IN THE FEDERAL COURT OF AUSTRALIA
VICTORIAN DISTRICT REGISTRY

No. VID 621 of 2005

IN THE MATTER OF:

ANSETT AUSTRALIA LIMITED (ACN 004 209 410) & ORS (in accordance with the Schedule attached) (All Subject to a Deed of Company Arrangement)

and

MARK ANTHONY KORDA and MARK FRANCIS XAVIER MENTHA (as Deed Administrators of the Companies)

Plaintiffs

AFFIDAVIT

(Order 14, rule 2)

On 12 September 2005 I, **MARK ANTHONY KORDA**, Chartered Accountant, of Level 24, 333 Collins Street, Melbourne in the State of Victoria, **MAKE OATH AND SAY:**

1 I refer to my affidavit sworn 21 June 2005 and filed in this proceeding ("**First Affidavit**").

2 I make this further affidavit in support of this application ("**Application**"), in which the plaintiffs seek orders or directions pursuant to sections 447A and 447D of the *Corporations Act* 2001 (Cth) ("**Act**") and the inherent jurisdiction of the Court as to the course we, as Deed Administrators, ought to follow in connection with the proposed pooling of the assets and liabilities of the Ansett Group into one Ansett Group Company ("**Pooling**").

Filed on behalf of the Plaintiffs

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(Alex King)

3 Save where I say to the contrary, I make this affidavit from my own knowledge. Where I depose to matters on the basis of information or belief I believe those matters to be true. I am authorised by Mark Mentha ("**Mentha**") to make this affidavit on his behalf. References in this affidavit to "we", "us", "our" or "ourselves" are references to Mentha and me.

EXPERIENCE

4 We are registered Official Liquidators, members of the Institute of Chartered Accountants in Australia and members of the Insolvency Practitioners Association of Australia. Since 15 April 2002 we have been the principals of the business trading as KordaMentha, a national professional services firm specialising in corporate insolvency, corporate recovery, corporate advisory and real estate services. Prior to that we were partners of the firm of Andersen, Chartered Accountants. We have been practising in accounting, corporate insolvency, receivership and financial reconstructions for over 20 years.

5 Over the last 16 years, firstly as partners at Andersen and subsequently as principals of KordaMentha, we have acted as administrators, or conducted corporate "workouts" of various corporate groups, including:

(a) Jennings Group Companies;

(b) Collings Real Estate Group of Companies;

(c) Walter Wright Group of Companies;

(d) Bradmill Undare Group of Companies;

(e) Newmont Yandal Operations;

(f) DIM Group of Companies; and

(g) Stockford Group of Companies.

6 In the administration of the DIM Group of Companies deeds of company arrangement were executed to effect the pooling of the assets and liabilities of the 16 companies within the DIM Group.

APPOINTMENT AS ADMINISTRATORS OF THE ANSETT GROUP

7 The Ansett Group went into voluntary administration between 12 and 14 September 2001 ("**Voluntary Administration**").

8 Following the resignations of Peter Hedge, Greg Hall and Allan Watson ("**Initial Administrators**"), on 17 September 2001 we were appointed by order of the Court as voluntary administrators ("**Voluntary Administrators**") of all of the Ansett Group Companies, save for Air New Zealand Engineering Services Limited (ACN 089 520 696), of which we were appointed Voluntary Administrators on 4 October 2001.

9 On 17 September 2001 Michael Humphris ("**Hazelton Group Administrator**") was appointed by order of the Court as voluntary administrator of Hazelton Airlines Ltd (ACN 061 965 642) (now HZL Ltd), Hazleton Air Services Pty Ltd (ACN 000 242 928) and Hazelton Air Charter Pty Ltd (ACN 065 221 356) (together "**Hazelton Group**" or "**Hazelton Group Companies**" and each a "**Hazelton Group Company**") following the resignation of the Initial Administrators, who had also been appointed to the Hazelton Group Companies.

