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Subject: AM2018/14 - Four Yearly Review of Modern Awards - Air Pilots Award 2010

Dear Associate

Attached for filing is the:

- Witness Statement of Christopher Hine; and
- Outline of Submissions in Reply to the AFAP's Submissions,

dated 29 March 2019 and filed on behalf of Regional Express Group of Companies in respect of matter AM2018/14 - Four Yearly Review of Modern Awards - Air Pilots Award 2010, in accordance with Order 2 of the Directions issued on 18 December 2018.

We note that our client was granted an extension of time to file materials by 4.00pm on 29 March 2018 in the [attached email](#) from chambers on 25 March 2019.

The other parties are copied into this communication for the purpose of service.

Kind regards

Alana Hudson, Lawyer

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IN THE FAIR WORK COMMISSION

Title of Matter: Four Yearly Review of Modern Awards
Section: s. 156 - 4 yearly review of modern awards
Subject: Air Pilots Award 2010 - Substantive Issues

OUTLINE OF SUBMISSIONS IN REPLY TO AFAP'S SUBMISSIONS

A. BACKGROUND

1. This outline of submissions is made on behalf of the Regional Express Group of Companies (**Rex**), comprising Regional Express Holdings Pty Ltd, trading as Regional Express Airlines, Pel-Air Aviation Pty Ltd (**Pel-Air**) and the Australian Air Pilots Academy (**AAPA**).
2. On 18 December 2018, Vice President Catanzariti issued Directions in this matter (AM2018/14) (**Directions**), which amongst other things directed:
 - (a) any party seeking amendments to clause 16 of the *Air Pilots Award 2010* (**Pilots Award**) to file and serve an Form F46 Application outlining the grounds of those amendments by 4:00pm on Wednesday, 16 January 2019 (**Order 1**);
 - (b) 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 those applications by 4:00pm on Wednesday 2019 (**Order 2**); and
 - (c) any party wishing to respond to the material filed and served pursuant to Order 2 of the Directions to file and serve any outline of submissions and any evidence on which it relies by 4:00pm on Wednesday, 27 March 2019 (**Order 3**).
3. Pursuant to Order 1, the Australian Federation of Air Pilots (**AFAP**) filed its Form F46 Application on 13 January 2019 seeking a variation to clause 16.2 of the Pilots Award. On the same dated, Alliance Airlines Pty Ltd (**Alliance**) and the Regional Aviation Association of Australia (**RAAA**) each filed a Form F46 Application seeking a number of variations to clause 16 of the Pilots Award. The variations sought by Alliance and the RAAA are in identical terms.
4. Pursuant to Order 2, on 13 February 2019, HR Law on behalf of Alliance and the AFAP each filed and served an outline of submissions and evidence in support of their respective

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Applications. Further, during the period 13 February 2019 and 21 February 2019, the Regional Aviation Association of Australia (**RAAA**), of which Rex is a member, filed and served its outline of submissions and evidence in support of its Application.

5. Pursuant to Order 3, on 27 March 2019, HR Law on behalf of Alliance filed and served an outline of submissions and evidence responding to the material filed by both the AFAP and RAAA in accordance with Order 2, and on 28 March 2019, the AFAP also filed and served an outline of submissions and evidence responding to the material filed by both Alliance and the RAAA in accordance with Order 2.
6. On 25 March 2019, Vice President Catanzariti granted an extension of time to Rex until 4:00pm on Friday, 29 March 2019, in respect of Order 3.
7. This outline of submissions and the supporting Witness Statement of Christopher Hine are therefore filed on behalf of Rex in response to the outline of submissions and evidence filed by the AFAP on 13 February 2019 in support of its Application.
8. Rex acknowledges that the Application made by the RAAA in the proceedings, and the outline of submissions and evidence filed and served by the RAAA in support of that Application during the period 13 February 2019 and 21 February 2019, were made on behalf of Rex as a member of the RAAA. However, Rex also wishes to respond in its own right as an employer in the industry to the materials filed by the AFAP in support of its Application.

B. OVERVIEW OF REX'S POSITION

9. Rex supports the Applications made by both the RAAA and Alliance, both of which are seeking variations to the Pilots Award in identical terms. Rex also supports the various outlines of submissions and evidence filed and served by those parties in support of their respective Applications and in response to the AFAP's Application.
10. Rex opposes the Application made by the AFAP and, in particular the specific variation being sought by the AFAP to clause 16.2 of the Pilots Award (**the Training Variation**). The reasons for such opposition and Rex's response to the matters set out in the outline of submissions and evidence filed by the AFAP in support of its Application are set out in Part C below.
11. Rex submits that the Application made by the AFAP should be dismissed and that the variations sought by both the RAAA and Alliance should be made to the Pilots Award. To the extent that the Commission is minded to make variations to clause 16 of the Pilots Award but in terms different to those proposed by the parties, Rex seeks to be heard further on alternative wording.

C. RESPONSE TO THE AFAP'S APPLICATION AND MATERIALS IN SUPPORT

12. The AFAP is seeking a variation to clause 16.2 of the Pilots Award as follows:

Where the employer requires a pilot to reach and maintain minimum qualifications for a particular aircraft type in accordance with this award (including qualifications imposed by a regulatory body necessary for a pilot to perform the duties required by the employer), all facilities and other costs associated with attaining and maintaining those qualifications will be the requirements of the employer.

13. The AFAP does not seek any other variations to clause 16 of the Pilots Award.
14. The AFAP claim that the proposed variation is to remove an ambiguity or uncertainty and only seeks to clarify clause 16.2's intended meaning. For the reasons set out below, Rex disagrees with this assertion and with the variation sought.

