the details of the person who is making this application.

Title ☐ Mr ☐ Mrs ☐ Ms ☒ Other please specify:

First name(s)

s.47F(1)

Surname

Postal address

Suburb

State or territory

Phone number

Email address

If the party applying for an order is a company or organisation please also provide the following details

Legal name of business Transport Workers Union of Australia

Trading name of business Transport Workers Union of Australia

ABN/ACN

Contact person

s.47F(1)

How would you prefer us to communicate with you?

☒ Email (you will need to make sure you check your email account regularly)

☐ Post

FAIR WORK COMMISSION
Form F52—Application for order for production of documents etc to the Fair Work Commission

The Commission matter that this application relates to



These are the details of the main matter that the documents relate to

Name of Applicant from
main matter

Aerocare Flight Support Pty Ltd

Name of Respondent from
main matter

Commission Matter
Number

AG2017/1424

Your role in main matter

☐ Applicant ☒ Respondent ☒ Other please specify: Objector
to the approval of the Agreement.

1. The Application

1.1 What documents are being sought?



Using numbered paragraphs, list the documents etc you are seeking to be produced to the Fair Work Commission.

Please see attached Schedule 1.

1.2 Why is each document being sought?



Using numbered paragraphs, provide details specifying why each document is sought and how the documents can assist the Member in deciding the main matter. For instance, what evidence is contained in the documents and what is the apparent relevance of each document to your matter?

Please see attached Schedule 1.



You must complete the draft order attached to this form.

FAIR WORK COMMISSION

Form F52—Application for order for production of documents etc to the Fair Work Commission

Disclosure of information

The Commission may provide a copy of this application and any documents you lodge in support of this application to the other parties in this matter.

Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature

s.47F(1)



Name

Date

14 June 2017

Capacity /
Position

National Negotiator



Where this form is not being completed and signed by the Applicant, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS

SCHEDULE 1

Categories of Documents:

1. A copy of the electronic roster¹ for all of the employees of Aerocare Flight Support Pty Ltd in the classifications of Airline Service Agent, Advanced Airline Service Agent, and each of the Specialist Duties classifications identified in the Aero-Care Collective Agreement 2012 (AE899834), who worked at the Sydney International Airport for each day of the entire roster period or periods, covering the months of March and April 2017.
2. A copy of a job description² for each position in which an employee of the Applicant is employed or engaged, at the Sydney International Airport.
3. A copy of the "company standard operating procedures" referred to in cl 6.2.2 of the Agreement, as they existed during the "access period" as defined in cl 180(4) of the Act (ie in the seven days from 7 April 2017);
4. A copy of any:
 - a. "safety announcement"
 - b. "client notice"
 - c. client SOP,
 - d. "publications"
 - e. "memoranda

referred to in cl 6.2.3 of the Agreement, as they existed during the "access period" as defined in cl 180(4) of the Act (ie in the seven days from 7 April 2017);

5. A copy of any "performance management or disciplinary procedures" referred to in cl 7.9 of the Agreement, as they existed during the "access period" as defined in cl 180(4) of the Act (ie in the seven days from 7 April 2017);
6. A copy of any:
 - a. "code of practice"; or
 - b. "protocol"relating to fatigue management and implemented by the Applicant, as existing during the "access period" as defined in cl 180(4) of the Act (ie in the seven days from 7 April 2017).
7. The Documents used or relied upon by Mr Gregory Luke Shelley to assist or form his belief as to the truth and accuracy of the Statutory Declaration declared by him on 24 April 2017, and in particular with respect to the answer to question "3.6 Do you think the agreement passes the better off overall test?".
8. A copy of any document (including but not limited to any letter, memorandum, email, or file note) recording advice provided by the consultancy "first ir consultancy pty ltd" to Aerocare Flight Support Pty Ltd in the period between 27 January 2017 (when the first NERR was issued by the company) and 25 April 2017, as to whether the Aerocare Collective Agreement 2017 passed the better off overall test outlined in s 193 of the Act.

¹ Using the expression in cl 11.1 of the Aerocare Collective Agreement 2012

² to use the language of cl 33.1 of the Agreement the subject of approval, and 27.1 of the Aero-care Collective Agreement 2012

Reason for Documents Being Sought:

Category 1 and 2 – BOOT Compliance Assessment

The Commission is required to consider whether the agreement the subject of the application for approval (**the Application, and the Agreement**) passes the Better Off Overall Test as outlined in s 193 of the *Fair Work Act 2009*.

The information presently before the Commission contained in the F17 Statutory Declaration filed in support of the Application, contains no information about the rostering arrangements in the Applicant's enterprise, at any of the workplaces at which the employees of the Applicant who are covered by the Agreement work.

The Commission is unable to properly assess whether each and every employee will be better off overall under the Agreement than under the Award, in the absence of information that enables an assessment of the practical application of the Agreement to the rostering arrangements at each of the workplaces at which employees of the Applicant perform work.

The information sought in Category 1 and Category 2 above:

- a. Inform the broad descriptions of work within the classifications referred to in the Agreement, so as to assist an assessment of the reliability of the translation table (identifying the translation of Agreement classification to reference instrument classification) proffered by the Applicant in support of the Application.
- b. Relate to an airport at which the Applicant has employees and who perform work that will be covered by the Agreement (noting it is only one of the workplaces that the Commission must consider in applying the BOOT).
- c. Relate to classifications of employee that are covered by the Agreement and the reference instrument, and to which the Agreement will apply if approved.
- d. Covers a reasonable time period (ie two roster periods), and a time period that is reasonably proximate in time to the approval application (March and April 2017).

The documents sought are relevant to an assessment that the Commission is required to undertake in considering whether to approve the Agreement.

Categories 3 to 6 – s 180(2) Compliance

In considering whether to approve the Agreement, the Commission is required to consider whether s 180(2) was complied with (by interaction of s 186(2)(a) and s 188(a) of the Act).

The Agreement purports to create rights and/or impose obligations, by reference to documents referred to in Categories 3 to 6 above.

The documents sought in these categories seek copies of the various documents external to the Agreement, as they existed during the access period, and which the TWU contends ought to have been provided (or access ought to have been provided) during the access period.

The documents sought are relevant to an assessment that the Commission is required to undertake in considering whether to approve the Agreement.

Categories 7 and 8

The Commission is required to consider whether the Agreement passes the Better Off Overall Test as outlined in s 193 of the *Fair Work Act* 2009.

The Applicant has filed a statutory declaration of Mr Gregory Luke Shelley in support of the Application, in which Mr Shelley expresses the opinion that the Agreement passes the BOOT.

The consultancy "first ir consultancy pty ltd" were advising the Applicant during the negotiations for the Agreement, including corresponding with the TWU and ASU.

The documents sought in Categories 7 and 8 are relevant to an assessment that the Commission is required to undertake in considering whether to approve the Agreement.

The documents sought in Categories 7 and 8 are relevant for the cross-examination of Mr Shelley.

The TWU notes that an order in similar terms to that sought in Category 7 was recently made by the Full Bench in [2017] FWCFB 3131



DRAFT ORDER

Fair Work Act 2009

s.590(2)(c) - Order requiring a person to produce documents etc to the Fair Work Commission

Applicant(s):

Aerocare Flight Support Pty Limited

v

Respondent(s):

Transport Workers Union of Australia

Commission Matter No: AG2017/1424

COMMISSION MEMBER

DATE

TO: The Proper Officer
Aerocare Flight Support Pty Limited
31f Longland Street
Queensland, QLD, 4006

Pursuant to s.590(2) of the *Fair Work Act 2009* you are **ORDERED** to provide to the Fair Work Commission the documents, records and other information specified in the Schedule to this order before the Fair Work Commission at the following time, date and place:

Time: 9am
Date: _____ June 2017
Place: Registry
Fair Work Commission
80 William Street
Sydney, NSW, 2000

Member

- Note:
- This order has been issued at the request of the Transport Workers Union of Australia.
 - You can apply to have this order set aside or varied.
 - Instead of attending to provide the documents etc. covered by this order at the time and place specified above, you may produce them to an officer of the Commission at the place specified above not later than 4.00 pm on the day before the day specified above.
 - If you have any queries in relation to this order please contact the associate to Deputy President Gooley on : chambers.gooley.dp@fwc.gov.au.

