FAIR WORK COMMISSION

AMENDED OUTLINE OF SUBMISSIONS

4 YEARLY REVIEW OF MODERN AWARDS
AIR PILOTS AWARD 2010
SUBSTANTIVE ISSUES
(AM2018/14)

~~13 FEBRUARY~~ 12 AUGUST 2019

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OUTLINE OF SUBMISSIONS

A. BACKGROUND

1. The Fair Work Commission ~~has~~ directed any party who has filed a F46 Application pursuant to Order 1 of the Orders dated 18 December 2018 or in matter AM2016/2 to file and serve an outline of submissions and any evidence on which it relies in support of the Application.

2. On 16 January 2019, HR Law on behalf of Alliance Airlines Pty Ltd ("Alliance"), filed a F46 Application pursuant to Order 1 ("**F46 Application**").

3. On 20 June 2019, the Fair Work Commission directed any party in support of the current application to vary the *Air Pilots Award 2010*, or in support of an amendment to the application, to identify the variation/amendment sought and file materials in support.

~~2.~~4. Alliance filed an amended F46 Application and statement of Tracie Deegan, General Manager, HR and Development of Alliance on 5 July 2019 in accordance with this direction.

5. On 6 August 2019, the Fair Work Commission directed any party wishing to file amended submissions to do so by Monday 12 August 2019.

~~3.~~6. In consideration of the amendments made to the F46 Application, ~~T~~the Outline of submissions in support of the Application ~~are~~ have been amended below.

B. INTENTION OF THE REVIEW OF MODERN AWARDS

~~4.~~7. The intent of the 4-yearly review of modern awards is to maintain a relevant and fair minimum safety net and to make sure it continues to meet the needs of the community.

~~5.~~8. The purpose of the variation ~~Alliance Airlines Pty Ltd ("~~Alliance~~")~~ proposes to clause 13 of the Exposure Draft of the *Air Pilots Award 2016* (clause 16 of the current *Air Pilots Award 2010*) is to clarify the intention and interpretation of the award provisions by removing ambiguity or uncertainty and/or in the alternative to amend the award provisions on the basis it is necessary to achieve the modern awards objective and ensure that the provisions maintain~~s~~ the status quo that exists under the award and in the Aviation Industry.

C. CLAUSE 13 OF THE EXPOSURE DRAFT OF THE AIR PILOTS AWARD 2016

~~6.~~9. As outlined in section 2.2 of the F46 Application, Alliance submits the following variation to clause 13 of the Exposure Draft of the *Air Pilots Award 2016* (clause 16 of the current *Air Pilots Award 2010*).

"*13. Training—classifications*

13.1 This clause does not apply to employees engaged in aerial application operations.

13.2 Where employment has commenced and the employer and not a regulatory body or otherwise requires a pilot to undertake additional training to reach and maintain minimum qualifications for a particular aircraft type in accordance with this award, other than the aircraft type for which the pilot was employed, all facilities and other costs associated with attaining and maintaining those qualifications will be the responsibility of the employer.

13.3 Where a pilot fails to reach or maintain a standard required the pilot will receive further re-training and a subsequent check. The pilot may elect to have a different check captain on the second occasion.

13.4 Where a pilot fails the second check in clause 13.3, the pilot may, where practicable, be reclassified to the previous or a mutually agreed equivalent position.

13.5 Where employment commences under this award, the pilot's service required to be undertaken by the prospective employer, and not a regulatory body or otherwise, prior to commencing employment, during a training period will be recognised and any training required to be conducted, by the prospective employer and not a regulatory body or otherwise, at the pilot's cost will be reimbursed to the pilot.

13.6 Nothing in this clause 13 prevents the pilot and employer entering into an individual return of service or training bond."

D. REASONING FOR THE PROPOSED AMENDMENTS TO CLAUSE 13 OF THE EXPOSURE DRAFT OF THE AIR PILOTS AWARD 2016

D.1 CLAUSE 13.2 AND CLAUSE 13.5 - "where employment has commenced" and "undertake additional training"

~~7.~~10. The insertion of the words "*where employment has commenced*" and *"undertake additional training"* into clause 13.2 clarifies that this clause applies where a pilot has commenced employment and is required to undertake additional training to reach and maintain minimum qualifications for an aircraft other than the aircraft type for which the pilot was employed.

~~8.~~11. These proposed changes are consistent with the interpretation of clause 16.2 of the *Air Pilots Award* 2010 in Jetgo *Australia Holdings Pty Ltd v Goodsall* [2015] FCCA 1378 where Judge Vasta stated at [162] that:

"Firstly, cl.16.2 only applies to persons who are already in the employ of the employer and must submit to further training; for an example, if they were to be the pilot for a different type of plane. The Respondent was not an employee of the Applicant until 1 May 2013 which post-dated the training".

D.2 CLAUSE 13.2 AND CLAUSE 13.5 - "and not a regulatory body or otherwise"

~~9.~~12. The use of the words:

(a) "*where the employer requires"* in clause 16.2 of the *Air Pilots Award 2010* and clause 13.2 of the *Exposure* Draft of the *Air Pilots Award 2016*; and

(b) "required *to be undertaken by the prospective employer*" in clause 16.5 of the *Air Pilots Award 2010* and 13.5 of the Exposure Draft of the *Air Pilots Award 2016*;

should to be given their ordinary general meaning[1].

~~10.~~13. The award's history and subject matter may be considered to resolve ambiguity[2].

~~11.~~14. Courts and tribunals should avoid an overly literal or technical approach. They should attempt to give the terms of the award meaning that is consistent with the intentions of the parties[3].

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[1] *The Clothing Trades Award* (1950) 68 CAR 597 (Australian Industrial Court, Full Court, Foster, Kirby and Dunphy JJ, 27 October 1950); cited in *City of Wanneroo v Holmes* [1989] FCA 369 (12 September 1989) at para. 43.
[2] *Pickard v John Heine & Son Ltd* [1924] HCA 38 (20 August 1924), [(1924) 35 CLR 1 at p. 9]; cited in *City of Wanneroo v Holmes* [1989] FCA 369 (12 September 1989) at para. 43.
[3] *Geo. A. Bond & Co. Ltd (in liq.) v McKenzie* [1929] AR (NSW) 498 at p. 503; cited in *City of Wanneroo v Holmes* [1989] FCA 369 (12 September 1989) at para. 43.

~~12.~~15. Interpreting awards involves looking at the meaning intended when drafting the document. This may involve going to effort to give an interpretation that avoids inconvenience or injustice. This does not mean disregarding the words of the instrument. Where simple or common words are used, they must be given their ordinary meaning[4].

~~13.~~16. Giving the words in clause 13 their ordinary general meaning, training within the meaning of this clause must be a requirement of the employer or prospective employer (as applicable).

~~14.~~17. If the use of the words in 9 above did not have such meaning, these words would not be used and the clause would simply refer to training without the need for it to be "required" by the employer or prospective employer and all training (i.e. training required by the employer, for example, relating to the airline itself (but not required by the Civil Aviation Safety Authority ("**CASA**")) **AND** training required by other regulatory authorities, for example CASA, or otherwise, for example, training that the pilot desires) would be covered by clause 13.

~~15.~~18. The words (or similar) to be "*required*" by the employer, have on our research been contained in pilots awards as far back as 1975.

~~16.~~19. Accordingly, we submit that clause 13 cannot be intended to cover training required to be undertaken by a regulatory authority or otherwise as this is not the ordinary meaning or intention of the clause.

~~17.~~20. This interpretation is confirmed, for example, in *Fair Work Ombudsman v Jetstar Airways Ltd* [2014] FCA 33, at [48] where, although the issue of who had required the training to be done was not decided as admissions where made, Justice Buchanan considered the interpretation of clause 16.5 of the *Air Pilots Award 2010* and emphasised the focus of the clause being on the requirement of the prospective employer, noting that *"clause 16.5 of the Award (set out earlier) is engaged by a "requirement" of "the prospective employer".*

~~18.~~21. The purpose of our proposed addition of the words "*and not a regulatory body or otherwise*":

(a) ensures that the ordinary general meaning of the words in 9 above are clear; and

(b) clarifies any potential uncertainty regarding the liability of the employer for training required by a regulatory body (such as the Civil Aviation Safety Authority ("**CASA**")) or otherwise.

D.3 CLAUSE 13.6 – new sub-clause

~~19.~~22. The insertion of the words "*Nothing in this clause 13 prevents the pilot and employer entering into an* individual *return of service or training bond*", clarifies that an individual return of service or training bond may be entered into.

~~20.~~23. Nothing currently prevents this from occurring and these types of arrangements have always existed in the aviation industry (see subsection **E below**).

~~21.~~24. We note that the cases of *Regional Express Holdings Ltd (CAN 099 547 270) v Clarke [2007] FCA 957* and *McLennan v Surveillance Australia Pty Ltd [2005] FCAFC 46* dealt with how bonds interact with certified agreements and Australian Workplace Agreements ("AWA's"), respectively. This is distinguishable from whether bonds can co-exist with clause 13 of the Exposure Draft of the *Air Pilots Award 2016* or clause 16 of the current *Air Pilots Award 2010*.

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[4] *Kucks v CSR Ltd* [1996] IRCA 166 (19 April 1996), [(1996) 66 IR 182 at p. 184]; cited in *The Australian Workers' Union - West Australia Branch v Co-operative Bulk Handling Limited* [2010] FWAFB 4801 (Kaufman SDP, Richards SDP, Roberts C, 9 July 2010) at para. 12, [(2010) 197 IR 53].

~~22.~~25. This is supported by:

(a) *Jetgo Australia Holdings Pty Ltd v Goodsall* [2015] FCCA 1378 where the Respondent's employment contract contained a service-based provision which stated that, *"the type rating [Embraer 145 type rating] will be reimbursed to the employee over a 24-month period paid quarterly by the company".* Judge Vasta at [156] stated, "*I see no problem with the employment contract and clause 16.5 standing together. The employment contract seems to recognise what is contained in clause 16.5".* Accordingly, the provision of the employment contract (not even a bond) was able to stand together with the award, which demonstrates that this service requirement under a bond is not relevant as to whether clause 13 of the Exposure Draft of the *Air Pilots Award 2016* (clause 16 of the current *Air Pilots Award 2010*) is complied with;

(b) *China Southern West Australian Flying College re Air Pilots Award 2010* where Vice President Watson considered "bonding agreements" forming part of the safety net award and stated that "*in my view, such a matter can be, and is more appropriately, dealt with under the enterprise bargaining stream of the Act where award obligations can be modified on the basis of agreements subject to the relevant tests provided for enterprise agreements";* and

(c) the fact that bonds have always and continue to exist in the majority of enterprise *agreements* made (see E.2 below).

D.3.1 Return of service or training bond is a separate and distinct obligation

~~23.~~26. A return of service or training bond is a separate and distinct obligation to those obligations set out under clause 13.

~~24.~~27. Specifically, clause 13 deals with the requirement to pay a pilot for training, whilst a return of service or training bond, deals with the requirement of service.

