

Our ref: KZS\LGR\1000 041 081

18 December 2019

AM2018/14 – AIR PILOTS AWARD 2010

SUBMISSIONS ON BEHALF OF QANTAS GROUP

1. These submissions are made on behalf of the Qantas Group in respect of a training bond clause to be included in the exposure draft of the *Air Pilots Award 2010* (**Award**), pursuant to the directions dated 4 December 2019.

Background

2. The Qantas Group supports the inclusion of a training bond clause in the Award. Employers incur significant costs associated with training pilots. The use of training bonds is an integral aspect of securing a pilot's service for the period of the bond, or alternatively to recovering a portion of the training costs incurred where a pilot ceases employment before the expiration of the bond. We refer to and support the submissions of Alliance Airlines and Regional Aviation Association of Australia in respect of why the inclusion of such a clause in a modern award is consistent with the modern awards objective.¹
3. A training bond clause in the Award will set the minimum terms and conditions for a training bond clause which can be negotiated through enterprise bargaining, subject to passing the better off overall test. Such a clause is intended to serve as the benchmark for enterprise bargaining, not the high watermark.
4. It is in this context that the training bond proposals put forward by the parties should be considered.
5. There is broad support amongst all stakeholders that the Award should be varied to include a training bond clause. Since the training bond proposal put forward at the hearing on 12 November 2019 (**November Proposal**), the stakeholders have been able to narrow the issues in dispute.
6. The Qantas Group proposes minor amendments to the November Proposal, in the form set out below (**Qantas Group Proposal**). In our submission, the Qantas Group Proposal has regard to and represents a fair balance of the various competing interests.

Qantas Group Proposal

7. The Qantas Group Proposal is set out below. The text shown in underlining (including the deletion of text) indicates where the Qantas Group Proposal differs from the November Proposal:²

13. Training—classifications

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

¹ Alliance Airlines amended outline of submissions dated 12 August 2019 at [7]-[8], [34]-[41]; Regional Aviation Association of Australia submissions dated 21 February 2019 at [4].

² No changes have been made to clauses 13.1 to 13.5 of the exposure draft of the Award (16.1 to 16.5 of the current Award).

13.2 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.

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, prior to commencing employment, during training period will be recognised and any training required to be conducted at the employee's cost will be reimbursed to the pilot.

13.6(1) An employer and a pilot may, by agreement, enter into a training bond whereby the costs of training which have been or are to be borne by the employer may be recovered from the pilot if the pilot ceases to be employed by the employer within a period of time agreed between the pilot and the employer, subject to the following:

- (a) The Training Bond must be agreed between the employer and an individual pilot.
- (b) The Training Bond must be in writing, specify the amount of the bond, and be signed by the pilot prior to commencing training.
- (c) The maximum term of the Training Bond will be two (2) years for piston engine/turbo prop aircraft and three (3) years for jet aircraft.
- (d) The training bond amount cannot exceed fifty percent (50%) of the actual cost of the training.
- (e) The Training Bond amount reduces on a monthly pro rata basis over the term of the Training Bond from ~~the commencement of training when the pilot successfully checks to line.~~
- (f) A pilot can only be subject to one Training Bond at a time. Where a pilot is subject to one Training Bond and subsequently enters into another, the bonds are not cumulative and the highest value Training Bond will apply.
- (g) The employer can only recover an amount payable under a Training Bond where the pilot resigns, or their employment is terminated for serious misconduct.
- (h) No amount can be recovered in the case of redundancy, loss of medical licence by the pilot, termination of employment by the employer (except in the case of serious misconduct) or where the Pilot fails the training course.
- (i) A Training Bond cannot be entered into in circumstances where an employer directs a pilot to undertake training.

13.6(2) For the avoidance of doubt, a Training Bond can only be entered into between an employer and a pilot in respect of:

- (a) Class and type rating training necessary to operate a particular aircraft, including the aircraft type for which the pilot was initially employed (including pre-employment training) and ~~initial class and subsequent~~ type rating training} for additional aircraft types; and
- (b) Upgrade training involving a (change in rank and/or type status training); and
- (c) Downgrade training involving a change in type.