INVESTIGATIONS

10 We have undertaken extensive investigations into the affairs of the Ansett Group since our appointment as Voluntary Administrators. We have been assisted with those investigations by our partners and staff at KordaMentha, in particular:

(a) David Merryweather, Partner, particularly in relation to the management of Ansett Group operations and the sale of Ansett Group assets;

(b) Michael Brereton, Director, particularly in relation to the management of specific technical and insolvency issues and internal audits of procedures and processes of the Ansett Group administration;

(c) Colin Egan, Director, particularly in relation to the sale of assets including aircraft, engines and spare parts;

(d) Sebastian Hams, Director, particularly in relation to the management of financial resources and financial reporting; and

(e) Carmel Flynn, Director, particularly in relation to employee relations and industrial relations and communications with creditors generally,

(together, "**Investigations**").

WORDS AND PHRASES DEFINED IN THIS AFFIDAVIT

11 The following words, phrases and acronyms used in this affidavit have the following meanings.

(a) "**AAE**" means Ansett Aviation Equipment Pty Ltd (subject to deed of company arrangement) (ACN 008 559 733).

(b) "**AAHL**" means Ansett Australia Holdings Limited (subject to deed of company arrangement) (ACN 004 216 291).

(c) "**AAL**" means Ansett Australia Limited (subject to deed of company arrangement) (ACN 004 209 410).

(d) "**Administrations**" means the voluntary administrations and/or the deed administrations of the Ansett Group, as the context requires.

(e) "**AEF**" means Ansett Equipment Finance Limited (subject to deed of company arrangement) (ACN 006 827 989).

(f) "**Aeropelican**" means Aeropelican Pty Ltd (subject to deed of company arrangement) (ACN 000 653 083).

(g) "**AHL**" means Ansett Holdings Limited (subject to deed of company arrangement) (ACN 065 117 535).

(h) "**AIL**" means Ansett International Limited (subject to deed of company arrangement) (ACN 060 622 460).

(i) "**Ansett DOCA**" means any deed of company arrangement of an Ansett Group Company executed on or about 2 May 2002.

(j) "**Ansett Group**" means the group of companies to which we were appointed as voluntary administrators on 17 September and 4 October 2001.

(k) "**Ansett Group Company**" means any company in the Ansett Group and, for the purposes of this definition, includes the Westsky Trust and the Pelican Trust.

(l) "**Ansett Websites**" means the website www.ansett.com.au, the Ansett Group part of the website www.kordamentha.com and the Ansett Group part of the website www.abl.com.au.

(m) "**ATO**" means Australian Taxation Office.

(n) "**2000 Audited Accounts**" means the audited accounts of the Ansett Group for the year ended 30 June 2000.

(o) "**BNP**" means BNP Paribas.

(p) "**CBA**" means Commonwealth Bank of Australia Limited.

(q) "**Deed Administrator**" means each of us, in our capacities as deed administrators of each Ansett Group Company.

(r) "**Deed Creditor**" means any person who is a "Deed Creditor" within the meaning of that term as used in any Ansett DOCA.

(s) "**First Meeting**" means any Ansett Group Company meeting convened pursuant to section 439A of the Act and held on 29 January 2002.

(t) "**Kendell**" means Kendell Airlines (Aust) Pty Ltd (subject to deed of company arrangement) (ACN 000 579 680).

(u) "**MOU**" means the memorandum of understanding dated 3 October 2001 executed by us, Air New Zealand Limited and others on or about 3 October 2001.

(v) "**MOU Application**" means Federal Court proceeding V3045 of 2001.

(w) "**MOU Monies**" means the monies paid to the Ansett Group by the New Zealand Government pursuant to the MOU.

(x) "**National**" means National Australia Bank Limited.

(y) "**Priority Creditor**" means any person who is a "Priority Creditor" within the meaning of that term as used in any Ansett DOCA.

(z) "**Second Meeting**" means the adjourned First Meeting, held on 27 March 2002.

(aa) "**SEESA Application**" means Federal Court proceeding V3083 of 2001.

(bb) "**SEESA Deed**" means the deed entered into on 14 December 2001 by the Commonwealth, certain Ansett Group Companies and us in relation to the SEESA Scheme.

(cc) "**SEESA**" means the scheme known as the "Special Employee Entitlements Scheme for Ansett Group Employees" established by the Commonwealth Government.

(dd) "**Show Group**" means ANST Show Pty Ltd (subject to deed of company arrangement) (ACN 002 968 989), formerly Show Group Pty Ltd.

(ee) "**Skywest Airlines**" means Skywest Airlines Pty Ltd (subject to deed of company arrangement) (ACN 008 997 662).