~~25.~~28. Bonding of a pilot for training, whether that bond be fixed or otherwise, is irrelevant for the purposes of clause 13. If a pilot fails to provide the requisite amount of service stipulated in a bond, then this is a pecuniary issue relative to that failure. Such a requirement for service does not detract from the obligations under clause 13, it simply confirms the current position in the industry and view of the judiciary including the Fair Work Commission.

~~26.~~29. If the use of bonds was an issue relating to clause 13, bonds would not exist in the aviation industry and would not be included in Industrial Agreements and historically in industrial awards.

D.3.2 The issue with contrary views

~~27.~~30. We note that the AFAP submitted in *Alliance Airlines Pilots' (Brisbane, Townsville And Cairns) Enterprise Agreement 2018* [2018] FWCA 4716, *"in relation to training that the possible imposition of a training bond for the types of training contemplated in clause 27 of the Agreement is less beneficial than clause 16 of the Award. As clause 16 of the Award requires the employer to be responsible for training costs in certain circumstances the AFAP submits that this gives rise to a BOOT concern*".[5]

~~28.~~31. Due to the undertakings provided by Alliance in the above matter, Commissioner Lee was satisfied that the training obligations under clause 16 of the award (clause 13 of the Exposure Draft of the *Air Pilots Award 2016*) had been agreed. Commissioner Lee did however at [6] raise that:

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[5] *Alliance Airlines Pilots' (Brisbane, Townsville And Cairns) Enterprise Agreement 2018* [2018] FWCA 4716 at para 2.

"Having considered the submissions of the parties, I agree with the AFAP that it is possible that the effect of clause 27 of the Agreement may be such that it leads to employees not being better off overall. This may occur if it was to result in employees being required to enter a training bond and repay the costs of training in the event of them ceasing employment prior to expiration of the bond and the training that was the subject of the bond was training that the terms of clause 16 of the Award would have required the employer to pay for all facilities and other costs associated with attaining and maintaining those qualifications."

~~29.~~32. We respectfully submit that this view, if clause 13.2 and clause 13.5 are not interpreted as submitted at paragraphs 7 to 18 cannot be accepted as the intention of clause 13.

Example 1

A narrow body aircraft Captain is employed by ABC Aviation and subject to a $15,000 bond relating to initial civil aviation required training. After being employed for 6 weeks the Captain leaves the employ of ABC Aviation. If the view taken by the AFAP above is correct, then no bond would have any effect or in fact could not be entered into unless the Captain in the six weeks he was employed by ABC Aviation earnt more than:

$15,783 (award base rate for a narrow body aircraft Captain) + relevant allowances + $15,000 (Bond amount)

This equates to an average minimum weekly salary during the six-week period of $5,130.50 plus allowances that would be needed to be paid.

Example 2

The Virgin Australia Narrow Body Aircraft Pilots' Enterprise Agreement 2018 which was *approved* by *Commissioner* Harper-Greenwell on 11 May 2018 and to which the AFAP was a party states at clause 71.2:

"Following an endorsement which Virgin Australia has paid for, Virgin Australia may require that a Pilot:

(a) Be frozen on the aircraft type to which they were endorsed for a minimum of 36 months from the date of successful completion of the initial simulator type and instrument rating check rides; and

(b) Repay $45,000 (on a reducing pro-rata basis, calculated monthly) if their employment with Virgin Australia comes to an end (other than by way of redundancy, for medical or compassionate reasons or retirement) during the 36 month period."

This means a narrow body aircraft Captain who is employed by Virgin Australia is subject to a $45,000 bond following an endorsement. If, after being employed for 6 weeks the Captain leaves the employ of Virgin Australia, if the view taken by the AFAP above is correct, then again, no bond would have any effect or in fact could not be entered into unless the Captain in the six weeks they were employed earnt more than:

$15,783 (award base rate) + relevant allowances + $45,000 (Bond amount)

This equates to an average minimum weekly salary during the six-week period of $10,130.50 plus allowances that would be needed to be paid.

Under the Virgin Australia Narrow Body Aircraft Pilots' Enterprise Agreement 2018 such a Captain during the six-week period earns an annual base salary in accordance with the Virgin

Australia Narrow Body Aircraft Pilots' Enterprise Agreement 2018 as at the date of these submissions of $ $233,032 which is an average per week of $4,481.38. It is noted that this annual base salary is inclusive of other award entitlements (see clause 21 of the *Virgin Australia Narrow Body Aircraft Pilots' Enterprise Agreement 2018). This amount is less than half that which would be required to be earnt if the AFAP interpretation of clause 13 and training bonds was accepted.*

~~30.~~33. Further if the requirement is to earn award wages plus the whole bond amount before it could be enforced was accepted it would defeat the whole premise behind a return of service or training bond as bonds would have the ability to be more "enforceable" the longer the service the pilot has i.e. at the end of say two years of service the pilot would have earnt substantially more than they would over the six (6) week period set out in the examples. It is respectfully submitted that this interpretation is contrary to the view of the judiciary including the Fair Work Commission which is evidenced by the training bond provisions that currently exist in the majority of aviation enterprise agreements which have been approved by the Fair Work Commission (see point 8 below) and in a number of cases supported by the AFAP.

D.3.3 The purpose of the amendments Alliance proposes

~~31.~~34. Given the contrary view expressed by the AFAP, which it is respectfully submitted is incorrect, it is necessary to set out and make clear in the Award that nothing in clause 13 prevents a pilot and employer agreeing and entering into an individual return of service or training bond.

~~32.~~35. We note that the words Alliance propose be inserted into clause 13.6 do not go so far as to state that bonding is **allowed** to occur in specific circumstances nor do the words prescribe what the terms of those bonds should be. Rather the words simply clarify the position that currently exists in the aviation industry which it is submitted is supported by the Fair Work Commission (by the various enterprise agreement that contain training bond provisions) and which has been clearly affirmed by the Federal Circuit Court in *Jetgo Australia Holdings Pty Ltd v Goodsall* [2015] FCCA 1378.

~~33.~~36. It is submitted that the wording proposed as clause 13.6 are necessary for the following reasons:

(a) The award is a safety net of basic terms and conditions of employment.[6]

(b) The proposed changes do not fundamentally change the intention of the Award. In this regard, we note that the changes sought are distinguishable from the changes sought in *China* Southern *West Australian Flying College re Air Pilots Award 2010.* Specifically, China Southern sought to vary clause 16.2 of the *Air Pilots Award 2010* by adding the words "*unless otherwise agreed in writing between both parties" to the end of the clause*". The purpose of this variation was to enable employers and employees to be able to agree to provisions that amend the award obligations. Vice President Watson at [12], held that the variation was "*not necessary or appropriate to give effect to the modern* awards *objective*". The change proposed by China Southern fundamentally changed the intention of the Award and allowed for parties to agree to contract out of their obligations under clause 16.2 of the *Air Pilots Award 2010*. The proposed changes set out herein, however, does not do so and it is submitted is, given the differing views as to the intention of clause 13 is necessary and appropriate to give effect to the modern awards objective*;*

(c) The pecuniary obligation under training bonds or return for service bonds relate to the failure of the pilot to provide service. It is not relevant to the employer obligations under clause 13.

[6] *China Southern West Australian Flying College re Air Pilots Award 2010* [2012] FWA 8272 at para 10.

37. We also note our comments in paragraph 2522 above regarding the ability for bonds to co-exist with clause 13 of the Exposure Draft of the *Air Pilots Award 2016* or clause 16 of the current *Air Pilots Award 2010*.

D.3.4 Modern Awards Objectives

38. Further to the above and/or in the alternative, it is necessary to amend clause 13 of the Exposure Draft of the *Air Pilots Award 2016* (clause 16 of the current *Air Pilots Award 2010*) on the basis it is necessary to achieve the modern awards objective.

39. Section 134(1) of the *Fair Work Act 2009* (Cth) states:

> *"What is the modern awards objective?*
>
> *(1) The FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:*
>
> (a) *relative living standards and the needs of the low paid; and*
>
> (b) *the need to encourage collective bargaining; and*
>
> (c) *the need to promote social inclusion through increased workforce participation; and*
>
> (d) *the need to promote flexible modern work practices and the efficient and productive performance of work; and*
>
> *(da) the need to provide additional remuneration for:*
> *(i) employees working overtime; or*
>
> *(ii) employees working unsocial, irregular or unpredictable hours; or*
>
> *(iii) employees working on weekends or public holidays; or*
>
> *(iv) employees working shifts; and*
>
> (e) *the principle of equal remuneration for work of equal or comparable value; and*
>
> (f) *the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and*
>
> (g) *the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and*
>
> (h) *the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.*
>
> *This is the **modern awards objective.**"*

40. Alliance agrees with the RAAA and the statements made in its amended Form F46 filed on 4 July 2019 that the variations proposed are necessary to achieve the modern awards objective as they:

(a) *"clarify the intention and interpretation of the award provision;*

(b) *promote social inclusion through increased workforce participation as it encourages employers to attract and retain employees;*

(c) *promote flexible modern work practices and the efficient and productive performance of work as it encourages employers to introduce, maintain and improve employee-specific training programs for the benefit of employees as they progress with the employer;*

(d) *maximise productivity for aircraft operators as it avoids disputation, and reduces employment costs (by increasing employee retention) and reducing the need to continuously train new pilots; and*

(e) *encourage employment stability for pilots that contributes to employment growth and ultimately, the sustainability, performance and competitiveness of the national economy."*

41. Alliance further submits that specifically, the addition of the words *"Nothing in this clause 13 prevents the pilot and employer entering into an individual return of service or training bond*" is necessary to achieve the modern awards objective as:

(a) Individual return of service or training bonds are needed as a minimum employment condition in the aviation industry to account for the high costs associated with the cost of training pilots and the high risk associated with pilots leaving employment after receiving payment from their employer for such training.

(b) As Tracie Deegan noted in her statement filed on 5 July 2019 that "*If Alliance were only allowed to enter into training bonds in certain circumstances and a Pilot was allowed to leave the employ of Alliance after Alliance had paid for the costs of their training and they had not returned service, this would result in significant financial and employment costs to the business and would change the way Alliance and other airlines need to operate"*. We have provided examples at 32 and in Tracie Deegan's statement filed on 5 July 2019, of where a training bond would not be considered enforceable based on the views of the AFAP (which Alliance opposes for reasons which we have already stated above and in further submissions and evidence filed).

(c) If training bonds were prevented or only enforceable if a pilot earns the bonded amount and award wages, a significant financial strain would inevitably be placed on employers in the aviation industry including Alliance, to pay for training costs without return of service from their pilots and the performance and competitiveness of the aviation industry in Australia would decline.

(d) The words make it clear that nothing prevents a pilot and employer entering into an individual return of service or training bond.

E. RETURN OF SERVICE OR TRAINING BOND

E.1 Historical and current practice in the aviation industry

It has and continues to be a requirement in the aviation industry that pilots must undergo training. Employers have always had and continue to have a right to seek return of service

via a bond. Considering the financial cost to an employer associated with training a pilot, it is nonsensical to think that an employer would not require return of service in circumstances where, if the pilot leaves employment prior to completing a sufficient period of service with their employer, the employer's expenditure on training the pilot would be valueless and the pilots incentive to stay in consideration of payment for training would no longer be a factor taken into consideration when deciding whether to stay or leave their employer. Further, as stated by Judge Vasta in *Jetgo Australia Holdings Pty Ltd v Goodsall* [2015] FCCA 1378 at [167]:

"*Even if I am wrong in these conclusions about the effect of the Award, I would find that the Applicant received* no *consideration of the outlay they made on behalf of the Respondent and that it would be unjust for the Respondent to retain the benefit of this training at the expense of the Applicant".*

~~34.~~42. The concept of return of service and training bonds provides a greater retention rate of employees and security of employment.