SCHEDULE

1. A copy of the electronic roster³ for all of the employees of Aerocare Flight Support Pty Ltd in the classifications of Airline Service Agent, Advanced Airline Service Agent, and each of the Specialist Duties classifications identified in the Aero-Care Collective Agreement 2012 (AE899834), who worked at the Sydney International Airport for each day of the entire roster period or periods, covering the months of March and April 2017.
2. A copy of a job description⁴ for each position in which an employee of the Applicant is employed or engaged, at the Sydney International Airport.
3. A copy of the "company standard operating procedures" referred to in cl 6.2.2 of the Agreement, as they existed during the "access period" as defined in cl 180(4) of the Act (ie in the seven days from 7 April 2017);
4. A copy of any:
 - a. "safety announcement"
 - b. "client notice"
 - c. client SOP,
 - d. "publications"
 - e. "memoranda"
 referred to in cl 6.2.3 of the Agreement, as they existed during the "access period" as defined in cl 180(4) of the Act (ie in the seven days from 7 April 2017);
5. A copy of any "performance management or disciplinary procedures" referred to in cl 7.9 of the Agreement, as they existed during the "access period" as defined in cl 180(4) of the Act (ie in the seven days from 7 April 2017);
6. A copy of any:
 - a. "code of practice"; or
 - b. "protocol"
 relating to fatigue management and implemented by the Applicant, as existing during the "access period" as defined in cl 180(4) of the Act (ie in the seven days from 7 April 2017).
7. The Documents used or relied upon by Mr Gregory Luke Shelley to assist or form his belief as to the truth and accuracy of the Statutory Declaration declared by him on 24 April 2017, and in particular with respect to the answer to question "3.6 Do you think the agreement passes the better off overall test?".
8. A copy of any document (including but not limited to any letter, memorandum, email, or file note) recording advice provided by the consultancy "first ir consultancy pty ltd" to Aerocare Flight Support Pty Ltd in the period between 27 January 2017 (when the first NERR was issued by the company) and 25 April 2017, as to whether the Aerocare Collective Agreement 2017 passed the better off overall test outlined in s 193 of the Act.

³ Using the expression in cl 11.1 of the Aerocare Collective Agreement 2012

⁴ to use the language of cl 33.1 of the Agreement the subject of approval, and 27.1 of the Aero-care Collective Agreement 2012



FairWork
Commission

STATEMENT

Fair Work Act 2009

s.185 - Application for approval of a single-enterprise agreement

Aerocare Flight Support Pty Ltd T/A Aerocare Flight Support
(AG2017/1424)

COMMISSIONER WILSON

MELBOURNE, 23 JUNE 2017

Application for approval of an enterprise agreement – Statement to parties regarding applications for orders to produce documents.

[1] The Commission has given consideration to the matters discussed in the Mention Hearing on 22 June 2017, and in particular the applications of the Transport Workers' Union (TWU) and the Australian Municipal, Administrative, Clerical and Services Union (ASU) for the issuing of Orders for the Production of Documents.

[2] The Commission's decision in this regard is to issue an Order in the terms set out below (and an actual Order on the subject is issued at the same time as this Statement). The Commission's Reasons for Decision are in the course of being prepared and will be issued on Monday, 26 June 2017.

[3] The Order to be made by the Commission is in the following terms;

1. Aerocare Flight Support Pty Ltd and Aero-Care Flight Support Unit Trust, the Applicants in this matter, are ORDERED to provide to the Fair Work Commission the documents, records and other information specified in the Schedule to this order before the Fair Work Commission at its Brisbane Registry by **5 PM on Tuesday, 27 June 2017** (the Produced Documents) and to use their best endeavours to ensure that a further two copies of the Produced Documents are received in the Commission's Melbourne Registry by **9 AM on Wednesday, 28 June 2017** and a further one copy is received in the Sydney Registry by the same time. In each case, the Produced Documents are to be bound in indexed ring folder(s) and are to be page-numbered.
2. For the purposes of the Commission only, in addition to providing the Produced Documents as a hard-copy, they are also to be filed electronically as a PDF document, with the requirement that the PDF document properties/security must allow for printing, document assembly, content copying, page extraction and Optical Character Recognition.
3. Should the TWU or ASU wish to have access to any or all of the Produced Documents, they are to provide to the Commission by no later than **5 PM on Tuesday, 27 June 2017** an undertaking signed by the Secretary of the respective

union that it agrees that all Produced Documents to which it has access are and will remain confidential and that no officer, employee, agent, contractor or legal representative of the union will publish or disclose any part of the Produced Documents except where it is done for the purposes of these proceedings. At the same time as the union provides its undertaking it will nominate by name and position its counsel, solicitors and instructing representatives who it seeks have access to the Produced Documents. Upon receipt of an undertaking in these terms the Commission will issue a further Order granting access to the union or unions to the Produced Documents, provided that such access will be limited to inspection of the material at the Commission's Brisbane, Melbourne or Sydney Registries by the union or union's nominated counsel, solicitors and instructing representatives.

SCHEDULE

For the purposes of this Order, "document" has the same meaning as in the *Evidence Act 1995* (Cth), and it shall be compliance with this Order for names and other personal information to be redacted from any document provided to the Commission.

1. The document prepared by Gregory Luke Shelley being an analysis of the Better Off Overall Test to support the matters at paragraph 3.6 of the Statutory Declaration signed by him on 24 April 2017 (the Form F17).
2. To the extent that the following matters are not considered within item 1 above, any document that shows the Better Off Overall analysis for each of the following;
 - a. Airline Service Trainee (Modern Award classification Level 1, Clerical, Administration and Support stream), in respect of Saturday, Sunday and Public Holiday work;
 - b. Airline Service Agent (Modern Award classification Level 4, Aviation Transport Workers stream, and Level 2 Clerical, Administration and Support stream), in respect of Sunday and Public Holiday work;
 - c. Advanced Airline Service Agent (Modern Award classification Level 3 Clerical, Administration and Support stream) in respect of Saturday work;
 - d. Advanced Airline Service Agent (Modern Award classification Level 4, Aviation Transport Workers stream, and Level 3 Clerical, Administration and Support stream) in respect of Sunday and Public Holiday work;
 - e. Special Duties classifications (Modern Award classification Level 7, Aviation Transport Workers stream, and Level 5 Clerical, Administration and Support stream), in respect of Sunday and Public Holiday work.
3. Job descriptions for each classification in the Aerocare Collective Agreement 2017 as set out in that agreement's Schedule A (Classifications & Remuneration Table);
4. The standard operating procedures of Aerocare Flight Support Pty Ltd and Aero-Care Flight Support Unit Trust.

5. Any document that shows any of the following for 2016 and/or in 2017 until 31 May 2017;
 - a. The number of employees covered by the Aero-Care Collective Agreement 2012 (2012 Agreement) who worked Supplementary Hours (within the meaning of the 2012 Agreement); the number of Supplementary Hours that each worked; and/or the Supplementary Hours payments made to each employee.
 - b. The number of employees covered by the Aero-Care Collective Agreement 2012 (2012 Agreement) who worked Altered Hours (within the meaning of the 2012 Agreement); the number of Altered Hours that each worked; and/or the Altered Hours payments made to each employee.
 - c. The number of employees covered by the Aero-Care Collective Agreement 2012 (2012 Agreement) who worked Nominated Hours (within the meaning of the 2012 Agreement); the number of Nominated Hours that each worked; and/or the Nominated Hours payments made to each employee.

[4] Further to the foregoing orders, the Commission confirms the Directions given in the Mention Hearing held on Thursday, 22 June 2017;

1. The ASU and the TWU will have until **5 PM on Friday, 30 June 2017** to file and serve any further evidentiary material and submissions on which they rely in respect of the application.
2. The Applicants will have until **5 PM on Wednesday, 5 July 2017** to file and serve any further evidentiary material and submissions on which it relies in respect of the application.
3. That no party files and serves any further material beyond the prescribed dates without the leave of the Commission.
4. The hearing of the merits of the application for approval of the agreement will be in Brisbane on Thursday, 13 July and Friday, 14 July 2017 at 10 AM, with video-conference access to Melbourne and Sydney available upon the request of a party to the Commission.
5. That any party have liberty to apply on 2 days' written notice to the others.