(ff) "**Skywest Aviation**" means ANST Westsky Aviation Pty Ltd (subject to deed of company arrangement) (ACN 004 444 866), formerly Skywest Aviation Pty Ltd.

(gg) "**Skywest Entities**" means Skywest Aviation, Skywest Holdings and Skywest Jet Charter.

(hh) "**Skywest/Aeropelican DOCAs**" means the deeds of company arrangement executed on or about 15 February 2002 by Skywest Airlines, the Skywest Entities and Aeropelican.

(ii) "**Skywest Holdings**" means ANST Westsky Holdings Pty Ltd (subject to deed of company arrangement) (ACN 008 905 646), formerly Skywest Holdings.

(jj) "**Skywest Jet Charter**" means ANST Westsky Jet Charter Pty Ltd (subject to deed of company arrangement) (ACN 008 800 155), formerly Skywest Jet Charter Pty Ltd.

(kk) "**2001 Unaudited Accounts**" means the unaudited accounts of the Ansett Group for the year ended 30 June 2001.

(ll) "**Traveland**" means ANST Travel Pty Ltd (subject to deed of company arrangement) (ACN 000 240 746), formerly Traveland Pty Ltd.

12 References to paragraphs are references to paragraphs of this affidavit.

PURPOSE OF THE APPLICATION

13 The plaintiffs will seek orders or directions from the Court to the effect that:

(a) we may properly and justifiably cause each of the Ansett Group Companies to vote in favour of Pooling, to the extent each Ansett Group Company is entitled to vote as a Deed Creditor, or as a "Claimant" (as defined in the Skywest/Aeropelican DOCAs), at any meeting of creditors of that Ansett Group Company convened for the purpose (among others) of considering variations to that Ansett Group Company's DOCA to effect Pooling ("**DOCA Pooling Variations**") ("**Pooling Meeting**");

(b) further or alternatively to paragraph 13(a), each of us, in our capacities as Deed Administrator of each Ansett Group Company, may properly and justifiably exercise a casting vote, as chairman of the Pooling Meeting, in favour of Pooling in the event that no result is reached on

any poll conducted at any Pooling Meeting in relation to any DOCA Pooling Variation;

(c) the Court approve the compromises documented in the deed entitled "AAE Pooling Compromise Deed" made 29 August 2005 ("**AAE Pooling Deed**"), a copy of which is now produced and shown to me marked "**MAK-5**";

(d) further or alternatively to paragraph 13(c), in our capacities as Deed Administrators we may properly perform and give effect to the AAE Pooling Deed;

(e) the relevant provisions of Part 5.3A of the Act are to operate in relation to each of the Ansett Group Companies as if section 445F(2) of the Act provided that notice of each Pooling Meeting is to be given by posting on the Ansett Websites notice of those meetings and causing details of the said websites and meetings to be published in a national newspaper, or in each jurisdiction in which the Ansett Group carries or carried on business, in a daily newspaper that circulates generally in that jurisdiction, and ancillary orders; and

(f) the costs of the Application (including costs of any necessary contradictor to the Application) be costs in the administration of the Ansett Group.

14 As Deed Administrators, we have statutory and fiduciary obligations to each Ansett Group Company and to the creditors of those companies, including an obligation to maximise the return to creditors of individual Ansett Group Companies.

15 However, we are also obliged, pursuant to the terms of the MOU, the SEESA Deed and each of the Ansett DOCAs, to take all reasonable steps to propose and recommend that each Ansett Group Company seek to Pool. In addition, by clause 23 of the MOU, we are required to use our best endeavours to ensure that the Priority Creditors are paid all of their entitlements in full.

16 For the reasons detailed in paragraphs 206 to 211, in our opinion Pooling will maximise returns on an Ansett Group basis, and thus to AAL Priority Creditors, but may result in lesser returns to non-Priority Creditors of individual Ansett Group Companies. Because it may be controversial for us, as Deed Administrators, to exercise Ansett Group Company votes and casting votes (as proposed in paragraphs 13(a) and 13(b) above) in favour of Pooling, and to perform and give effect to the AAE Pooling Deed, we have brought this Application.