E.2 Enterprise Agreements which contain reference to return of service or training bonds

~~35.~~43. By way of example of the status quo in the industry, the following enterprise agreements (both current and dating back to 1975) contain provisions relating to bonds. This is not an exhaustive list of all enterprise agreements which contain bonding arrangements but gives an indication of the prevalence and commonality of bonding arrangements in the aviation industry both historically and recently.

~~36.~~44. These enterprise agreements are also an example of the fact that bonds and requirements for return of service, can co-exist with the Award, otherwise the approval of all enterprise agreements with bonding arrangements contained within them would fail the requisite tests that existed at the time of approval (see our example above at paragraph ~~32~~29 regarding the *Virgin Australia Narrow Body Aircraft Pilots' Enterprise Agreement 2018*). This is particularly relevant given that historically the award provisions as far back as 1975 contain provisions not dissimilar to clause 13.

Historical Enterprise Agreements
Airline Pilots' (T.A.A.) Agreement 1975
Airline Pilots' (T.A.A.) Agreement 1976
Airline Pilots' (T.A.A.) Agreement 1978
Airline Pilots' (T.A.A.) Agreement 1979
Airline Pilots' (T.A.A.) Agreement 1981
Recent Enterprise Agreements
Tigerair Pilots Australia Enterprise Agreement 2014
Virgin Australia Regional Airline Pilots' Enterprise Agreement 2015
Sunstate Airlines (Qld) Pty Limited Pilots Enterprise Agreement 2015
Qantas Airways Limited Pilots (Long Haul) Enterprise Agreement 2015
Jetstar Airways Pilots Enterprise Agreement 2015
Surveillance Australia Pilot and Observer Enterprise Agreement 2016
Network Aviation Pilots' Enterprise Agreement 2016
Virgin Australia Wide Body Aircraft Pilots' Enterprise Agreement 2017
National Jet Systems Pty Ltd Pilot Enterprise Agreement 2017
Virgin Australia Narrow Body Aircraft Pilots' Enterprise Agreement 2018
National Jet Express Pty Ltd Pilot Enterprise Agreement 2016 – 2020

~~37.~~45. **Attached** at "**Annexure A**" is a document which sets out the relevant provisions of these enterprise agreements which relate to training bonds. These provisions demonstrate that based on the reasoning set out above, clause 13 of the Exposure Draft of the *Air Pilots Award*

2016 cannot prevent nor is restrictive on the entering into of training or return of service bonds.

F. CONCLUSION

~~38.~~46. For the reasons set out herein, it is submitted that clause 13 of the Exposure Draft of the *Air Pilots Award 2016* should be amended as follows:

"*13. Training—classifications*

13.1 This clause does not apply to employees engaged in aerial application operations.

13.2 Where employment has commenced and the employer and not a regulatory body or otherwise requires a pilot to undertake additional training to reach and maintain minimum qualifications for a particular aircraft type in accordance with this award, other than the aircraft type for which the pilot was employed, all facilities and other costs associated with attaining and maintaining those qualifications will be the responsibility of the employer.

13.3 Where a pilot fails to reach or maintain a standard required the pilot will receive further re-training and a subsequent check. The pilot may elect to have a different check captain on the second occasion.

13.4 Where a pilot fails the second check in clause 13.3, the pilot may, where practicable, be reclassified to the previous or a mutually agreed equivalent position.

13.5 Where employment commences under this award, the pilot's service required to be undertaken by the prospective employer, and not a regulatory body or otherwise, prior to commencing employment, during a training period will be recognised and any training required to be conducted, by the prospective employer and not a regulatory body or otherwise, at the pilot's cost will be reimbursed to the pilot.

13.6 Nothing in this clause 13 prevents the pilot and employer entering into an individual return of service or training bond."

~~39.~~47. If you have any questions in relation to these submissions, please contact Jill Hignett at j.hignett@hrlawyers.com.au.

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On behalf of Alliance Airlines Pty Ltd

FAIR WORK COMMISSION

AMENDED OUTLINE OF SUBMISSIONS AND EVIDENCE IN RESPONSE

4 YEARLY REVIEW OF MODERN AWARDS
AIR PILOTS AWARD 2010
SUBSTANTIVE ISSUES
(AM2018/14)

~~27 MARCH~~ 12 AUGUST 2019

A. BACKGROUND

1. On 18 December 2018, Vice President Catanzariti issued Directions ("**Directions**") in this matter (AM2018/14).

2. Vice President Catanzariti directed any party who had filed a F46 Application pursuant to Order 1 of the Directions or in matter AM2016/2 to file and serve an outline of submissions and any evidence on which it relies in support of the Application/s by 4.00pm on Wednesday, 13 February 2019.

3. On 13 February 2019, HR Law on behalf of Alliance Airlines Pty Ltd ("**Alliance**") and the Australian Federation of Air Pilots ("**AFAP**") each filed and served an outline of submissions and any evidence on which they intend to rely in support of their Applications.

4. Between 13 February 2019 and 21 February 2019, the Regional Aviation Association of Australia ("**RAAA**") also filed and served its outline of submissions and evidence on which it intends to rely in support of its Application.

5. Vice President Catanzariti further directed any party wishing to respond to the material filed and served pursuant to Order 2 of the Directions (as outlined in points 2 and 3 above), to file and serve an outline of submissions and any evidence on which it relies in response by 4.00pm on Wednesday, 27 March 2019 (see Order 3 of the Directions). This was the response originally filed to the outline of submissions and evidence filed and served by the AFAP and RAAA.

~~5.~~6. On 20 June 2019, the Fair Work Commission directed any party in support of the current application to vary the *Air Pilots Award 2010*, or in support of an amendment to the application, to identify the variation/amendment sought and file materials in support.

7. Alliance filed an amended F46 Application and statement of Tracie Deegan, General Manager, HR and Development of Alliance on 5 July 2019 in accordance with this direction.

~~6.~~8. On 6 August 2019, the Fair Work Commission directed any party wishing to file amended submissions to do so by Monday 12 August 2019.

~~7.~~9. In consideration of the amendments made to the F46 Application, Alliance amended response to the outline of submissions and evidence filed and served by the AFAP and RAAA is detailed below.

B. RESPONSE TO AFAP OUTLINE OF SUBMISSIONS

1. The AFAP's submissions are in support of the Schedule C Variation and the Training Variation it seeks.

2. Alliance ~~is~~ was only concerned with the Training Variation sought by the AFAP (discussed at paragraphs 15 to 28 of the AFAP's submissions) at the time these submissions were originally filed, therefore Alliance directeds ~~d~~ this response to those issues. Since the filing of these submissions, the parties have had separate communication regarding the Schedule C variation.

3. At paragraph 15, the AFAP states that it has:

"*become aware that some employers are of the view that, if minimum qualifications are required by the Civil Aviation Authority, then they are not required by the employer for the purposes of clause 16.2 of the Air Pilots Award. Accordingly, it is argued that the employer is responsible for those qualifications".*

Alliance repeats and relies on its submissions at paragraphs 9 to 18 (now paragraphs 12 to 21 in its amended submissions) of its outline of submissions in response to this statement. In the circumstances outlined by the AFAP, Alliance's submits that the ordinary general meaning of clause 16.2 is that if "minimum qualifications" are required by the employer and not a regulatory body or otherwise, then the employer would be responsible to pay for the costs of such training. If, however, the Civil Aviation Safety Authority ("**CASA**") or another regulatory body or otherwise requires minimum qualifications, then those minimum qualifications would not be considered to be "required by the employer". This is not limited to situations where minimum qualifications are required by CASA as the AFAP asserts, but also minimum qualifications required by other regulatory authorities and/or minimum qualifications which a pilot may desire, that are not relevant, for example, to the duties or the aircraft which the employer requires the pilot to perform/fly.

4. Alliance seeks the addition of the words "and not a regulatory body or otherwise" to clauses 13.2 and clause 13.5 of the Exposure Draft of the *Air Pilots Award 2016* (clause 16 of the current *Air Pilots Award 2010*) to ensure the ordinary general meaning of the words of the clause are clear, ~~and~~ to clarify any potential uncertainty regarding the liability of the employer for training required by a regulatory body or otherwise and/or in the alternative, on the basis it is necessary to achieve the modern awards objective.

5. At paragraph 16, the AFAP asserts that "*the variation of clause 16.2 sought by the AFAP is required to ensure it operates as it is historically intended to do so*". Alliance submits that this assertion is incorrect. Alliance's position is detailed in its response below.

6. At paragraph 17, the AFAP refers to the Air Pilots Award as "*essentially, an amalgamation of 4 pre-modernisation awards*". Alliance notes that all of the awards referred to by the AFAP in paragraph 17 (a) to (d) contained provisions not dissimilar to "*where the employer requires*" and "*required to be undertaken by the prospective employer",* as contained in clause 13 of the Exposure Draft of the *Air Pilots Award 2016* (clause 16 of the current *Air Pilots Award 2010*), demonstrating a clear intention to distinguish between a requirement of the employer and a regulatory body or otherwise.

7. Whilst Alliance notes clause 20 of the *Aerial Agricultural Aviation Pilots Award 1999* [Print R8613] contained a provision that references CASA, i.e. that:

"Should any training or flight tests be required by the pilot in order to obtain, renew, or maintain any licence or standard required by the ***employer or CASA****, the cost of such training or testing will be met by the employer."*

This still supports Alliance's submissions that training required by the employer is separate and distinct from training required by CASA (or other regulatory bodies or otherwise). The absence of the word CASA in the other awards (including the clause 13.5 of the Exposure Draft of the Air Pilots Award 2016 (clause 16 of the current Air

Pilots Award 2010) further supports the position that such requirements were not intended to be covered.

8. As to paragraphs 18 and 19 of the AFAP's submissions, it is noted that:

(a) The AFAP states at paragraph 18 that "*clause 24 of the Pilots (General Aviation) Award 1984 made specific reference to qualifications required by CASA (or its predecessors) and required that the employer would be responsible for the costs of obtaining those qualifications."*

(b) The AFAP further states at paragraph 19 that:

"*During award simplification, clause 24 of the Pilots (General Aviation) Award 1984 was subject to redrafting. However, it was intended that the liability of the employer remained. Commissioner Wilks in the award simplification decision [Print Q8606] makes this clear. Accordingly, notwithstanding that the training clause was significantly amended, clause 19 of the Pilots' (General Aviation) Award 1998 retained the intention that that the employer would be responsible for the cost of qualifications required by CASA."*

Alliance submits that clause 24 of the *Pilots (General Aviation) Award 1984* prior to its redrafting in the award simplification decision [Print Q8606] (**attached** and marked as "**Annexure A**") did not make specific refence to qualifications required by CASA (or its predecessors).