Variation creates further ambiguity and uncertainty

15. The variation sought by the AFAP does not clarify the intended operation of clause 16.2 as submitted by the AFAP but rather creates further ambiguity and uncertainty as to what costs an employer is obliged to pay pursuant to that clause. In particular:
 - (a) the words proposed to be included in clause 16.2 are extremely broad and general in nature;
 - (b) there is no clarity or certainty about exactly what "qualifications imposed by a regulatory body" are intended to be captured by this clause and the AFAP have not provided any further clarity or certainty about these matters (perhaps deliberately so) in their submissions and evidence;
 - (c) it is unclear whether the employer is liable for the costs associated with attaining and maintaining the qualifications imposed by a regulatory body necessary for a pilot to perform the duties required by the employer (for example, a commercial pilots licence) but where the employer expects that the pilot has such qualifications prior to commencing employment;
 - (d) what regulatory body is being referred to, is it just the Civil Aviation Safety Authority (**CASA**) or does it include other regulatory bodies, including any international regulatory.
16. Clarity and certainty in relation to these matters is particularly important in circumstances where the evidence of Mr Hine (and other witnesses on behalf of Alliance and RAAA) demonstrate that:
 - (a) there is a wide range of training, security, medical, experience and licensing requirements associated with becoming a commercial pilot which are imposed by CASA;

- (b) most of these requirements will be considered necessary for the pilot to perform the duties required of them by their employer yet a number of them may be qualifications that the pilot obtains prior to commencing employment with the employer and/or are qualifications which the employer does not expressly require or direct the pilot to obtain or maintain to either commence or remain in employment with the employer; and
 - (c) the costs associated with reaching and maintaining these qualifications are significant.
17. The variation proposed by the AFAP will not aid in certainty of clause 16 of the Pilots Award and will actually increase the uncertainty as to which training it applies to. Taken at its least favourable the variation could significantly increase the costs required to be incurred by an employer in employing a new pilot including costs associated with obtaining qualifications going back years prior to the employment commencing, over which the employer has no control.
18. Such a variation does not meet the modern award objective in Section 134(1) of the *Fair Work Act 2009*, in particular taking into account sub-sections (b), (c), (d), (f) and (g).

Variation is inconsistent with intended operation and existing practice

19. The proposed variation is not consistent with the intended operation of clause 16.2 and the way in which the clause has been consistently applied by employers in the past.
20. Rex adopts the submissions of Alliance made on 27 March 2019 in respect of the historical application of the Pilots Award by employers. We note that the evidence of Mr Hine is consistent with this analysis.

D. RESPONSE TO APPLICATIONS AND MATERIALS FILED BY ALLIANCE AND RAAA

21. As noted in paragraph 9 and 11 above, Rex supports the applications made by Alliance and the RAAA and supports and adopts the submissions those parties have filed. Rex submits, further and in response to those submissions, that:
- (a) the ability of an employer and a pilot to enter into a training bond is of critical importance to the viability of regional airlines, including Rex;
 - (b) if the types of training covered by clause 16 of the Pilots Award are not both clearly identified and appropriately limited, the costs to employers of employing pilots will increase and will affect the viability of regional airlines;
 - (c) If employers cannot enter into training bonds to ensure a return on investment for the costs incurred this will affect the viability of regional airlines; and

- (d) if the Pilots Award does not expressly identify that training bonds can be entered into the ability to include those training bonds in enterprise agreements will be questioned. This will discourage collective bargaining and will risk employment opportunities.

22. These submissions are consistent with and supported by the evidence of Mr Hine in the witness statement filed by Rex. As Mr Hine makes clear:

- (a) there are many costs that are incurred by a person wishing to become a pilot. Rex submits that this is no different from any other profession, many of which require significant costs of training or education and many years of practical experience which are borne by the person not a future employer;
- (b) only some of those costs should be payable by the employer - Rex has and does pay for those costs that directly relate to endorsement for the aircraft type that the employer operates and company specific training; and
- (c) if training bonds were not allowed, or the costs the employer must pay were increased this may affect the viability of Rex and other regional airlines. The viability of regional airlines is important to maintaining necessary and vital air services to regional and remote communities throughout Australia.

E. CONCLUSION

23. For the reasons set out above, the variations sought by the AFAP to clause 16.2 of the Pilots Award should not be adopted and the AFAP's Application in that regard should be dismissed. Instead, the variations proposed by both Alliance and the RAAA to clause 16 of the Pilots Award should be adopted as such amendments clarify the ambiguity or uncertainty associated with clause 16 of the Pilots Award, reflect the existing and long-standing practice of employers in the industry as to the training costs required to be paid by employers and the ability to enter into training bonds pursuant to provisions contained in enterprise agreements (which has been done with the agreement of the AFAP).

24. In the event that the Commission is minded to make variations to clause 16 of the Pilots Award but in terms different to those proposed by the parties, Rex seeks to be heard further on any proposed alternative wording.

Clayton Utz
Solicitors for Rex Group of Companies
29 March 2019

IN THE FAIR WORK COMMISSION

Title of Matter: Four Yearly Review of Modern Awards
Section: s. 156 - 4 yearly review of modern awards
Subject: Air Pilots Award 2010 - Substantive Issues

WITNESS STATEMENT OF CHRISTOPHER HINE

I, Christopher Hine, Executive Director and Group Flight Operations Advisor, Regional Express Holdings Limited (**Rex**), care of 81 to 83 Baxter Road, Mascot in the State of New South Wales, STATE AS FOLLOWS:

1. I am currently employed as the Rex Group Flight Operations Advisor. I am also a director on the Rex Board and Executive Chairman of the Australian Airline Pilot Academy (**AAPA**). I have been a Director of Rex since 1 March 2011. In this capacity, I am also a member of the Board Safety and Risk Management Committee.
2. I make this statement on behalf of the Rex Group (comprising Rex, Pel-Air Aviation Pty Ltd and AAPA).