17 Subject to obtaining appropriate relief in this Application, we currently intend to convene Pooling Meetings, pursuant to section 445F(2) of the Act, clauses 13.2 and/or 18.4 of the Ansett DOCAs and clause 10.1 of the Skywest/Aeropelican DOCAs, to consider proposed variations to the Ansett DOCAs and the Skywest/Aeropelican DOCAs to effect Pooling. We currently intend, as chairmen of each Pooling Meeting, to demand a poll at each Pooling Meeting, pursuant to Regulation 5.6.19(1)(a).

18 We are preparing a report in accordance with the requirements of clause 18.4.4 of the Ansett DOCAs, containing:

(a) our report about the Ansett Group Companies' businesses, property, affairs and financial circumstances, including a summary of the matters referred to in this affidavit;

(b) a statement setting out, and giving reasons for our opinions about:

(i) whether it is in the interests of Ansett Group creditors to vary the Ansett DOCAs and the Skywest/Aeropelican DOCAs to effect Pooling;

(ii) whether it is in the interests of Ansett Group creditors for the Ansett Group Company administrations to end by termination of the Ansett DOCAs; or

(iii) whether it is in the interests of Ansett Group creditors for the Ansett Group Companies to be wound up; and

(c) a statement setting out details of the proposed variations to the Ansett DOCAs and the Skywest/Aeropelican DOCAs to effect Pooling.

DEED ADMINISTRATORS RECOMMEND POOLING

19 As a result of our Investigations, for the following reasons we will recommend Pooling to Ansett Group creditors.

(a) Historically, the Ansett Group was in many respects operated as a single business, not separate entities (paragraphs 21 to 51), as evidenced by:

(i) provision of cash by some Ansett Group Companies to other Ansett Group Companies without the taking of security or being repaid (paragraphs 24 to 25);

(ii) sharing of Ansett Group employees between various Ansett Group Companies in circumstances where no charges were raised by the employer (or apparent employer) company against the recipient company and no formal or documented arrangements existed to govern such sharing (paragraphs 26 to 31);

(iii) sharing of numerous Ansett Group Company or Ansett Group assets and liabilities, in circumstances where the "asset owning" (or apparently "asset owning") companies either did not levy charges, or did not levy charges at commercial rates, to the recipient companies for the use of those assets, such assets including the Ansett Flight Simulator Centre, Ansett Group brands, trademarks and other intellectual property, information technology software applications and programs, Ansett Group headquarters located at 501 Swanston Street at the northern end of the Melbourne CBD ("**Head Office**") and adjoining properties located at 465-475 and 489 Swanston Street and 20-32 Franklin Street ("**Other Ansett Melbourne CBD Properties**") (paragraphs 32 to 48);

(iv) complex Ansett Group leasing and financing arrangements in relation to the use and operation of numerous Ansett Group aircraft (paragraphs 49 to 50);

(v) treatment of the Ansett Group as a whole for the purposes of taxation, in circumstances where Ansett Group income tax returns were prepared and tax losses transferred between Ansett Group Companies without adjustment of inter-company loan balances (paragraph 51).

(b) Because of the Ansett Group's pre-Administration "single business"-style operations, the Ansett Group as a whole would need to spend very significant time and costs to determine (or attempt to determine) whether or not, and if so, to properly and/or equitably raise "charge-backs" as between Ansett Group Companies for the pre-Administration use by some Ansett Group Companies of particular assets and/or tax benefits belonging (or apparently belonging) to, and of personnel employed (or apparently employed) by other Ansett Group Companies, without guarantee of accurate, or even fair and equitable results. This issue is directly linked to the Ansett Group's inter-company loans position and problems (paragraphs 52 to 59). In brief, to the extent pre-Administration "charge-backs" were raised they were normally reflected in Ansett Group Company inter-company loan accounts. The Ansett Group has inter-company loan transactions to a total value of approximately $2.95 billion. Any "charge-backs" adjustments would affect the inter-company loan position.

(c) In our opinion it is impracticable and, in some cases, impossible for us to determine which Ansett Group Companies owned the following Ansett Group assets, or parts of them (paragraphs 60 to 72):

(i) Head Office, and hence the proceeds of its sale (paragraphs 61 to 66);

(ii) the Other Ansett Melbourne CBD Properties, and hence the proceeds of their sale (paragraph 67);

(iii) certain aircraft and engines (paragraphs 68 to 69);

(iv) information technology systems and software (paragraphs 70 to 72).