Clause 24(b)(i) of the *Pilots (General Aviation) Award 1984* prior to its redrafting stated, *"where the employer requires a pilot to obtain any licence, rating, endorsement, initial instrument rating or type endorsement, subject to subclause (c) of this clause, the employer shall pay all costs associated with obtaining such rating or endorsement."*

Commissioner Wilks in the award simplification decision [Print Q8606] stated *"it will be amended and read as follows:*

19. Training – Classification

"19.1 where the employer requires a pilot to reach and maintain minimum qualifications for a particular aircraft type, all facilities and other costs associated with attaining and maintaining those qualifications will be the responsibility of the employer"…

Clause 24 and the amendments above, make no specific reference to qualifications required by CASA (or its predecessors). Furthermore, the qualifications referenced in the clauses are preceded by the words "*where the employer requires",* demonstrating a clear intention that the clause only apply to training required by the employer.

Alliance submits that the AFAP's assertion at paragraph 19 of its outline of submissions that clause 19 of the *Pilots (General Aviation) Award 1998* "*retained the intention that the employer would be responsible for the cost of the qualifications required by CASA"* is incorrect as, for the reasons Alliance outlines above and the absence of any reference to CASA, this was never the intention of the provisions. It is submitted that if this was the intention, then words similar to the *Aerial Agricultural Aviation Pilots Award 1999* would have been used.

9. Accordingly, on the basis outlined above, Alliance submits that the AFAP's interpretation of the intention of historical and current Awards is incorrect.

10. At paragraph 20, the AFAP state that:

"*During the award modernisation process, the Air Pilots Award was largely a product by way of consent by various stakeholders. The first draft of the Air Pilots Award was filed by Qantas on 18 March 2009. The training clause contained in that draft was expressly stated to be based on clause 19 of the Pilots' (General Aviation) Award 1998, and was in identical terms."*

11. At paragraph 21, the AFAP further state:

"*Qantas then filed a revised draft on 24 April 2009… This draft was the product of extensive consultation and was filed by agreement with various stakeholders… The revised draft retained the earlier clause and added 2 further clauses (one of which is derived from the Regional Airlines Pilots' Award 2003, the other excluding the training clause applying to aerial application operations)."*

12. As to paragraphs 20 to 21, it is noted that both drafts filed by Qantas on 18 March 2009 and 24 April 2009, respectively, refer to a requirement of the employer:

(a) The draft dated 18 March 2009 at clause 27.1 states "***where the employer requires*** *a pilot to reach and maintain minimum qualifications for a particular aircraft type in accordance with this award, all facilities and other costs associated with attaining and maintaining those qualifications will be the responsibility of the employer*";

(b) The draft dated 24 April 2009 at clause 31.2 states *"**where the employer requires** a pilot to reach and maintain minimum qualifications for a particular aircraft type in accordance with this award, all facilities and other costs associated with attaining and maintaining those qualifications will be the responsibility of the employer";* and

(c) The draft dated 24 April 2009 at clause 31.5 states "*where employment commences under this award the pilot's service **required to be undertaken by the prospective employer**, prior to commencing employment, during a training period will be recognised and any training required to be conducted at the employee cost will be reimbursed to the pilot".*

13. At paragraph 22, the AFAP sates "*It is clear, then, from the history of clause 16.2 of the Air Pilots Award that the type of qualifications referred to in the clause include those qualifications which are required by CASA".*

14. Alliance submits that it cannot be seen from the history of clause 16.2 of the Air Pilots Award that the type of qualifications referred to in the clause include those qualifications which are required by CASA. The history shows a clear use of words identical or similar to the words "*where the **employer** requires*".

15. As stated previously in Alliance' outline of submissions at paragraph 14 (now paragraph 17 of its amended outline of submissions), these words would not be used and the clause would simply refer to training without the need for it to be "required" by the employer or prospective employer and all training (i.e. training required by the employer, for example, relating to the airline itself (but not required by CASA AND training required by other regulatory authorities, for example CASA, or otherwise, for

example, training that the pilot desires) would be covered by clause 13, if that was the intention.

16. Clause 16.2 just references qualifications. It does not refer to initial or endorsement training. The intent of this clause is clear:

    (a) if training relating to reaching and maintaining qualifications is undertaken by a pilot; and

    (b) that training is required by the employer;

    then the employer is responsible for the facilities and costs associated with that training.

    If either (a) or (b) above are not satisfied, then clause 16.2 does not apply.

17. At paragraph 23, the AFAP refers to the intended operation of the pre-modernisation process clauses on which clause 16.2 was based, being "*also affirmed by a draft policy of the Office of the Employment Advocate for the purposes of applying the no-disadvantage test to Australian Workplace Agreements in response to concerns held by the AFAP".* The AFAP asserts that the draft policy of the Office of the Employment Advocate "*clearly contemplates the minimum qualifications **required** by CASA*".

    However, the draft policy states that:

    "training to be provided to the employee is endorsement training that is formally recognised by the Civil Aviation Safety Authority Australia (CASA) and provided by:

    A. A training provider of CASA; or

    B. A registered training provider of CASA."

    It does not specifically state that endorsement training is **required** by CASA, rather it simply says that endorsement training "*is formally recognised by CASA*".

18. Endorsement training in some circumstances (e.g. where "*employment has commenced*" and the employer requires a pilot to "*undertake additional training*" which is endorsement training) may not be considered to be a "requirement" of CASA. Although the endorsement training may be recognised by CASA as a "minimum qualification", there is still a distinction between the training for that minimum qualification being "recognised" by CASA and it being required by another party as additional training to reach and maintain a pilot's minimum qualifications.

19. This view is consistent with the amendments Alliance seeks to the Award and the interpretation of clause 16.2 of the *Air Pilots Award 2010* in *Jetgo Australia Holdings Pty Ltd v Goodsal*l [2015] FCCA 1378 set out by Judge Vasta (which Alliance refers to in its previous outline of submissions)[1]:

    "Firstly, cl.16.2 only applies to persons who are already in the employ of the employer and must submit to further training; for an example, if they were to be the pilot for a different type of plane. The Respondent was not an employee of the Applicant until 1 May 2013 which post-dated the training".

[1] [162]

20. Accordingly, Alliance disagrees with the AFAP's statement that the draft policy contemplates the "minimum qualifications" required by CASA, otherwise the word "required" by CASA would be used.

21. Alliance also notes that:

    (a) The draft policy states that *"training is to be distinguished for the purposes of whether the employee undertakes the training on a voluntary or directed basis"* and *"a return of service obligation is applicable for employees who undertake voluntary training".* This latter statement goes against the history of a wide range of training bonds which have been implemented (both prior and since this draft policy was issued), which cover training which is not undertaken voluntarily, e.g. required by the employer (see Alliance's outline of submissions at paragraph E).

    (b) The policy referred to is a "draft" and the AFAP have failed to address whether the draft policy was implemented in the form attached to its outline of submissions or not. Alliance assumes because the AFAP have only provided a draft version of the policy that the policy was never implemented or changed. Accordingly, any argument raised by the AFAP in relation to this draft policy can be given little weight.

22. At paragraph 24, the AFAP refers to the decision of *McLennan v Surveillance Australia Pty Ltd [2005] FCAFC 46* ("**McLennan**") and states that it supports its position. The AFAP also state that "*the Full Court found that the Dash-8 endorsement bond operated as a common law agreement, which was contrary to the statutory agreement in place (the AWA) and was therefore unenforceable".*

23. At paragraph 25, the AFAP states that "*the relevant reasoning that the AFAP relies on is that the Full Court to arrive at this conclusion, found that the Dash-8 training was training of the type contemplated by clause 19.1 of the Pilots' (General Aviation) Award 1998…*" The AFAP asserts "*to make a finding that the Dash-8 common law agreement was detrimental to the Appellant when compared to the AWA, it was necessary for the Full Court to have determined that the Dash-8 training bond dealt with training caught by clause 19.1 of the Pilots' (General Aviation) Award 1998. Accordingly, the Full Court expressly found that the minimum qualifications required to fly the Dash-8, being qualifications required by CASA, were covered by clause 19.1"*

24. At paragraph 26, the AFAP also asserts that:

    "There is nothing that would indicate that during the award modernisation process that the drafting of clause 16.2 of the Air Pilots Award was intended to depart from the established meaning of clause 19.1 of the Pilots' (General Aviation) Award 1998, as interpreted by the Full Federal Court in McLennan's Case."

25. As to paragraphs 24 to 26, Alliance submits that the argument the AFAP raises regarding the case of **McLennan** is incorrect.

26. In summary, the relevant facts of McLennan are as follows:

    (a) the appellant commenced employment with the respondent as a pilot of a Britain Norman Islander aircraft operating from Horne Island;

    (b) the appellant and the respondent entered into an AWA called the Pilots and Observers Australian Workplace Agreement ("**AWA**").

(c) the respondent called for expressions of interest from its employees in being promoted to the position of First Officer on a DHC-8 ("**Dash 8**").

(d) the appellant expressed her interest in the position but did not then have the necessary qualifications to operate a Dash 8 aircraft.

(e) the Appellant received a note informing her that she had the position; and

(f) the Appellant accepted the position and thereafter entered into a bond agreement.

27. The AFAP cannot make the assertion that "*the Full Court expressly found that the minimum qualifications required to fly the Dash-8, being qualifications required by CASA, were covered by clause 19.1"* as:

(a) the Dash-8 training was not found to be "*required by CASA*";

(b) no reference was made in the decision to "*minimum qualifications required to fly the Dash-8, being qualifications required by CASA";* and

(c) there was no reference made to CASA in relation to the coverage of clause 19.1 or at all.

28. The Dash-8 training required to be undertaken was additional training required by the respondent to be undertaken by the appellant (who was already employed at the time) to enable the appellant to fly a particular aircraft type (i.e. Dash 8), other than the aircraft type for which the appellant was employed (i.e. Britain Norman Islander aircraft)

29. For this reason, Alliance submits that the dash-8 training was covered by clause 19.1.

30. Alliance further notes that:

(a) The primary consideration in McLennan was whether the AWA was inconsistent with the bond agreement.

(b) It was found that the bond agreement entered into varied the AWA and therefore:

Black CJ and Moore J decided *"[55] … to create the rights and obligations found in the bond agreement, it would have been necessary for the appellant and respondent to make a variation agreement and have it endorsed by the Employment Advocate. The failure of the parties to do so had the result that the bond agreement was unenforceable."*

Lander J further held*, "[95] In this case, in my opinion, for the reasons stated by Black CJ and Moore J, the bond agreement was a variation agreement and therefore an ancillary document and needed to be approved by the Employment Advocate. No steps were taken in that regard so that, in my opinion, the bond agreement did not operate to vary the AWA which otherwise governed the employment relationship between the appellant and the respondent. [96] In those circumstances, the bond agreement was unenforceable by the employer."*

31. The above statements, support the addition of the new subclause 13.6 Alliance seeks, which states:

"Nothing in this clause 13 prevents the pilot and employer entering into an individual return of service or training bond."

32. Specifically, Alliance notes that McLennan does not stand for the proposition that such a bond agreement cannot exist. The Court simply found that if a bond agreement has the effect of varying an AWA, it needs to be approved in accordance with the *Workplace Relations Act 1996* (Cth).