COMMISSIONER

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[2017] FWC 3406



REASONS FOR DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Aerocare Flight Support Pty Ltd T/A Aerocare Flight Support
(AG2017/1424)

COMMISSIONER WILSON

MELBOURNE, 26 JUNE 2017

Application for approval of the Aerocare Collective Agreement 2017 - Orders for the production of documents.

[1] An application has been made pursuant to s.185 of the *Fair Work Act 2009* (the Act) by Aerocare Flight Support Pty Ltd and Aero-Care Flight Support Unit Trust (collectively referred to as Aerocare) for the Fair Work Commission to approve the *Aerocare Collective Agreement 2017*.

[2] In support of the application Aerocare has filed the requisite Form F16 setting out the basic information about the agreement and the bargaining representatives and has also filed the Form F17, the Employer Statutory Declaration in support of the application. The material filed by Aerocare indicates that there were two union bargaining representatives, the Australian Municipal, Administrative, Clerical and Services Union (the ASU) and the Transport Workers' Union (the TWU), and one employee bargaining representative. The material filed by Aerocare also indicates that there will be 1,370 employees to be covered by the agreement; that 1,207 employees cast a valid vote and, of those, 1,001 voted in favour of the making of the agreement. The same material also sets out that all of the 1,370 employees are classified as part-time and that none are classified as casual.

[3] Soon after Aerocare made its application, both the TWU and ASU filed Form F18 Statutory Declarations advising that while each was a bargaining representative in the negotiations leading to the making of the agreement, neither union supported the approval of the agreement by the Fair Work Commission.

[4] In this regard, the ASU put forward that the Commission cannot be satisfied that the agreement pass the better off overall test when compared to the applicable modern award, the *Airline Operations—Ground Staff Award 2010*, and that the agreement cannot be regarded as having been genuinely agreed to by the employees covered by it for the reason that it does not cover casual employees.

[5] The ASU put forward in the alternative that, if the Commission accepts casual employees are not covered, it cannot be satisfied that the employees to be covered by the agreement were fairly chosen for the reason that Aerocare, it is said, presently employs "at least hundreds of employees on a casual basis, who are covered by the predecessor agreement to the 2017 agreement" and that the casual employees are not operationally or

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organisationally distinct and thereby should not be excluded from the coverage of the agreement.

[6] The TWU argues that the Commission cannot be satisfied that the agreement passes the better off overall test and that it cannot be satisfied that the group of employees to be covered by the agreement was fairly chosen.

[7] Having received the foregoing documentation, the Commission's staff undertook, in accordance with usual practice, an analysis of the application which was documented in a report to me, entitled Agreement Analysis Summary. That summary has been circulated to the parties upon my direction, but on the basis that it is an internal working document of the Commission which does not represent any decided view of the Commission. In providing the summary to the parties, a direction was given that, because of its status as an internal working document, it must not be circulated beyond those parties appearing in the matter, and their instructors, and must not be copied, distributed or published by them, or by any person to whom they give a copy, in any manner inconsistent with my direction.

[8] Each of the TWU and ASU have made applications to the Commission for the issuing, pursuant to s.590 of the Act, of orders requiring the production by Aerocare of certain documents. The applications are in the following terms;

- TWU

"1. A copy of the electronic roster for all of the employees of Aerocare Flight Support Pty Ltd in the classifications of Airline Service Agent, Advanced Airline Service Agent, and each of the Specialist Duties classifications identified in the Aero-Care Collective Agreement 2012 (AE899834), who worked at the Sydney International Airport for each day of the entire roster period or periods, covering the months of March and April 2017.

2. A copy of a job description for each position in which an employee of the Applicant is employed or engaged, at the Sydney International Airport.

3. A copy of the "company standard operating procedures" referred to in cl 6.2.2 of the Agreement, as they existed during the "access period" as defined in cl 180(4) of the Act (ie in the seven days from 7 April 2017);

4. A copy of any:

- a. "safety announcement"
- b. "client notice"
- c. client SOP,
- d. "publications"
- e. "memoranda

referred to in cl 6.2.3 of the Agreement, as they existed during the "access period" as defined in cl 180(4) of the Act (ie in the seven days from 7 April 2017);

5. A copy of any “performance management or disciplinary procedures” referred to in cl 7.9 of the Agreement, as they existed during the “access period” as defined in cl 180(4) of the Act (ie in the seven days from 7 April 2017);

6. A copy of any:

- a. “code of practice”; or
- b. “protocol”

relating to fatigue management and implemented by the Applicant, as existing during the “access period” as defined in cl 180(4) of the Act (ie in the seven days from 7 April 2017).

7. The Documents used or relied upon by Mr Gregory Luke Shelley to assist or form his belief as to the truth and accuracy of the Statutory Declaration declared by him on 24 April 2017, and in particular with respect to the answer to question “3.6 Do you think the agreement passes the better off overall test?”.

8. A copy of any document (including but not limited to any letter, memorandum, email, or file note) recording advice provided by the consultancy “first ir consultancy Pty Ltd” to Aerocare Flight Support Pty Ltd in the period between 27 January 2017 (when the first NERR was issued by the company) and 25 April 2017, as to whether the Aerocare Collective Agreement 2017 passed the better off overall test outlined in s 193 of the Act.”

- ASU (as amended)

“1. A copy of the electronic roster for all of the employees of Aerocare Flight Support Pty Ltd in the classifications of Airline Service Agent, Advanced Airline Service Agent and each of the Specialist Duties classifications identified in the Aero-Care Collective Agreement 2012 (AE899834), who worked at Sydney international Airport, Sydney Domestic Airport, Brisbane Airport, Coolangatta Airport, Melbourne Airport and/or Perth Airport for each day of the entire roster period or periods, covering the months of March and April 2017.”

[9] The applications made by each of the TWU and ASU are strenuously resisted by Aerocare, who submit that the applications made by each of the unions are late in terms of the overall process before the Commission; that certain of the material sought by the two unions is confidential and that it ought not be the subject of an order from the Commission; that other parts of the information sought by the unions is voluminous in nature or is oppressive and that in some cases there are no documents to be produced.

[10] In respect of confidentiality, the case made by Aerocare is set out in an affidavit of Gregory Shelley, its General Manager Employee Relations, who deposed the following about the company’s rostering system, Aeronet;

“16. Aeronet represents a significant investment in the creation of intellectual property of Aerocare as its rostering is generated by a proprietary IT algorithm and software

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system. Aerocare has developed its business, market share and current client base over a period of 24 years by operating this unique proprietary software modelling manpower requirements across its workplaces and using essentially what is referred to as 'just in time' resourcing methodology which calculates Aerocare's customer baggage handling requirements in advance of flight arrivals and departures.

17. The leaking of our rosters to competing entities would expose Aerocare to competing organisations better understanding how our system of workflow operates. This in turn would be better positioned to prepare competing competitive tenders. In this case, I both Unions have their significant membership numbers in organisations that compete with Aerocare.

18. Further, the TWU has publically stated and continues to publically state on its Facebook page that Aerocare should not be allowed to operate in Australian airports and the airlines should not be engaging them for their work.”¹

[11] Mr Shelley's affidavit puts forward that he regards each of the unions as a competing entity. Mr Shelley also refers to an earlier affidavit in earlier proceedings before the Commission in 2012 in which it was deposed by another person, Darren Michael, an investigator and forensic technology practitioner, that provision of electronic rosters, with the consequential access to Aeronet's coding, “could enable the recipient to reverse engineer those codings and allow the recipient to avoid the significant cost, time, and trial and error in recreating the system or creating a similar system.”²

[12] In relation to the volume of material sought under the unions' applications for orders for the production of documents, Aerocare points to its operations being across 26 airports and the head office in all states and territories and that with there being 30 combinations of classifications of employees and levels of employees arising from the *Aerocare Collective Agreement 2017*, the estimated likely volume of rosters that would be required to be produced in conformity with the unions' orders would be in the vicinity of 3000 pages of materials.

[13] In relation to oppression, Aerocare put forward that it would be inappropriate to require the provision of material relating to the communications between First IR Consultancy and Aerocare since that would require the disclosure of confidential advice to Aerocare related to the bargaining process. Aerocare also put forward that at least some of the TWU's request seeks documents for the purposes of cross-examination of Mr Shelley. While not protected by legal professional privilege, Aerocare nonetheless put forward that communications to and from First IR Consultancy is analogous to communications to and from the head of the union in relation to its industrial strategy, which has been held in the past as not being in a category of information that should be disclosed. Aerocare also submits that neither union has identified specific employees who will be worse off under the *Aerocare Collective Agreement 2017* or any of its members who are alleged to be worse off under the better off overall test.