(d) The operation of certain deeds of cross-guarantee affect many Ansett Group Companies (paragraphs 73 to 85).

(e) If Pooling does not occur significant time and costs will be required to raise "charge-backs" as between Ansett Group Companies for the post-Administration use by some Ansett Group Companies of particular assets and/or tax benefits belonging (or apparently belonging) to, and personnel employed by other Ansett Group Companies (paragraphs 86 to 94).

(f) If Pooling does not occur we will need to undertake an apportionment of certain costs incurred in the Administrations (paragraphs 95 to 98), those costs having so far been funded out of AAL.

(g) If Pooling does not occur the time and costs which would be required to resolve (if possible) various Ansett Group tax issues would be enormous, without guarantee of accurate, or even fair and equitable results (paragraph 99).

(h) If Pooling does not occur very significant time and costs will be incurred in conducting a proof of debt process for each Ansett Group Company (paragraphs 100 to 104).

(i) In our opinion it is impracticable, if not impossible, for us to apportion the MOU Monies between the Ansett Group Companies without seeking the Court's directions and orders. In any event, we apprehend that were we to purport to allocate the MOU Monies, those creditors who thought themselves adversely affected by our apportionment decisions would commence legal proceedings. If past experience is any guide, such litigation would be extremely expensive and time-consuming (paragraphs 105 to 132).

(j) The provisions of the MOU require us to facilitate Pooling and to ensure payment in full of all priority entitlements held by employees within the Ansett Group (paragraphs 105 to 132).

(k) The provisions of the SEESA Deed require us to seek Pooling so as to maximise repayment of monies loaned to us as Administrators under SEESA (paragraphs 133 to 165).

(l) The provisions of the Ansett DOCAs expressly contemplate Pooling (paragraphs 166 to 170).

(m) To the best of our knowledge, no Ansett Group Company creditor objected to or opposed the proposed "pooling" provisions of any of the MOU, SEESA or the Ansett DOCAs.

20 Now produced and shown to me marked:

(a) "**MAK-6**" are copies of the Court's final orders and his Honour Justice Goldberg's reasons for judgment dated 12 October 2001, together with corrigenda dated 22 October 2001, in the MOU Application;

(b) "**MAK-7**" are copies of the Court's final orders dated 14 December 2001 and his Honour Justice Goldberg's reasons for judgment dated 4 January 2002 in the SEESA Application;

(c) "**MAK-8**" is a copy of the resolutions voted on at each Second Meeting (at which meetings the Ansett Group creditors approved the entry into the Ansett DOCAs), including the results of each poll taken at the meetings;

(d) "**MAK-9**" to "**MAK-13**" respectively are copies of our five reports to creditors of the Ansett Group ("**Reports to Creditors**"); and

(e) "**MAK-14**" is a poster-sized flowchart depicting the various unresolved issues affecting the Ansett Group Companies.

Ansett Group operated as a single business

21 Upon our appointment as Voluntary Administrators the entire Ansett Group corporate and business structure comprised 80 separate legal entities, some of which were incorporated overseas ("**wider Ansett Group**"). Upon Voluntary Administration the wider Ansett Group:

(a) employed approximately 15,000 people;

(b) had an annual payroll and incurred annual payroll-related costs of approximately AU$1.2 billion (year ended 30 June 2001);

(c) served more than 130 domestic destinations and made about 900 flights across the Australian network daily;

(d) served four overseas countries, namely Japan, Indonesia, Hong Kong and Fiji;

(e) owned or leased and operated a fleet of 133 aircraft;

(f) annually carried over 14 million passengers (year ended 30 June 2001);

(g) was a major participant in the air freight and cargo industry (111,147 tonnes of cargo in the year ended 30 June 2001);

(h) operated numerous Australian regional airlines, trading as "Skywest" (Western Australia), "Kendell" (New South Wales, Victoria, Tasmania and South Australia) and "Aeropelican" (New South Wales);

(i) operated travel agencies through Traveland, which owned 104 stores and dealt with a network of approximately 275 franchise stores;

(j) sold airline tickets through Show Group at 8 different locations around Australia; and

(k) had its executive management, financial and treasury systems centralised in New Zealand.

22 In the year ended 30 June 2001 the wider Ansett Group generated revenue of approximately AU$3.2 billion and incurred a net loss after tax of AU$378 million. The carry forward tax loss was AU$610 million.