33. Alliance only seeks the addition of the words above to ensure that it is clear that an individual return of service or training bond "may" be entered into. The words do not assert that return of service or bond agreements can be made in all circumstances. Such a return of service or training bond can still be subject to approval on a case by case basis, by the Fair Work Commission as has been and continues to be, normal practice in the industry.

34. Alliance otherwise repeats and relies on its submissions at D.3 of its outline of submissions in this regard.

35. At paragraph 27, the AFAP states that *"if clause 16.2 did not apply to minimum qualifications required by CASA, it is unclear what other minimum qualifications it could be referring to. Clause 16.2 would have little or no work to do".*

36. Alliance submits (as previously stated) that it refers to instances where employment has commenced and the employer (and not a regulatory body or otherwise) requires a pilot to undertake additional training to reach and maintain minimum qualifications.

37. **Example 1**

A Fokker 100 ("**F100**") pilot is employed by an Airline. The pilot has the licence required by CASA to operate the F100 aircraft. Accordingly, CASA would not require further training of the pilot to operate the aircraft type. However, the employing airline desires the pilot to undertake training beyond that which is required by CASA. This further required employer training would be considered to be a requirement of the employer and therefore fall within clause 13.2 of the Exposure Draft of the Air Pilots Award 2016 (clause 16.2 of the current Air Pilots Award 2010).

38. **Example 2**

During employment, training above and beyond the training required by CASA may be required by the employer.

For example, to obtain currency of a pilot licence, CASA requires three (3) simulator tests. However, it is the requirement of the employer to undertake six (6) simulator tests. The additional three (3) simulator tests are a requirement of the employing entity and therefore it falls within clause 13.2 of the Exposure Draft of the Air Pilots Award 2016 (clause 16.2 of the current Air Pilots Award 2010).

39. As stated in Alliance's previous outline of submissions at paragraphs 7 and 8 (now paragraphs 10 and 11 of its amended outline of submissions) and at paragraph 14 above, the addition of the words Alliance proposes to clause 13.2 are consistent with the interpretation of clause 16.2 of the *Air Pilots Award* 2010 in Jetgo *Australia Holdings Pty Ltd v Goodsall* [2015] FCCA 1378 where Judge Vasta stated at [162] that:

"Firstly, cl.16.2 only applies to persons who are already in the employ of the employer and must submit to further training; for an example, if they were to be the pilot for a

different type of plane. The Respondent was not an employee of the Applicant until 1 May 2013 which post-dated the training".

40. On the basis listed above, Alliance disagrees with the outline of submissions made by the AFAP and submit that the variation it seeks does not clarify the true intention of clause 16.2.

C. RESPONSE TO STATEMENT OF SIMON JON LUTTON

41. Alliance addresses the statements made by Mr Lutton regarding training below.

42. At paragraph 18, Mr Lutton asserts that *"the AFAP has always been of the view that training costs required to operate an aircraft are always the responsibility of the employer and that if an employer wishes to bond an employee, then it can do so by way of an enterprise agreement with the appropriate trade offs being made."*

43. Alliance submits that the AFAP's view as expressed by Mr Lutton at paragraph 18, is incorrect.

44. The training costs required to operate an aircraft are **not** always the responsibility of the employer. For example, if a pilot desires to undertake training to fly an aircraft which the employer does not require the pilot to fly, the costs associated with that training would not be the responsibility of the employer.

45. Alliance also notes that if an employer wishes to bond an employee, then it can do so by way of an enterprise agreement and/or entering into a separate training bond agreement (see **Annexure A** of Alliance's previous Outline of Submissions which sets out enterprise agreements which contain training bonds and the Statement of Matthew Tsai submitted by the RAAA which contains same).

46. Mr Lutton states at paragraph 20 "*in my experience of negotiating enterprise agreements, bonding is always in relation to the training to receive the qualifications required by the Civil Aviation Safety Authority*", Alliance notes that:

    (a) bonding between pilots and employers can be entered into for many and varied reasons; and

    (b) bonds have existed for all types of training including prior to, upon and during employment.

47. At paragraph 21, Mr Lutton states that *"in 2005, the AFAP was involved in discussions with the Office of the Employment Advocate ("EOA") regarding concerns of the AFAP about Australian Workplace Agreements ("AWAs") that contained bonding agreements…"*

48. At paragraph 22, Mr Lutton further states that, *"following on from these discussions, the EOA created a draft policy that it proposed to follow when assessing the value of a training bond when applying the no-disadvantage test. That policy clearly contemplated bonding arrangements arising from minimum qualifications required by the Civil Aviation Safety Authority".*

49. As to paragraphs 21 and 22 of Mr Lutton's statement, Alliance repeats and relies on its submissions at paragraphs 12 to 16 above.

50. At paragraph 23, Mr Lutton states that "*if minimum qualifications required by the Civil Aviation Safety Authority were not covered by clause 16.2 of the Award, then I am unclear to what sort of minimum qualifications that clause refers to*"

51. As to paragraph 23, Alliance repeats and relies on its submissions at paragraphs 27 to 29 above.

D. RESPONSE TO RAAA OUTLINE OF SUBMISSIONS AND STATEMENTS

52. Alliance supports the views of the witness statements relied upon by the RAAA as representative of the status quo in the aviation industry.

E. CONCLUSION

53. For the reasons set out herein and in Alliance's previous outline of submissions, amended outline of submissions and further statements filed, Alliance disagrees with the position taken by the AFAP and the variation it seeks and maintain Alliance's submissions (which are in the same terms as that sought by the RAAA) that clause 13 of the Exposure Draft of the *Air Pilots Award 2016* should be amended as follows:

"*13. Training—classifications*

13.1 This clause does not apply to employees engaged in aerial application operations.

13.2 Where employment has commenced and the employer and not a regulatory body or otherwise requires a pilot to undertake additional training to reach and maintain minimum qualifications for a particular aircraft type in accordance with this award, other than the aircraft type for which the pilot was employed, all facilities and other costs associated with attaining and maintaining those qualifications will be the responsibility of the employer.

13.3 Where a pilot fails to reach or maintain a standard required the pilot will receive further re-training and a subsequent check. The pilot may elect to have a different check captain on the second occasion.

13.4 Where a pilot fails the second check in clause 13.3, the pilot may, where practicable, be reclassified to the previous or a mutually agreed equivalent position.

13.5 Where employment commences under this award, the pilot's service required to be undertaken by the prospective employer, and not a regulatory body or otherwise, prior to commencing employment, during a training period will be recognised and any training required to be conducted, by the prospective employer and not a regulatory body or otherwise, at the pilot's cost will be reimbursed to the pilot.

13.6 Nothing in this clause 13 prevents the pilot and employer entering into an individual return of service or training bond."

If you have any questions in relation to these submissions, please contact Jill Hignett at j.hignett@hrlawyers.com.au.

Jill Hignett
Practice Group Leader
Accredited Specialist (Workplace Relations)
HR LAW

On behalf of Alliance Airlines Pty Ltd

ANNEXURE A

RECENT ENTERPRISE AGREEMENTS

NATIONAL JET EXPRESS PTY. LTD. PILOT ENTERPRISE AGREEMENT 2016 – 2020

PART 6 TRAINING

42. COMMAND POTENTIAL AND/OR AIRCRAFT TYPE CHANGE ASSESSMENT

42.1 The command potential and/or suitability for aircraft type change of a Pilot who has expressed interest in a command position or aircraft type change will be assessed by the Employer.

42.2 The assessment program shall take place in accordance with criteria established and published in Company Operations Manual and shall be based on Pilot suitability, qualifications, experience, skill, operational performance and seniority.

42.3 If a Pilot fails to meet the requirements specified in this command potential and/or aircraft type change assessment the Employer will advise the Pilot of the action the Employer intends to take. A Pilot may request a review of the Employer's decision. The review shall include consideration of the Pilot's suitability for further training or whether the Pilot's employment should be continued at its present status.

43 UPGRADE AND/PR CONVERSION TRAINING

43.1 When vacancies occur within the Employer's operations the Employer may offer a Pilot a conversion, re-conversion or upgrade in accordance with the Training and Development Bonds clause of this Agreement clause 44. After accepting such an offer and whilst undertaking any associated training, the Pilot shall maintain his existing salary until the date of successful completion of their check to line. The appropriate salary for the new position shall be effective from that date.

43.2 Where a Pilot elects for conversion, re-conversion or upgrade training and subsequently fails such training, then the Employer will advise the Pilot of the action the Employer intends to take. A Pilot may request a review of the Employer's decision. The review shall include consideration of the Pilot's suitability for further training or whether the Pilot's employment should be continued at its present status.

43.3 If a Pilot is directed by the Employer to undergo conversion, re-conversion or upgrade training and subsequently fails such training the Pilot shall be reinstated to the previous position or aircraft type or to a position as close as possible if the position is not available.

43.4 A Pilot may be given the opportunity to make two attempts at a clearance to line. A suitable period of training may be given after a failed check. A Pilot may request a change of his Training Pilot and/or Check Captain on any subsequent check. Should a second check result in a failure the Employer will advise the Pilot of the action the Employer intends to take. A Pilot may request a review of the Employer's decision. The review shall include consideration of the Pilot's suitability for further training, or alternatively whether the Pilot's employment should be continued at its present status.

44. TRAINING AND DEVELOPMENT BONDS

44.1 This clause applies to new Pilots requiring initial training and endorsement on the Employer's aircraft types or where a Pilot undertakes training as outlined in this clause, pursuant to Part 6 ("Training"). This clause does not apply where the Employer directs the Pilot to undertake the Training.

44.2 If an existing Pilot does not undertake the Training the Pilot's employment will continue with the Employer in the Pilot's current classification.

44.3 CONDITIONS OF TRAINING

44.3.1 The Employer will provide and fully pay for the Training, nominally valued and agreed to be a value specified separately in a Training Bond Agreement between the Employer and the Pilot as set out in Schedule 3 ("Bonding Agreement").

44.3.2 In return for the benefits of the Training, the Pilot agrees to remain and continue in employment with the Employer for a period not less than the period as specified in the Training Bond Agreement ("Service Period") as set out in Schedule 3. In recognition of the Pilot's previous service contribution, the Service Period in Schedule 3 will be determined by the following scale:

i. 0 to 5 years' service – 3-year Service Period applies
ii. >5 to 10 years' service – 2-year Service Period applies
iii. >10 to 15 years' service – 1-year Service Period applies
iv. >15 plus years' service – 0-year Service Period applies

44.3.3 For the purpose of this sub-clause, the Pilot's previous service contribution means service with the Employer or any related entity (where a related entity has the same meaning as a related corporation in the Corporations Act 2001 (Cth)).

44.3.4 Should the Pilot resign or be dismissed by the Employer for any reason not including sickness, loss of Class 1 Aviation Medical Certificate, redundancy or loss of licence within the Service Period, a pro rata value of the Training based on the Service Period not completed will become due to the Employer ("Debt"). The Debt will be calculated in accordance with the terms of the bonding agreement.