Overview of Rex Operations

3. Rex was established in 2002 and operates Australia's largest independent regional airline. Rex operates in New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania with a fleet of approximately 57 SAAB 340 aircraft and a range of smaller aircraft operated by subsidiaries. Rex provides essential affordable passenger and cargo air transport to regional Australia. Rex currently has scheduled routes to and from 7 major domestic ports - Melbourne, Townsville, Sydney, Adelaide, Cairns, Brisbane and Perth - and approximately 53 smaller regional ports across New South Wales, North Queensland, South Australia, Victoria, Western Australia and Tasmania.
4. Prior to 2002 the core of the business now operated by Rex was operated by two airlines, Kendall Airlines and Hazleton Airlines, both of which were part of the Air New Zealand / Ansett Australia Group. The Australian operations of the Air New Zealand / Ansett Australia Group were put into voluntary administration by Air New Zealand in September 2001 and Kendall Airlines and Hazleton Airlines were bought out of administration by a group of investors who formed Rex in 2002. In doing so the investors, including the Executive Chairman, Mr Lim Kim

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Hai, risked many millions of dollars to save hundreds of jobs of Kendall Airlines and Hazleton Airlines employees and ensure that many regional Australian communities would continue to have access to air services.

5. In FY17/18, Rex transported over 1.2 million passengers across Australian regional aviation routes.

My Background and Experience

6. I have over 25 years of aviation experience including 15 years as a First Officer and Captain of Metroliner and Saab 340 aircraft. I am also a well accomplished and knowledgeable flight instructor training pilots in both the general aviation and regional airline environments, and have significant expertise in the operation and functioning of Safety and Quality Management Systems.
7. I have been employed at Rex since its inception on 2 August 2002. During that time, I have held the following positions:
 - (a) between 2 August 2002 and 28 February 2011, General Manager Flight Operations and Chief Pilot, with statutory responsibility for aviation safety;
 - (b) between 1 March 2011 and March 2012, Chief Operating Officer and Accountable Manager (to the Civil Aviation Safety Authority (**CASA**)) with responsibility for the Company's operations including flight operations, maintenance control, airport operations and the human factors group which included safety, compliance and quality assurance and security.
8. In my role as General Manager Flight Operations and Chief Pilot I had responsibility for, and oversight of, the recruitment of pilots at Rex and the terms and conditions of employment relating to those pilots, including the entering into of Training Bonds. In that role and also in my role as Chief Operating Officer I was responsible for ensuring that all pilots had the necessary training and qualifications to perform their duties for Rex as a pilot.
9. Prior to working at Rex, I worked for Kendell Airlines from 1995 to 2002, during which time I held various Check and Training Captain positions. In my role as a Check and Training Captain on the SAAB 340 aircraft, I held CASA Instruments of Delegation to conduct initial type endorsement training and also proficiency testing for the issue of SAAB 340 aircraft type ratings to pilots. That is, I had been assessed by CASA and was subsequently authorised by CASA to provide the required initial flight training to a pilot on the Saab 340 aircraft and also assess them as proficient to be issued with the CASA licence endorsement required for them to be able to operate that specific aircraft.

CASA Requirements for Qualification as a Commercial Airline Pilot

10. There are a considerable number of training, security, medical, experience and licencing requirements associated with becoming a commercial pilot. The training requirements are set

out in Regulation Part 61 of the *Civil Aviation Safety Regulations 1998* (Cth) (*CASAR*).

Licences afford certain privileges, allowing pilots to operate aircraft subject to restrictions.

Even once a pilot has obtained a commercial pilot licence, there are a number of additional endorsements and ratings required to extend the privileges of a pilot's licence in order to operate certain aircraft and in particular conditions. This is coupled with ongoing medical and training obligations in order to maintain the currency of their qualifications.

11. Before obtaining qualifications to become a commercial pilot it is necessary to conduct training as a student to obtain either a Recreational Pilot Licence (**RPL**) or Private Pilot Licence (**PPL**). In order to obtain an RPL or PPL, an applicant must have:

- (a) passed aeronautical knowledge examinations;
- (b) completed flight training;
- (c) passed a flight test; and
- (d) in the case of an RPL, completed at least 25 hours of flight time as a pilot of an aircraft flight time (CASAR 61.475(2)) and 61.515(2)); or
- (e) in the case of a PPL, where the applicant has completed an integrated (intensive) training course, completed at least 35 hours of aeronautical experience (CASAR 61.525(1)); or
- (f) in the case of a PPL, where the applicant has not completed an integrated training course, completed at least 40 hours of aeronautical experience (CASAR 61.545(2)).

12. Once an individual has obtained either an RPL or PPL, they can then commence the process of obtaining the relevant qualifications to become a commercial pilot. In order to obtain a Commercial Pilots Licence (**CPL**) a trainee must have:

- (a) passed aeronautical knowledge examinations;
- (b) completed flight training;
- (c) passed a flight test; and
- (d) completed at least 150 hours of aeronautical experience that includes at least:
 - (i) 140 hours of flight time as a pilot of an aeroplane; and
 - (ii) 70 hours of flight time as a pilot in command of an aeroplane; and
 - (iii) 20 hours of cross-country flight time as a pilot in command of an aeroplane; and
 - (iv) 10 hours of instrument time; and

- (v) 5 hours of instrument flight time in an aeroplane (CASAR 61.580(2) and 61.590(1)).