Ansett Group archives

23 The Ansett Group archives contain most of the books and records of the Ansett Group and comprise over 45,000 archive boxes of documents held in seven locations around Australia. Our Investigations revealed that many of the archived books and records are in disarray. Many books and records are either incorrectly indexed or, in some cases, unable to be located. Further, certain historic books and records of the regional airlines (such as Kendell, Skywest Airlines and Aeropelican) and of Traveland are not in our possession as they were provided to the respective purchasers of those airlines and that business, but are available if required.

Sharing of cash

24 The Ansett Group's treasury function was centralised in New Zealand. The bank accounts of many Ansett Group Companies were regularly swept and set off against bank accounts of other Ansett Group Companies. Although inter-company loan balances were adjusted to reflect these movements of cash, the Ansett Group Companies providing cash to related companies did so informally without taking security or being repaid.

25 In some instances, the activities of certain Ansett Group Companies were wholly funded by other Ansett Group Companies. For example, AAE is wholly owned by AAHL and, to the best of our knowledge, was incorporated as a special purpose vehicle for the acquisition and financing of aircraft. It had no separate bank account and its business was wholly funded through inter-company accounts.

Sharing of personnel

26 As a result of our Investigations we believe that, of the 80 entities which comprised the wider Ansett Group, only seven companies employed the approximately 15,000 employees referred to in paragraph 21(a) ("**Likely**

Employer Companies"). The Likely Employer Companies are, and as best we can determine the approximate numbers of their respective employees were, as follows.

Likely Employer Company	Employees (approx)
AAL	12,551
Kendell	921
Traveland	720
AIL	458*
Show Group	158
Skywest Airlines	146
Aeropelican	46

*Some of the these employees may have been employed by AAL, not AIL.

27 Prior to Voluntary Administration the executive management of the Ansett Group was centralised in New Zealand. It is apparent that the total wider Ansett Group work force was viewed by executive management as a single team. For example, a memorandum published on the Air New Zealand / Ansett Group intranet on or about 10 August 2000 stated, among other things, that "the Air New Zealand / Ansett Group had *"a team of more than 24,000 staff"*. Now produced and shown to me marked "**MAK-15**" is a copy of the 10 August 2000 intranet memorandum.

28 There are numerous examples of Ansett Group employees having been "shared" among different entities within the Ansett Group prior to our appointment as Voluntary Administrators. For example:

(a) pilots employed by AAL flew Kendell aircraft;

(b) customer service officers employed by AAL were used by Kendell;

(c) Kendell employees performed work for AAL and Aeropelican;

(d) senior managers performed roles within different Ansett Group Companies simultaneously and moved between positions with various

of those different Ansett Group Companies. Often those senior managers negotiated transactions on behalf of and for the benefit of various Ansett Group Companies;

(e) AAL employees provided baggage delivery and ground handling services for various other Ansett Group Companies, including Kendell, the Hazelton Group and Aeropelican; and

(f) administrative, treasury and account-keeping services were provided by employees of particular Ansett Group Companies to other Ansett Group Companies.

29 Our Investigation of Ansett Group employment records revealed that while some "charge-backs" were raised in respect of some of the above arrangements, this did not always occur, and that to the extent they were raised, "charge-backs" were recorded on an inconsistent and haphazard basis. For example:

(a) Where senior managers performed roles within different Ansett Group Companies simultaneously, the costs of their services were generally not apportioned among the relevant Ansett Group Companies. Many of the "charge-backs" that were raised were not formally approved or accepted by the Ansett Group Company against which they were raised. The monthly "charge-backs" (to the extent they were raised) were simply accounted for in the relevant inter-company loan account balances.

(b) In the case of AAL pilots and other personnel utilised by Kendell (paragraphs 28(a) and 28(b)) the Kendell loan account with AAL revealed that charges for these services were raised by AAL against Kendell for different amounts in different months. Our Investigations revealed that this seems to have been the result of inconsistent bookkeeping rather than fluctuations in the level and type of the AAL services provided to Kendell. In some months, although Kendell utilised AAL employees, AAL raised no "charge-backs" against Kendell for the relevant services.