13.6(3) For the purposes of clause 13.6(1)(d), the "actual cost of the training" means all direct costs to the organisation associated with, or in connection with, providing a pilot with the training the subject of the bond, including:

- Operational costs of flying the aircraft in non-revenue operations
- Internal and external training provider costs
- Cost of simulator and other training devices

- [Ground school training costs](#)
- [Facility hire costs](#)
- [Personnel related costs for the trainee while undertaking full-time training](#)
- [Administrative costs of collating the required documentation to meet CASA regulations](#)
- [Cost of materials \(operational documentation and devices\) provided to the trainee.](#)

Areas of difference between the Proposals

8. We address the areas of difference between the November Proposal and the Qantas Group Proposal below.

Clause 13.6(1)(e): The amount of the bond should reduce from check to line

9. We submit that clause 13.6(1)(e) of the Award should provide that the amount of a training bond starts to reduce when the pilot successfully checks to line, and not earlier. By way of context, an employer only starts to receive a return on its investment for the pilot's training costs when the pilot completes the training the subject of the bond and successfully checks to line.
10. This approach is consistent with a number of enterprise agreements made and approved in accordance with the *Fair Work Act 2009* (Cth) – see for example:
- (a) clause 62.7 of the Jetstar Airways Pilots Enterprise Agreement 2015 (**Jetstar Agreement**);
 - (b) clause 54.8.6.2 of the Sunstate Airlines (Qld) Pty Limited Pilots Enterprise Agreement 2015;
 - (c) clauses 57.7.1 and 57.7.3(b) of the Eastern Australia Airlines Pty Limited Pilots Enterprise Agreement 2015.

These training bond provisions are extracted in **Attachment A** to these submissions, and are contained in Annexures C, D and J of the statement of Matthew Tsai dated 13 February 2019.

11. The effect of clause 13.6(1)(e) of the November Proposal is to reduce the training bond period, given the amount of the bond starts to reduce from the commencement of training. In some cases, this could be a reduction of the training bond period by more than three months. Coupled with the limitation on recovering a maximum of 50% of the cost of the training (see clause 13.6(1)(d) of the Proposals), this represents an unnecessary restriction on what should reflect minimum terms and conditions. If a party wishes to press for bespoke training bond features, this is more appropriately achieved through enterprise bargaining than the modern award review process.

Clause 13.6(2)(b): Downgrade training should be able to be bonded

12. The November Proposal limits the type of training which can be bonded. Clause 13.6(2)(b) of the November Proposal provides that a training bond can only cover "upgrade training".
13. The Qantas Group Proposal adopts a different formulation, which would cover both:
- (a) upgrade training involving a change in rank and/or type; and
 - (b) downgrade training involving a change of type.

14. "Upgrade training involving a change in rank and/or type" could include, for example, a move from First Officer on a wide body aircraft to Captain on the same wide body aircraft (change in rank), or a move from First Officer narrow body to First Officer wide body (change in type). The word "status" in the November Proposal has been replaced with "type" in the Qantas Group Proposal because we are unsure what "status" is intended to encompass and think it should be a reference to "type".
15. "Downgrade training involving a change of type" occurs where, for example, a pilot elects to bid back from a wide body aircraft to a narrow body aircraft. Reasons for this could include that the pilot no longer meets the international age restrictions for wide body aircraft. This is a common feature of the industry and a pilot's transition to retirement. If the pilot is successful in the bid back, the pilot must undergo training for the different aircraft type (which may be re-endorsement training depending on the circumstances). In our submission, the modern award should cater for this circumstance. An example of this is in clause 62.6 of the Jetstar Agreement, which is extracted in Attachment A to this document.
16. The "downgrade" wording is included in the Qantas Group Proposal for the avoidance of doubt. In our view, downgrade training involving a change of type is already encompassed by "class and type rating training necessary to operate a particular aircraft", see clause 13.6(2)(a) of the Qantas Group Proposal. However, for certainty, we propose that clause 13.6(2)(b) specifically refer to "downgrade training involving a change of type".

Clause 13.6(3): All direct costs should be included in the definition of "actual cost of the training"


17. Clause 13.6(1)(d) of the November and Qantas Group Proposals limit the training bond amount to no more than 50% of the "actual cost of the training". During the hearing on 12 November 2019, the stakeholders were requested to consider and propose a definition of "actual cost of training".
18. The cost of training will vary depending on, for example, the type and duration of the training and the employer or third party providing the training. The type and amount of training costs also change over time, including because of advances in technology.
19. In these circumstances, we propose that the list of training costs to be included is a non-exhaustive list. This is consistent with the definition of "actual cost of training" included in the example clause provided by the Office of the Employment Advocate in December 2005. The correspondence from the Office of the Employment Advocate and example training bond clause is extracted at **Attachment B** to these submissions, and is annexed to the witness statement of Simon Jon Lutton dated 13 February 2019 and marked "Attachment B".³
20. In our submission, the definition of "the actual cost of training" should include all direct actual costs of training incurred by the employer for providing the training, to be determined at the time the training is provided. This includes each of the costs listed in clause 13.6(3) of the Qantas Group Proposal, where applicable.