13. At this stage of their training, a pilot will have at least one aircraft rating which is attached to their licence. In addition to a CPL, a pilot must hold an instrument rating if they wish to fly in other than visual conditions and is certainly required for all regular public transport/airline operations. In order to obtain an instrument rating an applicant must have, in the case of a multi engine aircraft:

- (a) completed 10 hours of dual instrument time in a multi-engine aeroplane or approved flight simulator; and
- (b) completed 5 hours of aeronautical experience at night as a pilot of an aeroplane or approved flight simulator including at least one hour of dual flight and one hour of solo night circuits; and
- (c) conduct certain instrument approaches. (CASAR 61.885(1)).

14. Rex operates Saab 340 aircraft with a maximum certified take-off weight of 13,155kg. A CPL holder is required to obtain an additional licence in order to operate in command of an aircraft with a maximum certified take-off weight of more than 5,700kg in a regular public transport operation (CASAR 61.570(a)(iii)). In order to operate in command of such an aircraft, a pilot must obtain an Air Transport Pilot Licence (**ATPL**), which requires a pilot to have:

- (a) passed a series of aeronautical examinations;
- (b) passed a flight test;
- (c) completed an approved course in multi-crew operation; and
- (d) completed at least 1500 hours of aeronautical experience that includes at least:
 - (i) 1400 hours of flight time as a pilot; and
 - (ii) 750 hours of flight time as a pilot of an aeroplane; and
 - (iii) either:
 - A. at least 500 hours of flight time in an aeroplane as a pilot in command under supervision; of
 - B. at least 250 hours of flight time in an aeroplane as a pilot in command or pilot in command under supervision, of which at least 70 hours must be as a pilot in command; and
 - (iv) 200 hours of cross-country flight time in an aeroplane; and

- (v) 100 hours of cross-country flight time as a pilot in command, or pilot in command under supervision, of an aeroplane; and
- (vi) 100 hours of flight time at night as a pilot of an aeroplane, other than dual flight; and
- (vii) 75 hours of instrument time; and
- (viii) 45 hours of instrument time in an aeroplane (CASAR 61.704(3) and 61.705(1)).

15. In addition to the cost of the particular licence related courses of training, including theoretical training and tests, aircraft and simulator training and tests and licence application fees, outlined above, a pilot must also:

- (a) Obtain and initial CASA Medical Certification;
- (b) apply for relevant security clearance and maintain an:
 - (i) Aviation Security Identification Card, which requires renewal every 2 years; and
 - (ii) Aviation Identification which requires renewal every 5 years, and
- (c) undergo ongoing renewal medical examinations (depending upon the age and health of the particular pilot) in order to legally exercise the privileges of their licence,

which all carry associated costs.

16. As can be seen from the above, there are many CASA requirements that must be met and maintained by pilots from the earliest commencement of and then throughout their careers.

Costs of Training and other regulatory requirements

17. I have set out in the table below an indicative estimate of the costs associated with obtaining the various qualifications, licences and required certifications identified above.

Licence/Qualification/Certification	Indicative costs
Aviation Security Identification Card (ASIC)	\$275
Medical Certificate Issue	\$500
Recreational Pilot Licence (RPL)	\$13,000 - \$16,000
Private Pilot Licence (PPL – additional to RPL)	\$12,000 – \$15,000
Commercial Pilot Licence (CPL – Additional to PPL)	\$50,000 - \$60,000
Integrated CPL (RPL, PPL and CPL)	\$80,000 - \$100,000

Instrument Rating (Multi Engine)	\$21,000 – \$26,000
Multi Engine Class Rating	\$4,000 - \$5,000
Airline Transport Pilot Licence (ATPL)	\$5,000 - \$10,000

18. The training costs associated with the various qualifications and licences required to become a pilot that Rex has been responsible for, and paid for over the years are reflected in the training clauses in the various enterprise agreements that have applied to Rex since 2002. These provisions are consistent with and have reflected the relevant provisions in the applicable awards regarding training.
19. Attached and marked "**CH-1**" is a table which sets out the key parts of the relevant training clauses in each of Rex's enterprise agreements since 2002. As can be seen from those extracts, in summary:
- (a) Rex is responsible for arranging facilities to enable pilots employed by it on permanent hire to reach and maintain proficiency in such ground courses and such aeronautical skills as required by Rex;
 - (b) subject to (c) below, where Rex requires a currently employed pilot to obtain any licence, rating, endorsement, initial instrument rating or type it will pay all costs associated with obtaining and for renewing same (including all licensing fees and CASA charges);
 - (c) where Rex arranges for or provides for a pilot who is not currently employed, training of a type mentioned in (b) above on the understanding that such training will qualify the pilot to commence employment with Rex, Rex will be deemed to be the pilot's employer from the commencement of such training if the training is carried out by Rex, with the exception of grounds schools (and therefore will be responsible for the costs of such training). However, where the aircraft used for such training is not one operated by Rex, the Pilot will pay the training costs in full and the and the pilot's employment will commence subsequent to completion of training; and
 - (d) Rex will otherwise pay for all costs (including licence fees and CASA charges) associated with a pilot obtaining any subsequent aircraft endorsement to their licence or instrument rating where such endorsement or rating is required of the pilot by Rex.
20. The important thing to note in respect of the above, is that if Rex requires a pilot (employed) to obtain certain qualifications, licenses and endorsements (whether CASA requirements or otherwise) in order to perform their duties as a pilot for Rex then Rex will cover all costs associated with those things.