[14] Aerocare also submit, at least in respect of the class of documents sought by the TWU regarding codes of practice or protocols, that the codes of practice are legislative instruments and thereby part of the public record and that in the event the Commission obliged Aerocare to produce the protocols referred to in the TWU's application, there are no such documents in that class.

[15] At the hearing of the unions' applications for these orders, Aerocare submitted that it would be prepared to consent to a limited provision of information to the unions, but only in the event that they were prepared to commit to appropriate undertakings from each as to confidentiality.

[16] The Commission's principles in relation to the making of orders pursuant to s.590 of the Act have recently been summarised in the Full Bench decision in *Re: Penelope Vickers*:

“[8] The principles applying to the issue of orders for production by the Commission under s.590(2)(c) are well established. The power conferred by s.590(2)(c) is a discretionary one to be exercised for the purpose of the Commission informing itself as to a matter before it. The Commission will be guided in the exercise of its discretion by the practice followed by courts in civil proceedings when issuing subpoenas. The documents sought must have apparent relevance to the issues in the proceedings.³ Access to the documents sought must be for the purpose of supporting a case which is intended to be advanced, not to explore if there is a supportable basis for a case that might potentially be advanced.⁴ The documents required to be produced must be described with sufficient particularity, and the burden of producing them must not be oppressive.^{5,6} (Original references included)

[17] The matter ultimately to be determined by the Commission upon Aerocare's application is whether or not it should approve the *Aerocare Collective Agreement 2017*. In addition to making that ultimate decision, the Commission may also do the other things contemplated within Chapter 2 – Part 2 – 4, Division 4 of the Act dealing with the approval of enterprise agreements, which include whether or not the Commission may seek an undertaking pursuant to s.190 in respect of any concerns it may hold that the agreement does not meet the requirements set out in ss.186 and 187. It may also require the inclusion in the agreement of the model consultation term or the model flexibility term (contemplated in Division 5 of Part 2 – 4).

[18] Preliminary consideration of the application, having taken into account the material set out in the Agreement Analysis Summary prepared by Commission staff, leads to the view that it will be necessary for the Commission to understand, with better particularity, the workings of the agreement and especially in respect of the effect of the agreement on certain classifications of employees performing work on weekends or on public holidays. I consider it is necessary and desirable for the Commission to have further information in this respect. Some, but potentially not all, parts of the information proposed by Aerocare as a consent order (if there were to be undertakings given by the unions) address that need. However without yet having seen that information it is impossible at this time to determine whether that material may satisfy the Commission's needs.

[19] In all the circumstances, I consider it both necessary and desirable that there be an order requiring Aerocare to produce documents to the Commission that set out the better off overall analysis in respect of employees generally, but also in respect of certain categories of employees who may be called upon to work weekends or public holidays, to the extent that the general information does not deal with their particular circumstances.

[20] Both the *Aerocare Collective Agreement 2017* and the agreement presently operating, the *Aero-Care Collective Agreement 2012*⁷ provide for Supplementary Hours, Altered Hours

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and Employee Nominated Hours (noting that there are some differences between the two agreements both as to the content and names of these provisions).

[21] In the *Aerocare Collective Agreement 2017*, Supplementary Hours are those that an employee requests to work in addition to the hours they may work in a day or a roster period, and which are then paid at the rate of time and half of the Monday to Friday ordinary hours rate.

[22] Altered Hours are requests made by Aerocare that an employee change the start or finish times or both of a rostered shift to meet last-minute changes in operational circumstances.

[23] Employee Nominated Hours deal with the circumstance in which “an overwhelming number of employees have indicated a desire to have the opportunity to maximise their income by undertaking work outside the provisions of clause 9”, which deals with the ordinary hours of work to be worked in a day or a roster period. Employee Nominated Hours are then treated as ordinary time.

[24] I consider there is presently insufficient information before the Commission for me to be satisfied that these provisions, in conjunction with the other features of the 2017 agreement, would mean that each employee is better off overall.

[25] Accordingly an Order will be made for the provision by Aerocare of documents relating to its overall use of these forms of hours as they exist under the *Aero-Care Collective Agreement 2012*.

[26] I have considered each of the TWU and ASU applications and decide each of the classes of documents sought by them as follows;

- The TWU Application

1. A copy of the electronic roster for all of the employees of Aerocare Flight Support Pty Ltd in the classifications of Airline Service Agent, Advanced Airline Service Agent, and each of the Specialist Duties classifications identified in the Aero-Care Collective Agreement 2012 (AE899834), who worked at the Sydney International Airport for each day of the entire roster period or periods, covering the months of March and April 2017.

While this class has apparent relevance to the matters to be determined by the Commission, I accept Aerocare’s arguments in respect of the volume of material to be produced and its confidentiality. I consider the class goes beyond the matters that the Commission requires in order to determine the application. I consider the Commission’s need in this regard can be satisfied with an order in the more limited terms proposed by Aerocare in respect of the information Mr Shelley had available to him when he formed the view the agreement met the better off overall test.

2. A copy of a job description for each position in which an employee of the Applicant is employed or engaged, at the Sydney International Airport.

This class of documents has apparent relevance and an order in this regard will be made, but in respect of all Aerocare's job descriptions and not restricted to employment at Sydney International Airport.

3. *A copy of the "company standard operating procedures" referred to in cl 6.2.2 of the Agreement, as they existed during the "access period" as defined in cl 180(4) of the Act (ie in the seven days from 7 April 2017);*

This class of documents has apparent relevance and an order in this regard will be made.

4. *A copy of any:*

- a. *"safety announcement"*
- b. *"client notice"*
- c. *client SOP,*
- d. *"publications"*
- e. *"memoranda*

referred to in cl 6.2.3 of the Agreement, as they existed during the "access period" as defined in cl 180(4) of the Act (ie in the seven days from 7 April 2017);

I am not persuaded this class of documents has apparent relevance to the matters that need to be determined by the Commission, but note that Aerocare, to some extent at least, does not object to provision of its own standard operating procedures, although it does object to the provision of client standard operating procedures. An Order consistent with the extent to which Aerocare is prepared to go with a consent order is made by me, being for documents which I do consider have apparent relevance.

5. *A copy of any "performance management or disciplinary procedures" referred to in cl 7.9 of the Agreement, as they existed during the "access period" as defined in cl 180(4) of the Act (ie in the seven days from 7 April 2017);*

After consideration of the terms of clause 7.9 of the agreement, I do not consider this class has apparent relevance to the matters that need to be determined by the Commission at this time.

6. *A copy of any:*

- a. *"code of practice"; or*
- b. *"protocol"*

relating to fatigue management and implemented by the Applicant, as existing during the "access period" as defined in cl 180(4) of the Act (ie in the seven days from 7 April 2017).

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I do not consider this class has apparent relevance to the matters that need to be determined by the Commission.

7. The Documents used or relied upon by Mr Gregory Luke Shelley to assist or form his belief as to the truth and accuracy of the Statutory Declaration declared by him on 24 April 2017, and in particular with respect to the answer to question "3.6 Do you think the agreement passes the better off overall test?"

I consider the subject matter of this class, but not its precise formulation, to have apparent relevance to the matters the need to be determined by the Commission. I have had regard to the proposal made by Aerocare for a consent order in the event undertakings in a suitable nature could be provided by the unions and consider that Aerocare's formulation requiring it to provide the better off overall analysis undertaken by Mr Shelley satisfies the Commission's needs. Accordingly an Order consistent with that formulation will be made by me.

8. A copy of any document (including but not limited to any letter, memorandum, email, or file note) recording advice provided by the consultancy "first ir consultancy pty ltd" to Aerocare Flight Support Pty Ltd in the period between 27 January 2017 (when the first NERR was issued by the company) and 25 April 2017, as to whether the Aerocare Collective Agreement 2017 passed the better off overall test outlined in s 193 of the Act."

I do not consider this class to have apparent relevance to the matters to be determined by the Commission. The class is a fishing expedition. While not covered by legal professional privilege, it is likely that the communications are confidential. No order will be made by me in respect of this class.