44.3.5 Any Debt incurred by the Pilot under a bonding agreement (whether incurred pursuant to this Agreement or not) with the Employer may be offset and retained by the Employer to be applied to any part of the Debt outstanding to the Employer on the date of termination of the Pilot's employment against any entitlements owed to the Pilot by the Employer upon termination, and the Pilot hereby authorises the Employer to offset, retain and apply any entitlements to the amount remaining of the Debt (if any) as at the date of termination of the Pilot's employment.

44.3.6 The operation of this clause is not intended to affect any contractual right or obligation of the Employer of the Pilot in respect to any previous bonding agreement entered into between them. The clause is intended to operate prospectively in respect to any Training Bond Agreement entered into between the Employer and the Pilot on and from the operative date of this Agreement.

SCHEDULE 3

TRAINING BOND AGREEMENT

I [Pilot Name] have applied to undertake training of a total value as described. In consideration for and as a return of this investment by the Company, I agree to remain employed and render service to the Company faithfully and diligently in accordance with my employment obligations and duties at least for the bonded service period described. I acknowledge and agree that I will pay back any amount owing on a pro-rata basis if I resign or am dismissed by the Employer for unsatisfactory performance or misconduct during the bonded service period using the formula below.

(X divided by Y) multiplied by V where

- X= the number of months service not completed in the service period from commencement of Training
- Y = the total number of months agreed to be served (the Service Period) as part of the bond as defined in this bonding agreement.
- V =the Agreed Bonded Value of the T&D as defined on this bonding agreement (see below).

I agree that any amounts owed to me by the Company upon my departure such as salary or outstanding leave entitlements can/will be deducted from the amount calculated using the formula above and by executing this bonding agreement irrevocably authorise the Company to make such deduction from amounts owed to me consequent upon termination of my employment as provided in this bonding agreement. I further acknowledge and agree that the pro rata calculation of any remaining amount or any shortfall remaining after the deductions provided for above are made will be a personal debt due and owing by me to the Company immediately on termination of my employment payable within 14 days of my separation date. In the event that I default in payment of any amount arising under this bonding agreement due and owing by me to the Company I acknowledge that the Company may sue for recovery of the amount as a debt and that this bonding agreement may be pleaded by the Company as evidence of the debt so due and owing by me to the Company in any court of competent jurisdiction.

This bonding agreement shall be governed and construed in accordance with the laws of the State of South Australia.

Employee Details	
Employee Name:	Staff Number:
Position Title:	Base / Location:
Training Details	
Description of Training:	
Total Value of Training (AUD$):	Agreed Bonded Value of Training: (AUD$):
Employee Details	
Employee Name:	Staff Number:
Position Title:	Base / Location:
Training Details	
Description of Training:	
Total Value of Training (AUD$):	Agreed Bonded Value of Training: (AUD$):
Bond Details	
Bonded Service Period: xx MONTHS	Commencement Date Of Bond: Commencement of Training
Other Comments / Notes	
Approvals	
Employee Signature:	Manager Signature:
General/Executive Manager Signature:	Payroll Process Signature:

In the above Bond Agreement, the Value "V" will be determined by the following table:

Training Type	Value
Jet Aircraft Type Change	$30,000
Jet Command Upgrade on same aircraft type	$15,000
Jet Command upgrade on changed aircraft type	$30,000

VIRGIN AUSTRALIA NARROW BODY AIRCRAFT PILOTS' ENTERPRISE AGREEMENT 2018

PART 12 – OTHER PROVISIONS

71. BOND AND ENDORSEMENT ARRANGEMENTS

71.1 Virgin Australia will pay for endorsement costs and Command Upgrade training for all Pilots as set out below.

71.2 Following an endorsement which Virgin Australia has paid for, Virgin Australia may require that a Pilot:

(a) Be frozen on the aircraft type to which they were endorsed for a minimum of 36 months from the date of successful completion of the initial simulator type and instrument rating check rides; and

(b) Repay $45,000 (on a reducing pro-rata basis, calculated monthly) if their employment with Virgin Australia comes to an end (other than by way of redundancy, for medical or compassionate reasons or retirement) during the 36-month period.

71.3 Following a Command Upgrade, Virgin Australia may require that a Pilot:

(a) Be frozen on the aircraft type for a minimum of 20 months from being checked to line as a Captain; and

(b) Repay $20,000 (on a reducing pro-rata basis, calculated monthly) if their employment with Virgin Australia comes to an end (other than by way of redundancy, for medical or compassionate reasons or retirement) during the 20-month period.

71.4 Virgin Australia will pay for the endorsement costs for all new Pilots to the Group. In return:

(a) These Pilots will be paid a Training Salary that is $15,000 less than the applicable Level 1 First Officer's salary at the time. This Training Salary will be paid for the first year, following which they will be paid the applicable Level 2 First Officer's salary; and

(b) Virgin Australia may require that they:

(i) Be frozen on the aircraft type to which they were endorsed for a minimum of 36 months from the date of successful completion of the initial simulator type and instrument rating check rides; and

(ii) Repay $15,000 (on a reducing pro-rata basis, calculated monthly) if their employment with Virgin Australia comes to an end (other than by way of redundancy, for medical or compassionate reasons or retirement) during the 36-month period.

71.5 To achieve 71.2(b), 71.3(b) and 71.4(b)(ii), Pilots agree that Virgin Australia may apply all of their final pay towards repayment of the unpaid portion of the endorsement costs

and, if the final pay is insufficient to cover this, the Pilot must enter into a repayment agreement with Virgin Australia for the shortfall.

71.6 Virgin Australia may not waive a freeze period described above, except in the following circumstances:

(a) A type freeze can only be waived in circumstances where there are no other suitable applicants on the GDOJ List (who are not frozen) to fill the relevant vacancy;

(b) Waiver of a freeze period will only be permitted where a Pilot has completed two (2) recurrent training program simulator cycles on type, unless otherwise agreed by the AIC; and

(c) In the event of a base closure, type freezes applicable to Pilots who are subject to the base closure will be waived for the purpose of filling positions on another fleet within the affected base.

71.7 For the avoidance of doubt, all freezes imposed under Virgin Australia Short Haul Pilots' Agreement 2013 would remain in place, regardless of whether the type rating was paid for by the Pilot (either directly or by salary sacrifice) or Virgin Australia.

OTHER PROVISIONS

80. BOND AND ENDORSEMENT ARRANGEMENTS

80.1 Virgin Australia will pay for the endorsement costs for all Pilots (either a new employee or an existing employee). In return, Virgin Australia will require that a Pilot:

(a) be frozen on the aircraft type to which they were endorsed and appointed for a minimum of 36 months from the date of successful completion of the initial simulator type and Operator Proficiency Check (OPC);

(b) Repay the endorsement costs of $45,000 (on a reducing pro-rata basis, calculated monthly) if their employment with the Virgin Australia Group comes to an end (other than by way of redundancy, for medical or compassionate reasons or retirement) during the 36-month period;

(c) Agree that Virgin Australia may apply all of their final pay towards repayment of the unpaid portion of the endorsement costs and, if the final pay is insufficient to cover this, the Pilot must enter into a repayment agreement with Virgin Australia for the shortfall.

80.2 Following a command upgrade, Virgin Australia may require that a Pilot:

(a) (Be frozen on the aircraft type for a minimum of 20 months from being checked to line as a Captain; and

(b) Repay $20,000 (on a reducing pro-rata basis, calculated monthly) if their employment with Virgin Australia comes to an end (other than by way of redundancy, for medical or compassionate reasons or retirement) during the 20-month period.

80.3 In the event of replacement aircraft type for which a Pilot will require an endorsement, Pilots will be subject to clause 80.1. In this circumstance, Pilots covered by this Agreement who will reach 65 years within the freeze period will be eligible to transfer to the new Wide body aircraft type.

80.4 A Pilot subject to a bond and freeze period as a result of the introduction of a replacement aircraft type will be eligible to be awarded a position on another aircraft type within the freeze period provided that award results in an improvement in rank. In this event the remaining bond will be waived. The Pilot will be subject to the applicable bond/freeze for the new aircraft type.

80.5 Subject to the provisions of clause (a) and (b) below, Virgin Australia will not waive a freeze period described above unless:

(a) A type freeze can only be waived in circumstances where there are no other suitable applicants on the Pilots' List (who are not frozen) to fill the relevant vacancy; and

(b) Waiver of a freeze period will only be permitted where a Pilot has completed two (2) recurrent training program simulator cycles on type, unless otherwise agreed by the AIC.

66. ENDORSEMENT COSTS AND BONDING

66.1 This clause applies to the cost of the initial type training for new employees.

66.2 Where VARA pays the costs of a Pilot's endorsement training on the aircraft type applicable to the Pilot's initial Equipment Assignment, VARA may require the Pilot to enter into a training bond agreement (which will be legally binding). This training bond agreement may provide:

(a) in exchange for the benefit of VARA paying for the cost of the Pilot's training on their initial Equipment Assignment, the Pilot will remain employed with VARA for the period of three (3) years following commencement of employment, so that VARA receives a reasonable return on investment for the training costs;

(b) if the Pilot resigns from VARA within the three (3) year period, the Pilot will repay a proportion of the following training costs that is commensurate with the proportion of the three (3) year period that has not elapsed:

- Fokker 50- $20,000
- Fokker 100-$25,000
- ATR- $20,000
- Airbus 320- $30,000
- Other type- as agreed with the majority of the representatives on the WRC and, if there is no agreement - $25,000.

66.3 The bond period will have effect from the commencement of employment.

66.4 If the Pilot resigns from VARA within the three (3) year period, nothing in this clause can result in the Pilot having total annual earnings less than they would have had under the relevant Modern Award for the equivalent period of service.

8.4 RELOCATION AND TRAINING BONDS

8.4.1 Where an Employee requests, nominates or elects to accept either Relocation Assistance and/or undertake Training or Development (Training) as outlined in this clause, the Employee acknowledges that he/she has done so voluntarily and that the Employer has not directed them to accept the Relocation Assistance and/or to undertake the Training. The Employee agrees to enter into a Bond in relation to costs associated with the Relocation and or Training.

8.4.2 In the case of an existing Employee, it is agreed that if an Employee does not undertake the Training, the Employee's employment will continue with the Employer in the Employee's current classification.

8.4.3 Conditions of Relocation Assistance. The Employer, at its absolute discretion, may elect to offer Initial Relocation Assistance. Where offered, the Relocation Assistance may be in accordance with either clause 8.4.3.1 below or clause 5.11 herein as part of initial employment placement. Such assistance will be confirmed in a letter of offer.

8.4.3.1 The Employer will reimburse the Employee up to 50% of his/her relocation costs upon production of receipts, up to a maximum value of $5,000.00 for singles and up to a maximum value of $10,000.00 for an Employee moving with dependants, spouses or other immediate family or household members. For the purpose of this clause immediate family and household member has the same meaning as defined in the Act.

8.4.3.2 Where the Company offers, and the Employee accepts, Relocation Assistance at an agreed cost this will be specified in the Bond Agreement between the Employee and the Employer at Schedule 2.

8.4.3.3 In return for the benefits of the Relocation Assistance, The Employee agrees to remain and continue in employment with the Employer for a period not less than the period specified ("Service Period") in the Bond Agreement between the Employee and the Employer.