History of the Training Bond

Pilot Attrition at Rex

21. When Rex commenced operations in August 2002, it sought to negotiate new enterprise agreements to govern the employment of a range of employees, including pilots. The agreement negotiated in respect of pilots was the *Regional Express Pilots' Certified Agreement 2002 (2002 Pilots' Agreement)*. The 2002 Pilots' Agreement was negotiated and agreed with the Australian Federation of Air Pilots (**AFAP**), approved by a valid majority of employees covered by it and certified by the Australian Industrial Relations Commission on 10 January 2003.
22. Because the 2002 Pilots' Agreement was negotiated so early on in Rex's operation, it did not (and could not) anticipate all of the operational issues that Rex subsequently faced. One of the major operational issues which arose soon after Rex commenced operations was the attrition rate of pilots. While Rex was successfully recruiting and training pilots, we became concerned that a number of pilots were leaving shortly after commencement (having been trained and cleared for flying duties) to take up employment elsewhere. Based upon my knowledge of the aviation industry I understood that a number of airlines within the Asia-Pacific region were offering financial incentives, such as higher salaries, to qualified and trained pilots to leave Rex. These airlines operated larger aircraft on more profitable routes and could offer pilots higher salaries. Additionally, Virgin and subsequently Jetstar were recruiting heavily during this period.
23. In 2002/3 the annualised attrition rate for Rex Pilots was approximately 19% (i.e. of 201 pilots 35 left within the 11 months of this period).
24. The high turnover rate amongst pilots was very concerning to us because it caused significant additional costs to Rex which was still in its start-up phase. The additional costs included:
 - (a) direct cost of training additional pilots (e.g. simulator hire, instructors, travel and accommodation);
 - (b) indirect cost of no productivity in having to pay a trainee pilot a salary for an average of 10 weeks before they are ready for line training; and
 - (c) administrative costs (e.g. management and administrative time).

Retention Amount and Training Bonds

25. In or about December 2003, I was informed by Jim Davis (Executive General Manager Operations for Rex at the time) that, in order to address the high attrition rate, he had decided to implement a disincentive scheme to encourage new pilots to remain employed by Rex for a reasonable period after commencement and to try to minimise the financial harm to Rex if they

did not. The system he considered to be most appropriate was to make an amount payable by the pilot if he or she left employment within a 2 year period (“**retention amount**”). The retention amount and the terms under which it would be payable was embodied in a training bond. The term “Training Bond” is widely understood and accepted in the aviation industry as a mechanism to make a retention amount payable if an employee leaves employment without having served a required minimum period. A Training Bond is also widely understood as a method of covering additional training costs that will be incurred if a pilot leaves shortly after commencement.

Calculation of the Retention Amount

26. I was informed by Mr Davis who was responsible for fixing the retention amount at the time that he wanted to ensure that the retention amount was:
- (a) sufficiently high to act as a proper disincentive to pilots who might be tempted to leave employment before 2 years of service; and
 - (b) fair in that it was no more than the costs that would actually be incurred by Rex if the pilot left early.
27. Mr Davis further informed me that in calculating the retention amount, he took the following factors into account:
- (a) *Direct Costs:* When Rex recruits additional pilots, it incurs the additional costs of training those pilots. Mr Davis estimated these direct costs (as at 2003) to be approximately \$13,400 per pilot. Currently, these direct costs are estimated to be approximately \$22,000.
 - (b) *Indirect costs:* Until a new pilot commences line training he is being paid a salary but is not actually part of Rex’s operations and is not earning revenue for Rex. Mr Davis estimated these indirect costs (as at 2003) to be approximately \$5,200 per pilot. Currently, these indirect costs are estimated to be approximately \$6,100.
 - (c) *Administrative and operational costs:* Recruitment of extra pilots also results in additional administrative and operational costs to Rex as well as management time for conducting interviews. Whilst these costs are harder to quantify, Mr Davis estimated that the additional administrative and operational costs (as at 2003) were approximately \$550.00 per pilot recruited. Currently these additional administrative and operational costs are estimated to be approximately \$1,300 per pilot recruited which includes a simulator assessment.
28. Since the rationale behind the implementation of the retention amount through training bonds was to encourage lower rates of attrition amongst pilots, both Mr Davis and I hoped that the retention amount would act as a disincentive for pilots to resign early in their careers with Rex. We also hoped that if the pilots remained in employment for more than 2 years, some would

be more likely to become immersed in the Rex community and with the community they are based in and may be more likely to remain with Rex, and enjoy the benefits and lifestyle that it provides, in the longer term.

29. Now produced and shown to me and marked "CH-2" is a graph that I believe was prepared by Mr Davis in or about 2006 which shows the additional annual costs that are incurred by Rex when pilots leave employment early. Although this graph is now some years old, the costs of training pilots has only increased and pilot attrition costs remains a very significant one for Rex. Lower attrition rates help minimise these costs.
30. The retention amount does not relate to the cost of the training the individual pilot who enters into the training bond. If it was intended to do so then Rex would have ensured that it was able to recover the training costs in full and the retention amount would have calculated the cost on an individual basis as it does vary from pilot to pilot.

Impact of Introduction of Training Bond and Creation of Cadet Program and Academy

31. After implementing retention amounts through the Training Bond in or about 2003, Rex's attrition rates decreased to 14% for 2003/2004 (28 of 205 pilots) and 2004/2005 (31 of 216 pilots), and to 7% on an annualised basis for 2005/2006 (8 of 217 pilots over 6 months). Due to the demand for pilots by the major domestic carriers, Rex's attrition rate climbed to 50% for the 2007/2008 financial year and was very nearly disastrous for Rex and caused significant disruption to many regional communities. It was the onset of the global financial crisis that caused an expansion of the major airlines to cease and consequently Rex's attrition rate was below historical averages for a number of years.
32. This all lead to the idea to create Rex's own cadet pilot program, the Regional Express Cadet Pilot Program (**RECP Programme**) and to establish the Australian Airlines Pilot Academy (**AAPA**) so as to better ensure Rex, and the regional communities it serves, were less severely affected by recruitment drives from larger airlines (both Domestic and International) in the future.
33. The RECP Programme is carried out at the AAPA's training academy, located near at Wagga Wagga Airport in Wagga Wagga, New South Wales.
34. AAPA officially opened its doors on 27 May 2010. It is the first pilot training establishment in the Asia Pacific region that features a fully self-contained campus, which includes a world-class academic centre, individual bedrooms for all students, dining and recreational facilities such as a swimming pool, gymnasium, soccer field and multi-purpose hard court. The academic campus is situated next to the flight training centre, with its own maintenance hangar and aircraft training fleet parking area.
35. In or about 2010/2011, pilot attrition rates slowly increased again to more historical averages with an attrition rate of 12.2%. The annual attrition rates since that time are as follows:

- (a) FY2011/2012 - 15.4% (42 of 272 pilots)
- (b) FY2012/2013 - 9.8% (26 of 264 pilots)
- (c) FY2013/2014 - 5.1% (14 of 273 pilots)
- (d) FY2014/2015 - 11.0% (29 of 264 pilots)
- (e) FY2015/2016 - 10.8% (27 of 249 pilots)
- (f) FY2016/2017 - 27.8% (66 of 237 pilots)
- (g) FY2017/2018 - 29.1% (71 of 244 pilots)

36. In the current financial year to date (FY2018/2019), Rex has lost 30 out of 270 pilots.

37. As is evident from these rates, pilot attrition is still a very significant issue for Rex. Whilst Rex is better positioned because of the RECP Programme and the ability to enter into a Training Bond, Rex still struggles to maintain its schedule given the requirements of major airlines and world-wide pilot shortage. Without the RECP Programme and the ability to enter into a Training Bond, Rex's viability and air services to regional and remote communities would be jeopardised.

The Training Bond Provisions in the Pilots' Agreement

38. In or about 2005, Rex commenced litigation in the Industrial Division of the Magistrates' Court of Victoria against a former pilot Matthew Clarke in relation to the enforcement of a Training Bond. That matter ultimately proceeded on appeal to the Federal Court where it was found that the training bond was inconsistent with Rex's certified agreement at the time. The training bond was held to be unenforceable as a consequence: *Regional Express Holdings v Clarke* [2007] FCA 987.

39. As a result of the uncertainty about the enforceability of the Training Bond, in or about 2005, following the nominal expiry date of the 2002 Pilot's Agreement, Rex negotiated with the AFAP the inclusion of a new clause 23.3 into the proposed 2005 Pilots' Agreement requiring pilots to enter into a training bond and which stated as follows:

"A pilot who, upon initial employment, does not hold an endorsement on the aircraft type applicable to the initial equipment assignment is required to sign a two year training bond. This will be for \$15,000 in the case of a SAAB and \$10,000 in the case of a Metro. Should the pilot resign within the two year bond period, a residual amount, based on a 1/8 reduction in the original bond every three months, will be paid to the Employer. This amount must be paid in full within twelve months of the pilot's resignation date."

40. This clause was agreed to by the AFAP and approved by a valid majority of the pilots covered by the 2005 Pilots' Agreement. The 2005 Pilots' Agreement was approved by Commissioner Whelan of the AIRC on 24 October 2005. Clause 23.3 has been included in all subsequent Rex enterprise agreements and remains in the current agreement, *the Regional Express Pilots Agreement 2014 (2014 Pilots' Agreement)*, at clause 24.3. This clause is in almost identical terms to clause 23.3 in the 2005 Pilots' Agreement save that the bond amount is \$17,500 for the SAAB and there are no longer any Metro aircrafts operated by Rex.

Impact of AFAP's Proposed Variation

41. I understand the AFAP are seeking a variation to clause 16.2 of the *Air Pilots Award 2010 (Air Pilots Award)* as follows:

Where the employer requires a pilot to reach and maintain minimum qualifications for a particular aircraft type in accordance with this award (including qualifications imposed by a regulatory body necessary for a pilot to perform the duties required by the employer), all facilities and other costs associated with attaining and maintaining those qualifications will be the responsibility of the employer.

42. The proposed variation appears to be inconsistent with current long-standing practices within the industry (including at Rex) whereby employers only pay for the costs of a pilot attaining and maintaining qualifications for a particular aircraft type (whether required by CASA or otherwise) that are incurred whilst the pilot is in the employ of the employer and provided those qualifications are required by the employer. The proposed variation also does not deal with the issue as to whether employers, such as Rex, can continue to enter into arrangements for the implementation of retention amounts through a Training Bond to seek to address serious and widespread issues regarding pilot attrition throughout the industry. Such arrangements have been entered into pursuant to terms of enterprise agreements that have been negotiated with, and agreed to by the AFAP, for many years.
43. In the circumstances, if the AFAP's proposed variation is made, it will in my view, create further uncertainty and ambiguity regarding the operation of the clause and the type of training costs that employers in the industry are required to pay for and whether or not a Training Bond can be entered into. In particular, the additional wording proposed by the AFAP suggests that all qualifications imposed by a regulatory body necessary for a pilot to perform the duties required by the employer are to be paid for by the employer irrespective of whether such qualifications were attained during the employment or otherwise. As I referred to above, there are many different qualifications and licences that CASA require a pilot to attain and maintain in order to operate an aircraft, some of which pilots are required to have prior to commencing employment with an employer - such as a Commercial Air Pilots Licence. The proposed variation suggests that an employer is required to reimburse the pilot for any such costs incurred as a result of obtaining such licence once they are employed. Not only is this inconsistent with long-standing practice, it is also entirely unreasonable that an employer should be liable for such costs.