30 Now produced and shown to me and marked "**MAK-16**" is a copy of an extract of the Kendell loan account with AAL for the months of January 2001 to July 2001, marked up to show "charge-backs" raised by AAL against Kendell in respect of services provided to Kendell by AAL employees.

31 Despite our Investigations to date we have been unable to locate the source documents supporting the "charge-backs" contained in the Kendell loan account with AAL. Further, the relevant Ansett Group staff are no longer available to us to assist us in this regard.

Sharing of other assets and resources

32 Many Ansett Group Companies shared numerous assets (other than cash) and resources (other than personnel) in circumstances where the "asset owning" (or apparently "asset owning") companies either did not charge commercial rates to the recipient companies for the use of those assets and/or resources or raised "charge-backs" on an inconsistent and haphazard basis. Particular examples are set out below.

Ansett Flight Simulator Centre

33 Our Investigations revealed that the Ansett Flight Simulator Centre was a business owned by AAL (even though one of the flight simulators was owned by AAE) but that the Centre was regularly used by other Ansett Group Companies, including Kendell. Our Investigations into AAL company records indicate that AAL did not charge other Ansett Group Companies commercial rates for the use of the Centre. It appears that other Ansett Group Companies were charged, at most, an arbitrary (and approximate) one third of the "market rates" charged to external clients. Further, our Investigations into AAE company records indicate that AAE did not charge other Ansett Group Companies any fees at all for use of the flight simulator that it owned.

Ansett Group brands and intellectual property

34 Ansett Group branding focussed on the Ansett Group as a whole, rather than on individual Ansett Group Companies. It was also the case that a number of

Ansett Group Companies used the same promotional material to which copyright attached.

35 Now produced and shown to me and marked "**MAK-17**" is a copy of an extract from the May 2000 edition of "Panorama", an in-flight Ansett Group publication, which demonstrates the consistent use of branding across the various Ansett Group airlines.

36 All key Ansett Group trade marks, including the iconic chevron and seven point star, were registered and owned by AAL. However, these trade marks were used across the Ansett Group by most Ansett Group Companies (including Skywest Airlines, Aeropelican and Kendell) on planes, vehicles, posters, brochures, other advertising publications and merchandise.

37 Now produced and shown to me and marked "**MAK-18**" are copies of key trade marks registered by AAL and used by other Ansett Group Companies.

38 Now produced and shown to me and marked "**MAK-19**" is a copy of an extract of the July-August 2000 edition of the publication "Flight Safety Australia" which demonstrates the use of chevron and seven point star AAL trade mark on Kendell aircraft.

39 Stationary templates for Air New Zealand and AAL business divisions, such as Ansett Australia Engineering Ansett Australia Cargo and Worldwide Airport Services, were co-branded with Air New Zealand and Ansett Group logos.

40 During the course of our Investigations we have not been able to locate or find evidence of any intra-Ansett Group intellectual property licenses or like agreements referable to cross-Ansett Group use of such intellectual property; nor have we been able to find evidence of "charge-backs" referable to cross-Ansett Group use of such intellectual property.

Information technology, software applications and programs

41 Prior to our appointment as Voluntary Administrators the Ansett Group Companies, collectively, used hundreds of software applications and programs. Software applications and programs that were owned by AAL but,

prior to our appointment, were used by other Ansett Group Companies include:

(a) "Merlin", which facilitated the allocation of seats on flights and which was used predominantly by Kendell, Aeropelican and Skywest Airlines;

(b) "SkyNet", the "inter-face" manager application which connected various other software applications and programs;

(c) the Automatic Boarding control system;

(d) the flight arrivals and departure information system;

(e) the Freight Management System;

(f) the Fares Management and Distribution System;

(g) the passenger self-check-in facility;

(h) the inter-lining baggage dispatch system;

(i) the in-house web booking engine;

(j) the interactive voice response system for telephone bookings and queries;

(k) the Engineering Maintenance Information System (EMIS);

42 These applications and programs were listed in the AAL fixed asset register ("**AAL Asset Register**") at a minimum value of approximately $42.7 million. Now produced and shown to me marked **"MAK-20"** is a copy of a relevant excerpt from the AAL Asset Register.

43 Our Investigations revealed that there were few (if any) commercial agreements or IT licenses in place in relation to cross-Ansett Group use of the above applications and programs. To the extent relevant "charge-backs" were raised, again, that occurred on an inconsistent and haphazard basis.