Next steps

21. We respectfully request that we be given an opportunity to file submissions in reply to any training bond proposal put forward by another party on 27 December 2019. We request

³ The witness statement of Simon Jon Lutton dated 13 February 2019 is "Exhibit 1" in the hearing on 12 November 2019.

this with a view to attempt to further refine and narrow the remaining issues in dispute, should that be possible.

A handwritten signature in black ink, appearing to read 'Ashurst', written in a cursive style.

ASHURST AUSTRALIA

18 December 2019

ATTACHMENT A

1. Jetstar Airways Pilots' Enterprise Agreement 2015

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 level 1 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.

2. Sunstate Airlines (QLD) Pty Limited Pilots Enterprise Agreement 2015

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.

3. Eastern Australia Airlines Pty Limited Pilots Enterprise Agreement 2015

57.7. Training and Command Bonds

57.7.1. Where the Company pays the costs of a pilot's endorsement training on the aircraft type applicable to the employee'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:

a) 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 Eastern receives a reasonable return on its investment in the training costs;

b) 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 three year period that has not elapsed (repayment).

57.7.2. 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 57.7.3.

57.7.3. Initial Command Bond

a) 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.

b) 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.

c) 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.

ATTACHMENT B



Australian Government

Office of the Employment Advocate

Alisanne Ride
Workplace Relations Adviser

GPO Box 9842 Perth WA 6848
11th Floor, QY1 Building, 250 St. Georges Terrace
Perth WA 6000
Phone: 08 9464 5408 Mobile: 0409 118 178
Fax: 08 9464 5404 Email: alisanne.ride@oea.gov.au



Australian Government

Office of the Employment Advocate

7/12/07
Slapan

Dear Mr Higgins,
Please find attached the draft
policy. Please get back to me
with your comments as soon as possible.
Regards,
Alisanne Ride

Training bonds in the Aviation Industry

In the interests of achieving consistency and fairly applying the no-disadvantage test an industry wide approach is to be adopted with regard to assessing the value of the training bond and the training bond clause.

The OEA's policy is as follows:

Training bond policy

This policy applies if:

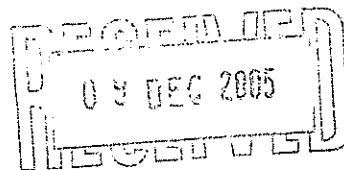
1. A training bond clause is contained within an AWA for flight crew.
 - a. The classification of flight crew includes the classifications of pilot and first officer.
2. The employee is a permanent employee.

Definitions

1. *'Registered training provider'* is defined as a training provider that is registered in accordance with the Australian Recognition Framework as a provider of particular vocational education and training by a training recognition authority of a State or Territory.
2. *'Training provider'* is defined as a person who, or entity that, provides vocational education and training.
3. *'Proficiency or Re-currency Training'* is defined as the training undertaken by the employee to maintain the employee's current skill set and level.
4. *'Check to line'* is defined as any formal test or other assessment conducted by, or on behalf of, the company towards a pilot being cleared to line duties.

Features of a training bond clause

1. The training 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.
2. Training is to be distinguished for the purposes of whether the employee undertakes the training on a voluntary or directed basis.
3. A return of service obligation is applicable for employees who undertake voluntary training.
 - a. The maximum Return of service obligation period (ROSOP) is two years for turbo-prop and piston equipment.
 - i. The return of service obligation diminishes over the period of two years in line with the following:



0-6 months since commencement of training – 50% of the training¹
6-12 months since commencement of training – 37.5% of the training
12-18 months since commencement of training – 25% of the training
18-24 months since commencement of training – 12.5% of the training

- b. The maximum ROSOP is three years for jet endorsements.
- i. The return of service obligation diminishes over the period of three years in line with the following:

0-6 months since commencement of training – 50% of the training²
6-12 months since commencement of training – 41.67% of the training
12-18 months since commencement of training – 33.33% of the training
18-24 months since commencement of training – 25% of the training
24-30 months since commencement of training – 16.67% of the training
30-36 months since commencement of training – 8.33% of the training

- c. The return of service obligation operates from the day training is commenced by the employee.
4. The actual cost of the training be stated in a monetary amount in the agreement.
- a. The employee is to be informed prior to undertaking training of the actual cost of the training.
- b. The actual cost of the training does not incorporate the cost of re-currency or proficiency training of the employee.
5. An exemption clause be provided to enable employees to be prematurely released from the bond for extenuating circumstances that are beyond the control of the employee.
6. The training bond may be waived or reduced by the employer at anytime at the employer's discretion.
7. Casual employees are excluded from the provisions of training bonds.