CHRISTOPHER HINE

Dated: 29 March 2019

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REGIONAL EXPRESS ENTERPRISE AGREEMENTS - TRAINING CLAUSES

<i>Regional Express Pilots' Certified Agreement 2002</i>	<i>Regional Express Pilots Certified Agreement 2005</i>	<i>Regional Express Pilots Enterprise Agreement 2011</i>	<i>Regional Express Pilots' Enterprise Agreement 2014</i>
<p>23 TRAINING</p> <p>23.1 The Employer will be responsible for arranging facilities to enable pilots employed on permanent hire to reach and maintain proficiency in such ground courses and such aeronautical skills as are required by the Employer.</p> <p>23.2 Where the Employer requires a pilot to obtain any licence, rating, endorsement, initial instrument rating or type endorsement, subject to clause 23.3, the Employer will pay all costs associated with obtaining and for renewing such rating or endorsement. This will include all licensing fees and Civil Aviation Safety Authority charges.</p> <p>23.3 Where the Employer arranges or provides for a pilot who is not currently in the Employer's employ, training of a type mentioned in clause 23.2 on the understanding that such training will qualify the pilot to commence employment with the Employer, the Employer will be deemed for all</p>	<p>23 TRAINING</p> <p>23.1 The Employer will be responsible for arranging facilities to enable pilots employed on permanent hire to reach and maintain proficiency in such ground courses and such aeronautical skills as are required by the Employer.</p> <p>23.2 Where the Employer requires a pilot to obtain any licence, rating, endorsement, initial instrument rating or type endorsement, subject to clause 23.5, the Employer will pay all costs associated with obtaining and for renewing such rating or endorsement. This will include all licensing fees and Civil Aviation Safety Authority charges.</p> <p>23.3 A pilot who, upon initial employment, does not hold an endorsement on the aircraft type applicable to the initial equipment assignment is required to sign a two year training bond. This will be for \$17 500 in the case of a SAAB. Should the pilot resign within the two year bond</p>	<p>24 TRAINING</p> <p>24.1 The Employer will be responsible for arranging facilities to enable Pilots employed on permanent hire to reach and maintain proficiency in such ground courses and such aeronautical skills as are required by the Employer.</p> <p>24.2 Where the Employer requires a Pilot to obtain any licence, rating, endorsement, initial instrument rating or type endorsement, subject to clause 24.5, the Employer will pay all costs associated with obtaining and for renewing such rating or endorsement. This will include all licensing fees and CASA charges.</p> <p>24.3 A Pilot who, upon initial employment, does not hold an endorsement on the aircraft type applicable to the initial equipment assignment is required to sign a two year training bond. This will be for \$17,500 in the case of a SAAB. Should the Pilot resign within the two year bond period, a residual amount,</p>	<p>24 TRAINING</p> <p>24.1 The Employer will be responsible for arranging facilities to enable Pilots employed on permanent hire to reach and maintain proficiency in such ground courses and such aeronautical skills as are required by the Employer.</p> <p>24.2 Where the Employer requires a Pilot to obtain any licence, rating, endorsement, initial instrument rating or type endorsement, subject to clause 24.5, the Employer will pay all costs associated with obtaining and for renewing such rating or endorsement. This will include all licensing fees and CASA charges.</p> <p>24.3 A Pilot who, upon initial employment, does not hold an endorsement on the aircraft type applicable to the initial equipment assignment is required to sign a two year training bond. This will be for \$17,500 in the case of a SAAB. Should the Pilot resign within the two year bond period, a residual amount,</p>

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<i>Regional Express Pilots' Certified Agreement 2002</i>	<i>Regional Express Pilots Certified Agreement 2005</i>	<i>Regional Express Pilots Enterprise Agreement 2011</i>	<i>Regional Express Pilots' Enterprise Agreement 2014</i>
<p>purposes of this Agreement to be the pilot's employer as from the date of commencement of such training if the training is carried out by the Employer, with the exception of ground schools. Provided that where the aircraft used for such training is not one operated by the Employer, the Pilot will pay the training costs in full and the pilot's employment will commence subsequent to completion of training.</p> <p>23.4 No pilot will be required by the Employer to obtain any subsequent aircraft endorsement to their licence or instrument rating in their own time or at their own expense where such endorsement or rating is required of the pilot by the Employer. The Employer will pay all costs associated including licence fees associated with obtaining and/or renewing such rating or endorsement, including Civil Aviation Safety Authority charges.</p> <p>23.5 Any required currency or proficiency training as prescribed in clause 23.2 will not normally be conducted at</p>	<p>period, a residual amount, based on a 1/8 reduction in the original bond every three months, will be paid to the Employer. This amount must be paid in full within twelve months of the pilot's resignation date.</p> <p>23.4 Any pilot who bids for and is entitled to command upgrade training may be requested by the company to sign a statement, confirming his or her commitment to give at least three months service with the company following check to line as a Captain. Where a pilot declines to sign such a statement, the company may at its discretion choose not to provide upgrade training to that pilot.</p> <p>23.5 Where the Employer arranges or provides for a pilot who is not currently in the Employer's employ, training of a type mentioned in clause 23.2 on the understanding that such training will qualify the pilot to commence employment with the Employer, the Employer will be deemed for all purposes of this Agreement to be the pilot's employer as from the date of commencement of</p>	<p>based on a 1/8 reduction in the original bond every three months, will be paid to the Employer. This amount must be paid in full within twelve months of the Pilot's resignation date.</p> <p>24.4 Any Pilot who bids for and is entitled to command upgrade training may be requested by the Company to sign a statement, confirming his or her commitment to give at least three months service with the Company following check to line as a Captain, Where a Pilot declines to sign such a statement, the Company may at its discretion choose not to provide upgrade training to that Pilot</p> <p>24.5 Where the Employer arranges or provides for a Pilot who is not currently in the Employer's employ, training of a type mentioned in clause 24.2 on the understanding that such training will qualify the Pilot to commence employment with the Employer, the Employer will be deemed for all purposes of this Agreement to be the Pilot's employee as from the date of commencement of such</p>	<p>based on a 1/8 reduction in the original bond every three months, will be paid to the Employer. This amount must be paid in full within twelve months of the Pilot's resignation date.</p> <p>24.4 Any Pilot who bids for and is entitled to command upgrade training may be requested by the Company to sign a statement, confirming his or her commitment to give at least three months service with the Company following check to line as a Captain. Where a Pilot declines to sign such a statement, the Company may at its discretion choose not to provide upgrade training to that Pilot.</p> <p>24.5 Where the Employer arranges or provides for a Pilot who is not currently in the Employer's employ, training of a type mentioned in clause 24.2 on the understanding that such training will qualify the Pilot to commence employment with the Employer, the Employer will be deemed for all purposes of this Agreement to be the Pilot's employer as from the date of commencement of such training if the training is</p>