- The ASU's amended application;

1. A copy of the electronic roster for all of the employees of Aerocare Flight Support Pty Ltd in the classifications of Airline Service Agent, Advanced Airline Service Agent and each of the Specialist Duties classifications identified in the Aero-Care Collective Agreement 2012 (AE899834), who worked at Sydney international Airport, Sydney Domestic Airport, Brisbane Airport, Coolangatta Airport, Melbourne Airport and/or Perth Airport for each day of the entire roster period or periods, covering the months of March and April 2017.

While this class has apparent relevance to the matters to be determined by the Commission, and I accept Aerocare's arguments in respect of the potential volume of material to be produced and its confidentiality, I consider the class goes beyond the matters that the Commission requires in order to determine the application. I consider the Commission's need in this regard can be satisfied with an order in the more limited terms proposed by Aerocare in respect of the information Mr Shelley had available to him when he formed the view the Agreement met the better off overall test.

[27] As recorded above, Aerocare argue strongly that much of the material that is sought to be produced by the unions is or should be confidential and that to some extent the material represents its intellectual property as well as its commercial advantage. It also argues that the unions cannot be respected as a neutral party in respect of its commercial situation and that instead each must be regarded as a competing entity. Mr Shelley's affidavit puts forward that "[b]ecause of its intrinsic intellectual property, I cannot hand over copies of the Shelley BOOT Analysis to the Unions as possession of a copy would enable an IT expert to extract the Aerocare rosters which are very commercially valuable."⁸

[28] While I do not accept the sweeping breadth of these contentions at face value, noting that in order for them to be accepted by me I would require detailed evidence on the subject, I accept that nonetheless there is at least some commercial advantage to be had by Aerocare in not disclosing to full public gaze its innermost commercial workings. Accepting for a minute that there is in fact some deep intellectual property in the company's rosters, which provides a commercial edge for Aerocare beyond that which could be generated by any competent management, it would be inappropriate for the Commission to proceed in a manner which forced a diminution of its competitive edge. Having formed that view, I accept that the Commission should tread carefully in respect of anything which may potentially diminish Aerocare's commercial standing. Plainly the decisions required to be made by the Commission in respect of the approval of the application do not require more than the Commission to be satisfied of the tests in the Act and particularly within Part 2 – 4.

[29] In all the circumstances, I consider it appropriate to seek undertakings from both the TWU and the ASU that, should they obtain access to the documents required to be produced, they will treat the information as confidential and ensure that it is not distributed beyond those people directly involved in the Commission's proceedings.

[30] Having considered these matters, the Commission proposes to make orders in these terms;

1. Aerocare Flight Support Pty Ltd and Aero-Care Flight Support Unit Trust, the Applicants in this matter, are ORDERED to provide to the Fair Work Commission the documents, records and other information specified in the Schedule to this order before the Fair Work Commission at its Brisbane Registry by **5 PM on Tuesday, 27 June 2017** (the Produced Documents) and to use their best endeavours to ensure that a further two copies of the Produced Documents are received in the Commission's Melbourne Registry by **9 AM on Wednesday, 28 June 2017** and a further one copy is received in the Sydney Registry by the same time. In each case, the Produced Documents are to be bound in indexed ring folder(s) and are to be page-numbered.
2. For the purposes of the Commission only, in addition to providing the Produced Documents as a hard-copy, they are also to be filed electronically as a PDF document, with the requirement that the PDF document properties/security must allow for printing, document assembly, content copying, page extraction and Optical Character Recognition.
3. Should the TWU or ASU wish to have access to any or all of the Produced Documents, they are to provide to the Commission by no later than **5 PM on Tuesday, 27 June 2017** an undertaking signed by the Secretary of the respective union that it agrees that all Produced Documents to which it has access are and will

[2017] FWC 3406

remain confidential and that no officer, employee, agent, contractor or legal representative of the union will publish or disclose any part of the Produced Documents except where it is done for the purposes of these proceedings. At the same time as the union provides its undertaking it will nominate by name and position its counsel, solicitors and instructing representatives who it seeks have access to the Produced Documents. Upon receipt of an undertaking in these terms the Commission will issue a further Order granting access to the union or unions to the Produced Documents, provided that such access will be limited to inspection of the material at the Commission's Brisbane, Melbourne or Sydney Registries by the union or union's nominated counsel, solicitors and instructing representatives.

SCHEDULE

For the purposes of this Order, "document" has the same meaning as in the *Evidence Act 1995* (Cth), and it shall be compliance with this Order for names and other personal information to be redacted from any document provided to the Commission.

1. The document prepared by Gregory Luke Shelley being an analysis of the Better Off Overall Test to support the matters at paragraph 3.6 of the Statutory Declaration signed by him on 24 April 2017 (the Form F17).
2. To the extent that the following matters are not considered within item 1 above, any document that shows the Better Off Overall analysis for each of the following;
 - a. Airline Service Trainee (Modern Award classification Level 1, Clerical, Administration and Support stream), in respect of Saturday, Sunday and Public Holiday work;
 - b. Airline Service Agent (Modern Award classification Level 4, Aviation Transport Workers stream, and Level 2 Clerical, Administration and Support stream), in respect of Sunday and Public Holiday work;
 - c. Advanced Airline Service Agent (Modern Award classification Level 3 Clerical, Administration and Support stream) in respect of Saturday work;
 - d. Advanced Airline Service Agent (Modern Award classification Level 4, Aviation Transport Workers stream, and Level 3 Clerical, Administration and Support stream) in respect of Sunday and Public Holiday work;
 - e. Special Duties classifications (Modern Award classification Level 7, Aviation Transport Workers stream, and Level 5 Clerical, Administration and Support stream), in respect of Sunday and Public Holiday work.
3. Job descriptions for each classification in the Aerocare Collective Agreement 2017 as set out in that agreement's Schedule A (Classifications & Remuneration Table);
4. The standard operating procedures of Aerocare Flight Support Pty Ltd and Aero-Care Flight Support Unit Trust.

5. Any document that shows any of the following for 2016 and/or in 2017 until 31 May 2017;
 - a. The number of employees covered by the Aero-Care Collective Agreement 2012 (2012 Agreement) who worked Supplementary Hours (within the meaning of the 2012 Agreement); the number of Supplementary Hours that each worked; and/or the Supplementary Hours payments made to each employee.
 - b. The number of employees covered by the Aero-Care Collective Agreement 2012 (2012 Agreement) who worked Altered Hours (within the meaning of the 2012 Agreement); the number of Altered Hours that each worked; and/or the Altered Hours payments made to each employee.
 - c. The number of employees covered by the Aero-Care Collective Agreement 2012 (2012 Agreement) who worked Nominated Hours (within the meaning of the 2012 Agreement); the number of Nominated Hours that each worked; and/or the Nominated Hours payments made to each employee.



COMMISSIONER

Appearances:

Mr J Murdoch QC, with *Ms G Dann*, of Counsel, for Aerocare.
Mr T Howell, of Counsel, for the TWU.
Ms E Gaske and *Mr J Cooney* on behalf of the ASU.

Hearing details:

2017.
 Melbourne (by telephone)
 16, 22 June.

Printed by authority of the Commonwealth Government Printer
 <Price code C, PR594072>

¹ Exhibit A2, Affidavit of Gregory Shelley, [16]-[18].

² Ibid Attachment GLS-1 [23].

³ *Clermont Coal Operations Pty Ltd v Brown & Dews and Others* [2015] FWCFB 2460 at [19].

⁴ *Kirkman v DP World Melbourne Limited* [2015] FWCFB 3995 at [19].

⁵ *Esso Australia Pty Ltd v AWU and ors* [2017] FWCFB 2200 at [6].

⁶ [2017] FWCFB 3131 [8].

⁷ AE899834.

⁸ Exhibit A2 [26].

s.47F(1)

From: s.47F(1)
Sent: Thursday, 15 June 2017 11:55 AM
To: s.47F(1)
Cc:
Subject: Update - Aviation Industry regarding our client Aerocare Flight Support Pty Ltd

Dear s.47F(1)

Further to your telephone conversation today with s.47F(1) of our office, I wish to confirm that the Aerocare BOOT hearing originally scheduled for tomorrow, Friday 16 June 2017, has been adjourned.