8.4.3.4 Should an Employee resign or be dismissed by the Employer for unsatisfactory performance or misconduct within the Service Period, a pro rata value of the Bond based on Service Period not completed will become due to the Employer ("Debt 1 "). The Debt 1 will be calculated in accordance with the provisions of the Bond Agreement.

8.4.4 CONDITIONS OF TRAINING

8.4.4.1 The Employer will provide and fully pay for the Training, nominally valued and agreed to be a value ("Value") as specified in the Bond Agreement between the Employee and the Employer at Schedule 2.

8.4.4.2 In return for the benefits of the Training, the Employee agrees to remain and continue in employment with the Employer for a period not less than the period specified ("Service Period") in the Training/Development Bond Agreement between the Employee and the Employer.

8.4.4.3 Should an Employee resign or be dismissed by the Employer for unsatisfactory performance or misconduct within the Service Period, a pro rata value of the Bond

based on Service Period not completed will become due to the Employer ("Debt 2"). The Debt 2 will be calculated in accordance with the provisions of the Bond Agreement.

8.4.4.4 Where an Employee is under more than one (1) Training/Development Bond Agreement, only the last Training/Development Bond Agreement entered into will apply and the first training/development bond shall be deemed to be fully discharged.

8.4.5 It is agreed that Debt 1 and Debt 2 ("Debt") may be offset and retained by the Employer to be applied to any part of the Debt outstanding to the Employer on the date of termination of the Employee's employment against any entitlements owed to the Employee by the Employer upon termination and the Employee authorises the Employer to offset, retain and apply any entitlements to the amount remaining of the Debt (if any) as at the date of termination of the Employee's employment.

8.4.6 Subject to clause 8.4.4.4, the operation of this clause is not intended to affect any contractual rights or obligations of the Employer or of the Employee in respect to any previous Bond entered into between them, meaning that any previous Training/Development Bond ("bond") in place at the time of this Agreement being made will continue in force as described in that Bond to the extent available with consideration to clause 8.4.4.4 above. This clause is intended to operate prospectively in respect to any Bond entered into between the Employer and the Employee on and from the operative date of this Agreement.

SCHEDULE 2: BOND AGREEMENT

I, <Name>, have applied to undertake training/development and/or to seek relocation assistance of a total value as described. In consideration for the benefits and, where applicable, the additional aircraft type rating that I will attain, and as a return of this investment by the Company, I agree to remain employed and render service to the Company faithfully and diligently in accordance with my employment obligations and duties at least for the Service Period described. I acknowledge and agree that I will pay back any amount owing on a pro-rata basis if I resign or am dismissed from employment with the Employer for any reason other than redundancy before the Service Period is complete using the formula below.

(X divided by Y) multiplied by V where

- X= the number of months service not completed in the Service Period from commencement of T&D Bond.

- Y= the total number of months agreed to be served as part of the bond as defined in this T&D Bond Agreement.

- V = the total value of the training and/or relocation assistance as defined on this Bond Agreement.

I agree that any amounts owed to me by the Employer upon my departure such as salary or outstanding leave entitlements can/will be deducted from the amount calculated using the formula above and by executing this Bond Agreement irrevocably authorise the Employer to make such deduction from amounts owed to me consequent upon termination of my employment as provided in this Bond Agreement. I further acknowledge and agree that the pro rata calculation of any remaining amount or any shortfall remaining after the deductions provided for above are made will be a personal debt due and owing by me to the Employer immediately on termination of my employment, which will be due immediately but payable within 14 days of my separation date.

In the event that I default in payment of any amount arising under this Bond Agreement due and owing by me to the Employer I acknowledge that the Employer may sue for recovery of the amount as a debt and that this Bond Agreement may be pleaded by the Employer as evidence of the debt so due and owing by me to the Employer in any court of competent jurisdiction. The applicable workplace agreement provides that Bond Agreement once signed is intended to remain in force unless the parties expressly agree in writing to vary or terminate it, and its operation shall not be affected by the termination or variation of any applicable workplace agreement that applied at the time that this Bond Agreement was entered into.
This Bond Agreement shall be governed and construed in accordance with the laws of the State of South Australia.

Employee Details Details	
Employee Name:	Staff Number:
Position Title:	Base / Location:
Relocation and Training Details	
Description of Training/Relocation:	
Total Value of Relocation Assistance (optional) (AUD$): Total Value of Training (AUD$):	Agreed Bonded Value (AUD$):
Bond Details	
Service Period (Months):	Commencement Date Of Bond:
Other Comments / Notes	
Approvals	
Employee Signature:	Manager Signature:
General/Executive Manager Signature:	Payroll Process Signature:
Date of Processing:	Copy : Employee ☐ Flight Operations ☐ Employee File ☐

16. TRAINING BONDS

16.1. Where a Pilot requests, nominates or elects to undertake training as outlined in this clause, or where the Company has offered conversion, re-conversion or upgrade pursuant to clause 15.1 ("Training"), the Pilot acknowledges that they have done so voluntarily and that the Company has not directed the Pilot to undertake the Training. However, where such training is a condition of employment, or determined by the employer as necessary for employment, including a conversion, re-conversion or upgrade the Pilot shall be deemed to have been directed to undertake the Training

16.2. Where a Pilot does not undertake the Training, the Pilot's employment will continue with the Company in the Pilot's current classification.

16.3 CONDITIONS OF TRAINING

(1) The Company will provide and fully pay for the Training, agreed to be a value specified separately in a Training Bond Agreement between the Company and the Pilot as set out in Schedule 3.

(2) In return for the benefits of the Training, the Pilot agrees to remain and continue in employment with the Company for a period not less than the period as specified in the Training Bond Agreement ("Service Period") as set out in Schedule 3. In recognition of the Pilot's previous service contribution, the Service Period in Schedule 3 will be determined by the following scale:

(a) 0 to 5 years' service - 3-year Service Period applies
(b) >5 to 10 years' service - 2-year Service Period applies
(c) >10 to 15 years' service - 1-year Service Period applies
(d) >15 plus years' service -0-year Service Period applies

For the purpose of this sub-clause, the Pilot's previous service contribution means service with the Company or any related entity (where a related entity has the same meaning as a related corporation in the Corporations Act 2001 (Cwlth)).

(3) Should the Pilot resign or be dismissed by the Company for any reason not including sickness, loss of Class 1 Aviation Medical Certificate, redundancy or loss of licence within the Service Period, subject to the Pilot's rights of review of any dismissal, including appeal rights, a pro rata value of the Training based on the Service Period not completed will become due to the Company ("Debt"). The Debt will be calculated in accordance with the terms of the Training Bond Agreement. Where a Pilot seeks a review of a dismissal the employer shall not be entitled to seek any recovery pending that review, and any appeal right.

(4) Subject to (3) above the Pilot agrees that any Debt incurred by him/her under a Training Bond Agreement with the Company may be offset and retained by the Company to be applied to any part of the Debt outstanding to the Company on the date of termination of the Pilot's employment against any entitlements owed to the Pilot by the Company upon termination, and the Pilot hereby authorises the Company to offset, retain and apply any entitlements to the amount remaining of the Debt (if any) as at the date of termination of the Pilot's employment.

(5) The operation of this clause is not intended to affect any contractual right or obligation of the Company or the Pilot in respect to any previous Training Bond Agreement entered into between them. The clause is intended to operate prospectively in respect to any Training Bond Agreement entered into between the Company and the Pilot on and from the operative date of this Agreement.

(6) If the Training provided, and subject to the Training Bond Agreement is either not provided (partially or fully), or is not Training specified by this Agreement as Training intended to be covered by a Training Bond Agreement the employer shall have no rights pursuant to this clause {16) and the Pilot shall have no obligations with respect to any such Training Bond Agreement.

(7) Schedule 3 of this Agreement prescribes and limits the type of Training provided under this Agreement that would attract, if eligible, a Training Bond Agreement and the maximum value to be attributed for such training.

SCHEDULE 3

TRAINING BOND AGREEMENT

I (Pilot Name] have been assigned by the Company to undertake the herein training of the total agreed value as described in this Training Bond Agreement. In consideration of this training, I shall be trained in accordance with this Training Bond Agreement. In further consideration I agree to remain employed with the Company at least for the return of service period provided for in this Training Bond Agreement. Unless the Company exercises its discretion to waive a part or all of the agreed value or to reduce the effective period of the return of service I acknowledge and agree that I will pay back the amount owing on a pro-rata basis if I resign or am dismissed by the Company for unsatisfactory performance or misconduct during the bonded service period using the formula below, subject to any lawful right of review of that dismissal. Where I seek a lawful review of that dismissal the Company shall not seek to recover any monies pending the resolution of that matter, and any appeal rights the parties may have in relation to it.
In this Training Bond Agreement, the amount owing by me to the Company shall be calculated based on the following formula;

(X divided by Y) multiplied by V where;

- X= the number of months service not completed in the service period from commencement of T&D.
- Y =the total number of months agreed to be served (the Service Period) as part of the bond as defined in this T&D Bond Agreement.
- V =the Agreed Bonded Value of the T&D as defined on this T&D Bond Agreement (see below).

I agree that any amounts owed to me by the Company upon my departure such as salary or outstanding leave entitlements can/will be deducted from the amount calculated using the formula above. I further acknowledge and agree that the pro rata calculation of any remaining amount or any shortfall remaining after the deductions provided for above are made will be a personal debt due and owing by me to the Company which will be payable within 14 days of my separation date or otherwise in accordance with an agreed payment scheme.
Subject to any term to the contrary under this Training Bond Agreement, the Enterprise Agreement, or any statute, in the event that I default in payment of any amount arising under this Training Bond Agreement due and owing by me to the Company I acknowledge that the Company may sue for recovery of the amount as a debt and that this Bond Agreement may be pleaded by the Company as evidence of the debt so due and owing by me to the Company

in any court of competent jurisdiction. The applicable workplace agreement provides that the T&D Bond Agreement once signed is intended to remain in force unless the parties expressly agree in writing to vary or terminate it, and its operation shall not be affected by the termination or variation of any applicable workplace agreement that applied at the time that this T&B Bond Agreement was entered into. However, the Company shall have no rights to enforce this Training Bond Agreement where the Training Bond Agreement does not conform to the terms of the Enterprise Agreement or where the Company does not provide the training in full.
This Training Bond Agreement is subject to, and governed and construed by the Enterprise Agreement, the Fair Work Act 2009 (and its successors) and the laws of the State of South Australia.

Employee Details	
Employee Name:	Staff Number:
Position Title:	Base / Location:
Training Details	
Description of Training:	
Total Value of Training (AUD$):	Agreed Bonded Value of Training: A$_____

Bond Details	
Bonded Service Period: xx MONTHS	Commencement Date Of Bond: Commencement of Training
Other Comments / Notes	
Approvals	
Employee Signature:	Manager Signature:
General/Executive Manager Signature:	Payroll Process Signature:

In the above Bond Agreement, the Value "V" will be determined by the following table:

Training Type	Value
Jet Aircraft Type Change	$30,000
Jet Command Upgrade on same aircraft type	$15,000
Jet Command upgrade on changed aircraft type	$30,000

8.16 RETURN OF SERVICE

8.16.1 The cost of endorsements obtained by pilots employed under this Agreement for the purpose of operating Company aircraft will be paid for by the Company. Pilots recognise that this is a considerable cost and it is a condition of employment that pilots will execute an Endorsement Deed for the applicable aircraft type prior to the commencement of any endorsement training.