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<i>Regional Express Pilots' Certified Agreement 2002</i>	<i>Regional Express Pilots Certified Agreement 2005</i>	<i>Regional Express Pilots Enterprise Agreement 2011</i>	<i>Regional Express Pilots' Enterprise Agreement 2014</i>
<p>the conclusion of a tour of duty.</p> <p>23.6 The Employer will ensure that after each check is completed a pilot be provided immediately with a copy of the appropriate check sheet. The check report will be completed in the pilot's presence and all adverse comments will be discussed with the pilot during the debriefing period. The pilot will sign the pass/fail form and appropriate check sheet to acknowledge that these documents have been sighted.</p>	<p>such training if the training is carried out by the Employer, with the exception of ground schools. Provided that where the aircraft used for such training is not one operated by the Employer, the Pilot will pay the training costs in full and the pilot's employment will commence subsequent to completion of training.</p> <p>23.6 No pilot will be required by the Employer to obtain any subsequent aircraft endorsement to their licence or instrument rating in their own time or at their own expense where such endorsement or rating is required of the pilot by the Employer. The Employer will pay all costs associated including licence fees associated with obtaining and/or renewing such rating or endorsement, including Civil Aviation Safety Authority charges.</p> <p>23.7 Any required currency or proficiency training or checking that is applicable to a pilot's licence renewal, endorsement training or Emergency Procedures training will not be conducted</p>	<p>training if the training is carried out by the Employer, with the exception of ground schools. Provided that where the aircraft used for such training is not one operated by the Employer, the Pilot will pay the training costs in full and the Pilot's employment will commence subsequent to completion of training.</p> <p>24.6 No Pilot will be required by the Employer to obtain any subsequent aircraft endorsement to their licence or instrument rating in their own time or at their own expense where such endorsement or rating is required of the Pilot by the Employer. The Employer will pay all costs associated including licence fees associated with obtaining and/or renewing such rating or endorsement, including CASA charges.</p> <p>24.7 Any required currency or proficiency training or checking that is applicable to a Pilot's licence renewal, endorsement training or Emergency Procedures training will not be conducted at the conclusion of a Tour of</p>	<p>carried out by the Employer, with the exception of ground schools. Provided that where the aircraft used for such training is not one operated by the Employer, the Pilot will pay the training costs in full and the Pilot's employment will commence subsequent to completion of training.</p> <p>24.6 No Pilot will be required by the Employer to obtain any subsequent aircraft endorsement to their licence or instrument rating in their own time or at their own expense where such endorsement or rating is required of the Pilot by the Employer. The Employer will pay all costs associated including licence fees associated with obtaining and/or renewing such rating or endorsement, including CASA charges.</p> <p>24.7 Any required currency or proficiency training or checking that is applicable to a Pilot's licence renewal, endorsement training or Emergency Procedures training will not be conducted at the conclusion of a Tour of Duty.</p> <p>24.8 All required CBT (Computer</p>

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<i>Regional Express Pilots' Certified Agreement 2002</i>	<i>Regional Express Pilots Certified Agreement 2005</i>	<i>Regional Express Pilots Enterprise Agreement 2011</i>	<i>Regional Express Pilots' Enterprise Agreement 2014</i>
	<p>at the conclusion of a tour of duty.</p> <p>23.8 The Employer will ensure that after each check is completed a pilot be provided immediately with a copy of the appropriate check sheet. The check report will be completed in the pilot's presence and all adverse comments will be discussed with the pilot during the debriefing period. The pilot will sign the pass/fail form and appropriate check sheet to acknowledge that these documents have been sighted.</p>	<p>Duty.</p> <p>24.8 The Employer will ensure that a Pilot has access to a copy of the appropriate check report immediately after the completion of any check. The check report will be completed in the Pilot's presence, all adverse comments will be discussed with the Pilot during the debriefing period. In the event that it is not possible to complete and review the check report at that time, the Check Captain and the Pilot concerned shall agree on a later time to complete the debriefing and review.</p>	<p>based training) shall have duty time rostered to complete. A pilot may elect to complete the CBT at a time other than the time rostered, but not later than the due date for that CBT, provided that failure to complete or pass the CBT will not impact the pilot's ability to complete their rostered duty.</p> <p>24.9 The Employer will ensure that a Pilot has access to a copy of the appropriate check report immediately after the completion of any check. The check report will be completed in the Pilot's presence, all adverse comments will be discussed with the Pilot during the debriefing period. In the event that it is not possible to complete and review the check report at that time, the Check Captain and the Pilot concerned shall agree on a later time to complete the debriefing and review.</p>

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