Factors considered in determining the training bond features and value

The OEA has determined these features after considering many factors including:

- o Relevant determinations by the Australian Industrial Relations Commission, State Magistrates Court and Federal Court of Australia.
- o The arguments put forward by industry stakeholders such as employers, industry associations, bargaining agents and employee associations.
- o Previous AWAs and assessments done by the OEA
- o The age, classification, permanency and income levels of the employees in the relevant industry

¹ Current AWAs with training bonds provide for a starting point of 100% of training costs to be paid by the employee in the event of the employee leaving the employers employment. The reasoning behind utilising the starting point of 50% lies with current NDT assessment practices of halving the training cost of the bond and placing the halved value under the Award side of the NDT.

² as per above.

Disagreement with the training bond features and valuation

If the employer or employee disagrees with the OEA features and valuation, then the matter will be forwarded to the DEA for a decision

DEA decisions will be recorded to allow for assistance in future decisions.

Example clause

1. The training 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.
2. Where the employee is directed to take on training then the employer will bear the costs of the employees training.
3. Where the employee voluntarily undertakes training to the mutual benefit of the employee and the employer:
 - a. the employee will bear up to 50% of the cost of the employee's training in the event that the employee leaves the employer's employment within the Return of Service Obligation Period (ROSOP).
4. A return of service obligation is applicable for employees who undertake voluntary training.
 - a. The ROSOP operates for a maximum period of:
 - i. two years for turbo-prop and piston equipment;
 - b. The return of service obligation diminishes over the period of two years in line with the following:
 - 0-6 months since commencement of training – 50% of the training;
 - 6-12 months since commencement of training – 37.5% of the training;
 - 12-18 months since commencement of training – 25% of the training;
 - 18-24 months since commencement of training – 12.5% of the training
 - c. The return of service obligation operates from the day training is commenced by the employee.
5. The actual cost of the training comprises the direct costs to the organisation of the endorsement of the employee as specified in Table below. The direct costs to the organisation include:
 - i. The direct operational costs of flying the aircraft;
 - ii. The cost of providing a trainer,
 - iii. The administrative costs of collating the required documentation to meet CASA obligations;
 - b. The employee is to be informed prior to undertaking training of the actual cost of the training.
 - c. The actual cost of the training does not incorporate the cost of re-currency or proficiency training of the employee.

Endorsement classification	Costs	ROSOP
Cessna 402 Captain	\$3,000.00	2 years
Cessna 441 Conquest Captain	\$12,000.00	2 years
Fairchild Metro Series First Officer	\$11,000.00	2 years
Fairchild Metro Series Captain	\$20,000.00	2 years
Embraer Brasilia first Officer	\$18,000.00	2 years
Embraer Brasilia Captain	\$25,000.00	2 years
Dash 8 First Officer	\$18,000.00	2 years
Dash 8 Captain	\$25,000.00	2 years

6. An employee may be prematurely released from the bond for extenuating circumstances that are beyond the control of the employee.
 - a. An extenuating circumstance may include but is not limited to:
 - i. Ill health
 - ii. Redundancy
 - iii. Occupational, health and safety
 - iv. Termination of employment at the employer's initiative (except for termination for serious misconduct)
 - b. Where the employee requests to be prematurely released from the bond for medical reasons, the employer is to be provided with documented evidence such as the non-renewal of the aviation medical certificate.
 - c. The employee may be requested to provide documented evidence to the employer for the extenuating circumstance that requires the employee to be prematurely released from the bond.
 - d. Where the employee requests to be released due to occupational, health and safety reasons, this will be subject to a determination by State or Territory Occupational, Health and Safety Department or Body.
7. The training bond may be waived or reduced by the employer at anytime at the employer's discretion.
8. The endorsement classification and actual cost of training applicable to this Agreement for the employee are as follows:

Endorsement Classification	Metro 23 Captain
ROSOP	2 years
Training Costs	\$20,000.00
Total:	\$20,000.00