The matter has been relisted for Monday 10 July 2017 at 10am.

Further information will be provided as it comes to hand.

Kind regards

s.47F(1)

Graduate Lawyer

Workplace Relations

Macpherson Kelley

A: Level 16, 324 Queen Street, Brisbane, Queensland, 4000

PO: GPO Box 5299, Brisbane QLD 4001

s.47F(1)

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s.47F(1)

From: s.47F(1)
Sent: Wednesday, 2 August 2017 4:08 PM
To: s.47F(1)
Cc:
Subject: Aerocare Ministerial Update Number 5
Attachments: Ministerial Update Number 5 - M Inwood.pdf; Form 12 - Aerocare v Sheldon & TWU.pdf

Dear s.47F(1)

Please find **attached** Ministerial Update in relation to our client Aerocare Flight Support Pty Ltd.

If you have any questions in regards to this please contact s.47F(1) on s.47F(1) or by email to s.47F(1)

Kind regards

s.47F(1)

Legal Secretary

Workplace Relations

Macpherson Kelley

A: Level 16, 324 Queen Street, Brisbane, Queensland, 4000

PO: GPO Box 5299, Brisbane QLD 4001

s.47F(1)

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2 August 2017

s.47F(1)

Office of the Hon Darren Chester MP
Minister for Infrastructure and Transport
Deputy Leader of the House
Suite M1 26 Parliament House
CANBERRA ACT 2601

EMAIL: s.47F(1)

Dear s.47F(1)

MINISTERIAL UPDATE NUMBER 5

Please find below our further updated briefing to your Minister.

BOOT Hearing

- On 13 and 14 July 2017 the application for the approval of the Aerocare Collective Agreement 2017 (CA17) was heard before Commissioner Wilson in Brisbane.
- The Australian Municipal, Administrative, Clerical and Services Union (ASU) and the Transport Workers Union (TWU) were in attendance to oppose the application. The ASU were self represented by s.47F(1), with s.47F(1) from the ASU instructing; and the TWU were represented by s.47F(1) of Counsel with s.47F(1) from the TWU instructing.
- Aerocare called evidence from its National General Manager for Industrial Relations, s.47F(1) from its IT Team leader (in relation to the integrity of Aerocare's internally applied balloting system) and from an employee covered by CA17
- Both unions argued, despite not lodging any "scope" application during the bargaining period, that the exclusion of casuals from CA17 resulted in CA17 not being "fairly chosen" or "genuinely agreed".

The unions were silent on the fact (as detailed in evidence) that Aerocare had deliberately not included casuals due to the rapid reduction in casual

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Q-6562572:1



employee numbers due to the ordinary turnover of labour and initiatives of Aerocare to not further recruit casual (recruiting permanent part time or full time only) and to actively encourage/ offer casuals to transition to permanent roles in conjunction with CA17.

The unions were also silent on the recent Australian Council of Trade Unions (**ACTU**) "success" before the Fair Work Commission (**FWC**) for the addition into all modern awards of a clause allowing casuals to convert to permanent positions subject to specific rules and restrictions and that CA17 already facilitated this.

5. The other areas of dispute were:

5.1 The proper interpretation of the Modern Award in relation to split shifts and the consequences of the proper interpretation for CA17 – The TWU (supported by the ASU) submitted that a second tranche of hours in the same day should be paid penalty or overtime rates on the basis of a break in continuous hours; or alternatively that the second tranche attracted penalty or overtime rates as "callback" hours.

Aerocare led evidence that this position was inconsistent with the unions' position across the aviation industry. In particular it was noted that the TWU had agreed to be covered by a number of post 2012 EBAs involving subsidiary companies on multi-national competitors (namely Skystar, a subsidiary of Menzies PLC) which specifically referred to and authorised "split shifts" without similar provision/ arrangement for any second tranche of hours to be at penalty or overtime rates.

It was also observed that the unions led no evidence of any application being brought before the FWC or against any employer disputing the interpretation of the applicable Modern Award or a current certified agreement and seeking a ruling that second tranches were to be paid at penalty or overtime rates.

It was also submitted on behalf of Aerocare that if the FWC ruled unfavourably on this point and that penalty or overtime rates were to apply to all second tranche hours; the 622 page BOOT analysis would be discarded; as Aerocare would simply not roster any covered worker for a second tranche of hours in the same day and would recruit additional workers to work those hours at ordinary time rates.

It was further submitted that if Aerocare rostered as it commercially and responsibly would in light of such a ruling, current workers working split shifts would be disadvantaged as their hours would be significantly reduced (no split shifts); and if they needed to seek a second job they would likely be working such additional hours elsewhere at ordinary time rates (making it no different from working a second tranche at Aerocare at ordinary hour rates) and be paying higher taxation on their second job earnings.

5.2 Whether CA17 passed BOOT – The union arguments centred on their analysis of a 622 page printout Aerocare submitted that evidenced its BOOT

calculations based on a theoretical roster drawn from hours worked by all covered employees earlier this year.

The unions regarded the tendered calculations to be incorrect because (as noted above) Aerocare did not calculate pays on the basis that any second tranche of hours in a day were to be paid at penalty rates; and because the unions did not believe Aerocare could include any set off/ calculation of commercial car parking costs that it absorbed on behalf of any employees who parked at an airport where no free carparking was available (the overwhelming majority of workplaces covered by CA17).

We believe that the union response and their own calculations (which failed to include any carparking cost adjustment and was inconsistent in its application of penalty or overtime rates) was discredited under cross-examination.

6. At the finalisation of the hearing, Commissioner Wilson reserved his decision.
7. Additional submissions were required regarding the removal of a now redundant entity named in CA17.
8. We expect the timeline for Commissioner Wilson to provide his decision and reasons for the decision to be approximately 4-6 weeks.
9. We are presently awaiting a copy of the FWC transcript. A copy of relevant portions of transcript will be made available to you in due course once received. If you would prefer a complete copy, please let us know.

Right of Entry Dispute

10. On 7 July 2017, s.47F(1) National Secretary for the TWU, entered a restricted security area at Sydney Airport for the purpose of holding discussions with Aerocare employees regardless of whether they were on any break or not.
11. Neither the TWU nor s.47F(1) took any steps to notify Aerocare of s.47F(1) s.47F(1) entry onto Aerocare premises and did he did not provide any notice of right of entry (NROE) as required under the *Fair Work Act 2009* (Cth) (**FWA**); or any NROE with the minimum applicable notice.
12. On behalf of Aerocare we wrote to s.47F(1) to request undertakings in respect of his future conduct along the lines of undertakings we obtained from the TWU's Queensland aviation organiser, s.47F(1) in 2013 regarding an invalid right of entry at Brisbane Airport.
13. In the absence of any acknowledgement or response to our correspondence, on the instructions of Aerocare we filed an application for the FWC to deal with a right of entry dispute.
14. The right of entry dispute has now been listed for hearing over 2 days in early October 2017, with a prior without prejudice conference to occur at a mutually convenient (but yet to be agreed) time..

A copy of the Right of Entry application filed with the FWC is **attached**.

s.47F(1) has engaged lawyers and counsel, but has not filed any material in response to the Application to date.

We will provide a further update in relation to both the outcome of the BOOT hearing and the right of entry dispute as they become available.

15. We otherwise note that Mr Sheldon's existing Entry Permit expires in October 2017.

We will otherwise keep you informed of further developments.

Yours faithfully
s.47F(1)

Macpherson Kelley
s.47F(1)
Principal

s.47F(1)



About the F12 Application Form

Application for the Commission to deal with a right of entry dispute

Who can use this form

Use this form if you want to make an application to the Fair Work Commission (the Commission) to deal with a right of entry dispute and you are:

- a permit holder
- a permit holder's organisation
- an employer, or
- an occupier of premises.

About right of entry

Section 505(3) of the [Fair Work Act 2009](#) allows the Commission to deal with a dispute regarding right of entry on its own initiative, or upon application.