8.16.2 Pilots acknowledge that where a pilot terminates their employment, any unpaid amount of any Endorsement Deed sum is a debt due and owing to the Company by the pilot.

8.16.3 In those cases where a pilot's employment has been terminated on grounds of redundancy, retirement from employment as a pilot or on grounds of ill health or similar circumstance, any indebtedness that is owing under an Endorsement Bond shall be waived by the Company.

54.8 TRAINING BOND – NEW PILOT

54.8.1 Where the Company pays the costs of a pilot's endorsement training on the aircraft type applicable to the pilot's initial equipment assignment (training costs), the Company may require the pilot to enter into a training bond agreement (bond agreement). The bond agreement will provide as follows:

54.8.2 In exchange for the substantial benefit of the Company paying the training costs, the pilot will remain employed with the Company for three years from commencement of employment, so that the Company receives a reasonable return on its investment in the training costs;

54.8.3 If the pilot resigns from the Company within the three-year period, the pilot will repay a proportion of the training costs that is commensurate with the proportion of the 3 year period that has not elapsed (repayment).

54.8.4 The amount of the repayment will be calculated for the period commencing from the date upon which the Pilot completed his/her last full month of service with the Company, up until 3 years from the date of commencement with the Company.

54.8.5 A pilot who is employed by the Company after the date of approval of this Agreement will not be subject to an initial Training Bond and will not be required to pay any amount or have any deductions from salary relating to training costs. However, in the event that the pilot assumes a Command position they may be subject to a Command Bond as provided in clause 54.8.6.

54.8.6 INITIAL COMMAND BOND

54.8.6.1 Pilots who are appointed to an initial Command position after this Agreement is approved may be required to enter into a "Command Bond" of $25,000. If the Company requires a Pilot to enter into a Command Bond in accordance with this clause, the Command Bond will be by agreement in writing between the Pilot and the Company, and the Pilot's appointment to a Command position will be conditional upon the Pilot entering into the Command Bond.

54.8.6.2 The Command Bond will apply for a period of two (2) years following the Pilot's appointment to a Command position, reduced each month on a pro rata basis over the two-year period. In the event that the pilot resigns from employment with the Company prior to the expiry of the two-year period, the pilot will be liable to reimburse the Company the remaining (pro-rated) amount of the Command Bond.

54.8.6.3 Pilots will be required to repay any Command Bond owing to the Company within 4 weeks of the date of the pilot's termination from the Company on the grounds of resignation.

15.12 BONDS

Upon commencement of employment a pilot may be bonded by the Company for an amount not exceeding $30,000 to remain in the employ of the Company for a period not exceeding three (3) years. If a pilot terminates his or her employment and as a result fails to serve the required three (3) year period, the amount payable under the bond will be pro-rated to the unexpired period of the bond (unless for compassionate reasons the Company has exercised its discretion to waive the amount or any portion of the amount payable).

PART 8-TRAINING AND RELATED MATTERS

62. TRAINING

62.1 Subject to clause 62.5 below, where the Company requires a pilot to reach and maintain minimum qualifications (including where a pilot has bid for and been allocated a position) for a particular aircraft type, all facilities and other costs associated with attaining and maintaining those qualifications will be the responsibility of the Company.

62.2 Pilots may be required to undertake training to enhance and broaden their work skills as required in their appointed position. By agreement with the Company, a pilot may train for higher or alternative positions. This training will not entitle them to the rate of pay for that higher or alternative position, unless the training is completed and the Company requires the pilot to use such skills in performing certain duties.

62.3 All training required by the Company shall be rostered.

62.4 The Company will not require a pilot to undertake any flight or Standby duties on the same day as any ground training.

62.5 Despite anything contained elsewhere in this Agreement, conversion and upgrade rights will be limited to one (1) Second Officer promotional opportunity to First Officer, one (1) Narrow Body First Officer promotional opportunity to Wide Body First Officer, one (1) Narrow Body command training opportunity, and after becoming a Narrow Body Captain, one (1) Wide Body command training opportunity. However, a Wide Body First Officer may forego their Narrow Body command training opportunity and instead exercise a Wide Body command training opportunity. Any additional opportunities will be at the discretion of the Company. Any movement of category or status at the request of the pilot beyond those referred to in this clause may be at the cost of the pilot.

62.6 Where a pilot wishes to bid back from a Wide Body to a Narrow Body aircraft (excluding Wide Body FO to Narrow Body command), or from command to a lower classification, the request will be subject to a current vacancy at the bid back level and the Company's consent. The cost of any training following being awarded a bid back opportunity may be recovered from the pilot.

62.7 Where training is provided at the cost of the Company, a return of service bond may apply for a term no greater than thirty-six (36) months from the completion of training, for an amount set at the time vacancies are advertised in accordance with clause 62.10. Return of service bonds are not cumulative and do not restrict a pilot from internal promotional opportunities and leave without pay opportunities.

62.8 Notwithstanding clause 62.7 above, a level1 FO or a Wide Body Second Officer will not be required to pay for their initial endorsement training that is requested/required to be undertaken by the Company or be subject to a return of service bond for the initial endorsement training that is requested/required to be undertaken by the Company.

62.9 A return of service bond will not apply where a conversion or transfer is undertaken at the request or direction of the Company.

62.10 Where a pilot is required under clause 62.7 to enter into a return of service bond the maximum bond will be $40,000.

62.11 The amount specified in clause 62.1 0 is the maximum bond amount and the actual bond amount will be dependent on the amount of training required by each pilot. Such amounts will be for the cost of training only and will not include facilitation costs and the like.

62.12 In the event of resignation or termination (excluding redundancy), the pilot may, at the Company's discretion, be required to pay the outstanding pro-rata amount of the training bond to the Company on demand, or by an agreed payment arrangement or by deduction from the final payment of monies.

62.13 The Company may deny a pilot's bid to transfer to another aircraft type if, at the anticipated training commencement date, the pilot would not be able to provide a three (3) year return of service.

3. RECRUITMENT OF GROUP PILOTS TO THE COMPANY

3.1. To be eligible for a command upgrade by progression within the Company, a Group Pilot must be a current First Officer or Captain at another Group Company and have satisfied the promotional criteria defined in the relevant operational manual and any selection process under this Agreement.

3.2. Any progression by a Group Pilot to a vacant position within the Company will be subject to successful completion by the pilot of the applicable recruitment process for the vacant role including as set out in Appendix A to this Agreement. This process may consider the pilot's performance whilst employed by a Group Company but will not involve psychometric testing (unless there is a regulatory or requirement under this Agreement to conduct this testing).

3.3. As part of this process, should a Group pilot fail to qualify on their new aircraft type or rank with the Company, they will be subject to the applicable process under this Agreement and relevant operational manuals. By agreement between the Company, the relevant Group company and the Group Pilot, in this circumstance the pilot may be re-employed by the relevant Group company.

3.4. A Group Pilot who transfers employment from another Group Company to the Company will be frozen on aircraft type for three (3) years from the date of entry into the cyclic proficiency program. However, this does not preclude a First Officer from bidding for a command on the same aircraft type within the Company.

3.5. If a Group Pilot becomes employed by the Company due to their progression to a vacant position within the Company pursuant to the operation of the Virgin Australia Group Pilots' List the Company or a Group Company will pay the cost of that pilot's endorsement training.

3.6. If:

3.6.1. the Company or a Group Company on behalf of the Company pays the cost of a Group Pilot's endorsement training; and

3.6.2. the pilot resigns from his/her employment with the Company (other than as a result of medical or age retirement) within three (3) years following the date of their entry into the cyclic proficiency program, the pilot must pay the Company a proportion of the training bond of $45,000 that is commensurate with the proportion of the 3 year period that has not elapsed.

3.7. Further, the pilot must enter into a legally binding training bond agreement reflecting the terms outlined in clauses 3.6 above.

3.8. Nothing in clause 3.6 above will result in a pilot having total annual earnings less than they would have had under the relevant Modern Award for the equivalent period of service.

HISTORICAL ENTERPRISE AGREEMENTS

AIRLINE PILOTS' (TAA) AGREEMENT 1975

Q. The employer may require a pilot on initial employment and a First Officer about to undergo initial jet conversion to enter a bond not to engage in employment as a pilot with another employer for the periods specified below:

(a) The period for initial employment shall be eighteen (18) months and the amount of the bond shall not exceed $ 1,200.

(b) The period for initial jet conversion shall be six (6) months following the first day of in-flight training, and the amount of the bond shall not exceed $2,000.

(c) In the event that a pilot fails to serve the required period under (a) and (b) the amount payable under the bona shall relate to the unexpired period of the bond.

AIRLINE PILOTS' (TAA) AGREEMENT 1976

C. Bond

The employer may require a pilot in initial employment and a First Officer about to undergo initial jet conversion to enter a bond not to engage in employment as a pilot with another employer for the periods specified below;

(a) The period for initial employment shall be eighteen (18) months and the amount of the bond shall not exceed $1200.

(b) The period for initial jet conversion shall be six (6) months following the first day of in-flight training, and the amount of the bond shall not exceed $2000.

(c) In the event that a pilot fails to serve the required period under (a) and (b) the amount payable under the bond shall relate to the unexpired period of the bond.

AIRLINE PILOTS' (TAA) AGREEMENT 1978

C. Bond

The employer may require a pilot on initial employment and a First Officer about to undergo initial jet conversion to enter a bond not to engage in employment as a pilot with another employer for the periods specified below:

(a) The period for initial employment shall be eighteen (18) months and the amount of the bond shall not exceed $1200.

(b) The period for initial jet conversion shall be six (6) months following the first day of in-flight training, and the amount of the bond shall not exceed $2000.

(c) In the event that a pilot fails to serve the required period under (a) and (b) the amount payable under the bond shall relate to the unexpired period of the bond.

AIRLINE PILOTS' (TAA) AGREEMENT 1979

Bond

C. The employer may require a pilot on initial employment and a First Officer about to undergo initial jet conversion to enter a bond not to engage in employment as a pilot with another employer for periods specified below:

(a) The period for initial employment shall be eighteen (18) months and the amount of the bond shall not exceed $1200.

(b) The period for initial jet conversion shall be six (6) months following the first day of in-flight training, and the amount of the bond shall not exceed $2000.

(c) In the event that a pilot fails to serve the required period under (a) and (b) the amount payable under the bond shall relate to the unexpired period of the bond.

AIRLINE PILOTS' (TAA) AGREEMENT 1981

Bond

C. The employer may require a pilot on initial employment and a First officer about to undergo initial jet conversion to enter a bond not to engage in employment as a pilot with another employer for periods specified below:

(a) The period for initial employment shall be eighteen (18) months and the amount of the bond shall not exceed $1200.
(b) The period for initial jet conversion shall be six (6) months following the first day of in-flight training, and the amount of the bond shall not exceed $2000.
(c) In the event that a pilot fails to serve the required period under (a) and (b) the amount payable under the bond shall relate to the unexpired period of the bond.