The Commission may deal with a range of disputes regarding right of entry, including:

- whether a request for a permit holder to comply with occupational health and safety requirements is reasonable (s.491 and s.499)
- whether a request for a permit holder to take a particular route to a room or area in which an interview is to be conducted or discussions held is reasonable (s.492A)
- in remote areas:
 - whether accommodation is reasonably available or premises reasonably accessible to permit holders;
 - whether providing accommodation or transport, or causing accommodation or transport to be provided would cause undue inconvenience to the occupier of premises;
 - whether a request to provide accommodation or transport is made within a reasonable period;
 - when a right of entry to investigate a suspected contravention or to hold discussions may be exercised by a permit holder (s.521C and s.521D); and
- the frequency with which a permit holder or permit holders of an organisation enter premises (s.505A).

The Commission can make orders imposing conditions, suspending or revoking a permit (s.505(2) and s.505A(3)).

Lodging your completed form

1. Lodge **your application** and any supporting documents with the Commission. You can lodge your application online using the [Commission's Online Lodgment Service \(OLS\)](#) or by post, by fax or by email or in person at the [Commission's office](#) in your State or Territory.
2. **Serve a copy** of this application and any supporting documentation on the Respondent as soon as practicable after the application is lodged with the Commission.

Where to get help

Commission staff & resources

Commission staff cannot provide legal advice. However, staff can give you information on:

- processes in the Commission
- how to make an application to the Commission
- how to fill out forms
- where to find useful documents such as legislation and decisions
- other organisations that may be able to assist you.

The Commission's website www.fwc.gov.au also contains a range of information that may assist.

Throughout this form



This icon appears throughout the form. It indicates information to help you answer the question following.

Legal or other representation

Representation is where another person (such as a lawyer, a representative from a union or employer organisation or a family member) speaks or acts on your behalf in relation to your matter. There is no requirement for you to be represented when you appear at the Commission. You will need the permission of the Commission Member dealing with your case if you wish to be represented by a lawyer or paid agent unless that person is:

- employed by a union or employer organisation, a peak union or peak employer body, or
- one of your employees or officers (if you are an employer).

If you decide to represent yourself in proceedings you will need to make sure you are well prepared.

Glossary of common terms

Applicant—This is the person or organisation that is making an application.

Party—A party is a person or organisation involved in a matter or case that is brought to the Commission.

Respondent—The person or business responding to an application made by an Applicant.

Service—Serving a document means giving a copy of the document to a person or organisation, usually to the other party to the matter. You can serve a document in a number of ways, including by email, fax, express or registered post, or in person. Parts 7 and 8 of the Fair Work Commission Rules 2013 deal with service.

Privacy

The Commission collects the information (including personal information) provided to it in this form for inclusion on the case file, and may disclose this information to the other parties to this matter and to other persons. For more details of the Commission's collection, use and disclosure of this information, please see the [Privacy Notice](#) for this form, or ask for a hard copy to be provided to you.



Remove this cover sheet and keep it for future reference—it contains useful information

Form F12—Application for the Commission to deal with a right of entry dispute

Fair Work Act 2009, ss. 505 and 505A

This is an application to the Fair Work Commission for it to deal with a right of entry dispute in accordance with Part 3-4 of the Fair Work Act 2009.

The Applicant



These are the details of the person who is making the application.

Title ☐ Mr ☐ Mrs ☐ Ms ☐ Other please specify:
First name(s) Aerocare Flight Support Pty Ltd
Surname
Postal address
Suburb s.47F(1)
State or territory
Phone number
Email address

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

Legal name of business Aerocare Flight Support Pty Ltd
Trading name of business Aerocare
ABN/ACN 32 103 196 701
Contact person s.47F(1)

Do you need an interpreter?



If you require an interpreter in order to participate in conciliation, a conference or hearing, the Fair Work Commission will provide an interpreter at no cost.

☐ Yes—Specify language
☒ No

Do you require any special hearing or conference (e.g. a hearing loop)?

assistance at the

☐ Yes—Please specify the assistance required
☒ No

Do you have a representative?



A representative is a person or business who is representing you. This might be a lawyer or a representative from a union. There is no requirement to have a representative.

☒ Yes—Provide representative's details below
☐ No

Your representative



These are the details of the person or business that is representing you.

Name of person s.47F(1)

Organisation Macpherson Kelley

Postal address GPO Box 5299

Suburb Brisbane

State or territory QLD **Postcode** 4001

Phone number s.47F(1) **Fax number** 7 3235 0430

Email address s.47F(1)

First Respondent



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

Title ☒ Mr ☐ Mrs ☐ Ms ☐ Other please specify:

First name(s) s.47F(1)

Surname s.47F(1)

Postal address 388-390 Sussex St

Suburb Sydney

State or territory QLD **Postcode** 2000

Phone number **Fax number**

Email address s.47F(1)

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

Legal name of business

Trading name of business

ABN/ACN

Contact person

Second Respondent



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

Title ☐ Mr ☐ Mrs ☐ Ms ☐ Other please specify:

First name(s)

FAIR WORK COMMISSION
Form F12—Application for the Commission to deal with a right of entry dispute

Surname

Postal address

Suburb

State or territory

Postcode

Phone number

s.47F(1)

Fax

02 9267 3222

number

Email address

s.47F(1)

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

Legal name of business

Trading name of business of Transport Worker's Union of Australia (TWU)

ABN/ACN

Contact person

s.47F(1)

1. Preliminary

1.1 What industry is the employer in?

Aviation (ground support and handling)

1.2 Under which section of the Fair Work Act 2009 is the application made?

- ☒ s.505—dispute about the operation of Division 5, Part 3-4—Right of Entry
☐ s.505A—dispute about the frequency of entry to hold discussions

1.3 Are you making this application because you are:

- ☐ a permit holder
☐ a permit holder's organisation
☒ an employer, or
☒ an occupier of premises.

2. About the dispute**2.1 What is the dispute about?**

- ☐ The frequency with which a permit holder or permit holders of an organisation enter premises under s.484
☐ Whether a request under ss.491, 492A or 499 is reasonable
☐ When a right of the kind referred to in s.490 may be exercised by a permit holder on premises of a kind mentioned in ss.521C(1) or 521D(1), despite that section
☐ Whether accommodation is reasonably available as mentioned in s.521C(1) or premises reasonably accessible as mentioned in s.521D(1)
☐ Whether providing accommodation or transport, or causing accommodation or transport to be provided, would cause the occupier of premises undue inconvenience as mentioned in s.521C(2)(a) or s.521D(2)(a)
☐ Whether a request to provide accommodation or transport is made within a reasonable period as mentioned in s.521C(2)(a) or s.521D(2)(a)
☒ Other (please describe below)

Using numbered paragraphs, describe the matters in dispute. Attach additional pages if necessary

Please refer to **Annexure A**

3. Relief sought**3.1 Please specify the orders sought from the Commission.**

- ☐ an order imposing conditions on an entry permit
☒ an order suspending an entry permit
☒ an order revoking an entry permit
☒ an order about the future issue of entry permits to one or more persons
☒ another order.

Please provide details of the orders sought or attach a draft order to this application.

A. An order that the Second Respondent transmit by email and facsimile to the Applicant's address:

- a. A legible copy of the Entry Permit of the permit holder under the Fair Work Act 2009 (Cth) (the **FWA**); and
b. A legible copy of the applicable Notice of Entry under the FWA, identifying the proposed date, time and place of entry and the suspected contravention,

no less than 24 hours prior to any employee or representative of the Second Respondent seeking to enter any premises occupied by the Applicant for the purposes of exercising a right

of entry for discussions under the FWA;

- B. An order that all employees or representatives of the Second Respondent entering premises occupied by the Applicant submit to any work health and safety directions of the Applicant, including but not limited to undergoing a work health and safety induction and orientation to the relevant premises; and
- C. An order revoking or, in the alternative, suspending the entry permit of the First Respondent;
- D. Further, or in the alternative to C above, the First and Second Respondent provide an undertaking to the Fair Work Commission as follows:
 - a. That Anthony Sheldon undertake that when exercising a statutory right of entry in relation to the premises of Aerocare, he shall:
 - i. Provide to Aerocare a Notice of Entry in the required form and otherwise comply with the requirements of the *Fair Work Act 2009* (Cth) (the **Act**);
 - ii. Comply with any reasonable request by Aerocare to comply with any occupational health and safety requirements that apply to their premises including, without limitation, any requirement to undergo a site safety induction conducted in a timely fashion so as not to defeat the purpose of the entry or to unreasonably delay the entry;
 - iii. Produce his entry permit and photographic identification if requested by Aerocare.
 - b. That Anthony Sheldon undertake to undergo an authorised or approved training course in relation to the exercise of rights of entry prior to further exercising a right of entry to any workplace and prior to any application for renewal of his right of entry permit under the Act, which otherwise expires on 3 October 2017;
 - c. That Anthony Sheldon, in any application for extension or renewal of his right of entry permit under the Act, will disclose a copy of the correspondence from Macpherson Kelley to him dated 7 July 2017, this Application for the Fair Work Commission to Deal with a Right of Entry Dispute dated 7 July 2017, and any correspondence in relation to same for consideration by the Fair Work Commission as to whether he is a fit and proper person to hold a right of entry permit; and
 - d. The Second Respondent undertakes that all of its officials and employees who seek to exercise a right of entry in relation to Applicant's premises are to comply with any reasonable request by the Applicant to comply with any occupational health and safety requirements that apply to their premises including, without limitation, any requirement to undergo a site safety induction conducted in a timely fashion so as not to defeat the purpose of the entry or to unreasonably delay the entry.

3.2 Please outline the grounds, including particulars, upon which the applicant relies in seeking the orders set out in question 3.1.

Please refer to **Annexure B**

Signature

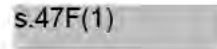


If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature s.47F(1)



Name s.47F(1)



Date 07/07/2017

**Capacity/
Position** Legal Representative for the Applicant



Where this form is not being completed and signed by the Applicant, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS

Annexure A

(2.1 What is the dispute about?)

1. At all relevant times:
 - 1.1 the First Respondent was
 - (a) An official in the employ of the Second Respondent
 - (b) Duly authorised to act for and on behalf of the Second Respondent;
 - (c) Acting with the express or implied knowledge and approval of the Second Respondent; and/or
 - (d) Acting with the express or implied authority of the Second Respondent.
 - 1.2 The Sydney Airport (**Premises**) are in part occupied by the Applicant;
 - 1.3 The Applicant had one or more employees performing work at the Premises;
 - 1.4 The Applicant is not responsible for security of the Premises.
2. On 7 July 2017:
 - 2.1 At approximately 9:20am the First Respondent entered a restricted security area of the Premises;
 - 2.2 The First Respondent, when located on the Premises and challenged as to the reason for his presence, he indicated that he was holding discussions with the Applicant's staff; and
 - 2.3 The First Respondent did not take any or any reasonable step to notify the Applicant of the First Respondent's entry to the Premises or to the Applicant's workplace within the Premises and did not provide the Applicant with a notice for right of entry under the FWA.
3. Having been on the Premises for a period of time and having conducted discussions with the Applicant's staff, the First Respondent was challenged by a representative of the Applicant as to whether the First Respondent could produce a Notice of Entry under the FWA (the **Queries**).
4. In response to the Queries, the First Respondent failed, or otherwise refused to produce a valid Notice of Right of Entry, and asserted that a valid Notice of Right of Entry was not required.
5. During the course of the First Respondent's entry to the Premises, the First Respondent hindered and/or obstructed the Applicant's employees in the performance of their work and otherwise acted in an inappropriate manner by seeking to speak to the Applicant's staff during work and when those workers were not on a scheduled break.
6. The First Respondent failed to participate in any work health and safety briefing and induction/orientation uniformly conducted and required by the Applicant prior to entering the Premises and the Applicant's workplace within the Premises.

Annexure B

(3.2 Please outline the grounds, including particulars, upon which the applicant relies in seeking the orders set out in question 3.1.)

1. At all material times on 7 July 2017 Mr Glenn Rooney was Manager, Airport Services – Sydney and was an authorised representative of the Applicant.
2. The First Respondent's conduct referred to in paragraph 2 of **Annexure A** was in breach of:
 - 2.1 Section 487(1) (b) FWA by failing, or otherwise refusing to, before entering the Premises, give the Applicant a Right of Entry notice for the entry;
 - 2.2 Section 481(2) FWA by failing, or otherwise refusing to, provide a Right of Entry Notice that complied with section 518 FWA;
 - 2.3 Section 487(3) FWA by failing, or otherwise, refusing to provide a Right of Entry Notice during working hours and at least 24 hours, but not more than 14 days, before the entry;

and in circumstances where, to the Applicant's knowledge, the Fair Work Commission had not issued any exemption certificate for the entry to the First or Second Respondent.

Particulars

- (a) On 7 July 2017 at approximately 9.20am the First Respondent and Mr Glenn Rooney (**Rooney**) of the Applicant had a discussion in a restricted security area of the Premises occupied by the Applicant (**Discussion**).
- (b) During the Discussion, words to the following effect were said:
 - (i) **Rooney:** *"What are you doing in Aerocare's premises?"*
 - (ii) **First Respondent:** *"I want to talk to the staff and show them how their wages are in comparison to the award."*
 - (iii) **Rooney:** *"Have you applied for or been granted a right of entry for our premises?"*
 - (iv) **First Respondent:** *"I am the secretary of the TWU and don't need one. I am talking to workers while they are on a break."*
 - (v) **Rooney:** *"How do you know they are on a break and if they are available?"*
 - (vi) **First Respondent:** *"All staff are in the break room and not doing anything so they must be on a break."*
 - (vii) **Rooney:** *"Just because they are in the break room does not mean they are on a break. They could be between flights coordinating their next arrival or departure."*
 - (viii) **Rooney:** *"Please leave as you do not have a right of entry, nor do you have a right to be on the premises."*

- (ix) **First Respondent:** *"Are you representing Aerocare and Archer Capital by telling the National Secretary of the TWU that I can't be in your office?"*
- (x) **Rooney:** *"Yes, as you do not have a right to entry. Our ramp office is private property and you have no right to be here."*
- (xi) **Rooney:** *"Please leave."*
- (xii) **First Respondent:** *"Why won't you allow us to tell your workers that they aren't being paid the Award and that Aerocare has the worst safety record in the country and the highest injuries rate, especially at Sydney International. Aerocare management continually make it difficult for the TWU to speak to their workers."*
- (xiii) **First Respondent:** *"What is your name, title and contact number?"*
- (xiv) **Rooney:** *"My name is Glenn Rooney and I am the Manager, for Airport Services at Sydney.... If you need anything contact me"*
- (xv) **Rooney:** *"Please leave the premises."*
- (xvi) **First Respondent:** *"Are you going to kick me out?"*
- (xvii) **Rooney:** *"If you keep refusing to leave I will need to contact security as you have no work purpose for being in our office as you do not hold a right of entry permit."*

- 2.4 Section 490(2) FWA on grounds that whilst purporting to exercise a right of entry, the First Respondent failed to hold discussions with the Applicant's employees only during mealtimes or other scheduled breaks.

Particulars

- (a) Particulars as per paragraph 2.3(b)(iv) - (vii) above.

- 2.5 Section 490(3) FWA on grounds that whilst purporting to exercise a right of entry, the First Respondent did not enter premises on a day specified in any entry notice or exemption certificate for the entry.

Particulars

- (a) Particulars as per paragraph 2.3(b)(iii) – (iv) above.

- 2.6 Section 492(1) FWA on grounds that whilst purporting to exercise a right of entry, the First Respondent did not hold discussions in the room or area of the Premises agreed with the Applicant.

Particulars

- (a) Particulars as per paragraph 2 above.

- 2.7 Section 500 FWA on grounds that whilst purporting to exercise a right of entry, the First Respondent hindered or obstructed the Applicant's employees in the performance of their work and otherwise acted in an inappropriate manner by

handing out flyers and business cards to the Applicant's employees whilst they were working and not on a scheduled break.

Particulars

- (a) Mr Glenn Rooney, Manager Airport Services-Sydney of the Applicant, witnessed the First Respondent talking to approximately 7 staff members of the Applicant and handing out flyers to them at the Premises;

- 2.8 Section 503 FWA, on the grounds that the First Respondent took action with the intention of giving the impression, or alternatively was reckless as to whether the impression was given, that he had authority to enter the Premises without having to comply with the Applicant's reasonable request to provide an entry notice as required by the FWA.

Particulars

- (a) Particulars as per paragraph 2.3 above.

3. By reason of the First Respondent's conduct referred to and particularised in paragraph 2 to 2.8 above, for which it is vicariously liable, the Second Respondent is also in breach of the provisions of the FWA referred to in paragraph 2 to 2.8 above.