Land and buildings (Head Office)

44 Despite our Investigations, we cannot determine which Ansett Group Company (or Companies) beneficially owned Head Office. The ownership issue is detailed in paragraphs 61 to 66. On the issue of sharing the use of and expenses for Head Office, although various Ansett Group Companies apparently had interests in, incurred liabilities in respect of and used Head Office, no "charge-backs" were raised or other commercial arrangements implemented in connection with that mixture of interests, liabilities and uses. Our Investigations revealed, among other things, that:

(a) the registered proprietor of Head Office was 501 Swanston Street Pty Ltd (ACN 005 477 618 ("**501 Swanston Street**");

(b) it appears that AAL used part of Head Office but did not pay rent;

(c) despite that, the 2000 Audited Accounts, the 2001 Unaudited Accounts and the AAL Assets Register indicate that AAL treated Head Office as its own asset;

(d) Ansett Group Companies, including AAL, always occupied at least 90% of Head Office;

(e) AAL arranged for part of Head Office to be sub-let to various unrelated, third party occupants and other Ansett Group Companies, but no lease documentation has been found to reflect these arrangements;

(f) although AAL charged and received rents from unrelated, third party occupants for use of Head Office or parts of it, to the extent "charge-backs" were raised against the other Ansett Group Companies, that occurred on an inconsistent and haphazard basis, and simply added to the relevant inter-company loan account balance;

(g) the AAL Asset Register shows that, with few exceptions, AAL paid for Head Office expenses and outgoings. A City of Melbourne rates notice for 2000-2001 issued to AAL on 28 August 2000 indicates that AAL routinely paid council rates in respect of Head Office. Also, our

Investigations suggest that AAL claimed tax deductions for the expenses it incurred in relation to Head Office; and

(h) despite the above, an amended 2001 Land Tax Assessment was issued to, and apparently paid for by AAHL (under its former name, Ansett Transport Industries Limited), and AAHL claimed a tax deduction for this expense.

Land and buildings (Other Ansett Melbourne CBD Properties)

45 Our Investigations revealed that the use of and liabilities for the Other Ansett Melbourne CBD Properties were also shared between different Ansett Group Companies with no "charge-backs" or other commercial arrangements existing to formalise the arrangements. Our Investigations have revealed that:

(a) the registered proprietor of the Other Melbourne Ansett CBD Properties was AAHL;

(b) despite that, the 2000 Audited Accounts, the 2001 Unaudited Accounts and AAL's Fixed Assets Register indicate that AAL treated the Other Ansett Melbourne CBD Properties as if it owned them;

(c) the AAL Asset Register shows that, with few exceptions, AAL paid for the expenses of the Other Ansett Melbourne CBD Properties. The City of Melbourne rates notice for 2000-2001 issued to AAL on 28 August 2000 indicates that AAL routinely paid council rates in respect of a number of the Other Ansett Melbourne CBD Properties. It appears that AAL claimed tax deductions for the expenses it incurred in relation to the Other Ansett Melbourne CBD Properties;

(d) an amended 2001 Land Tax Assessment issued to and paid by AAHL (under its former name, Ansett Transport Industries Limited) indicates that AAHL paid land tax in respect of a number of the Other Ansett Melbourne CBD Properties. AAHL claimed a tax deduction for this expense.

Now produced and shown to me marked "**MAK-21**" is a numbered bundle of documents in relation to the above Head Office, 501 Swanston Street and Other Ansett Melbourne CBD Properties matters.

Resources the subject of "charge-backs"

46 Various other resources were shared between Ansett Group Companies, including Kendell, in circumstances where "charge-backs" were raised on an inconsistent and haphazard basis. Such resources included:

(a) airport leasehold property;

(b) telephone services;

(c) security and passenger screening services;

(d) hosting and cleaning services;

(e) ground fuel;

(f) carparking space; and

(g) accommodation and meals.

47 I refer to the Kendell loan account with AAL for the months of January 2001 to July 2001 (exhibit "MAK-16") in this regard. Other loan accounts we have reviewed disclose similar inconsistencies.

48 Many of the "charge-backs" raised for the use of the above resources were not formally approved or accepted by the recipient Ansett Group Company. As is the case with the Kendell loan account, the monthly charge-backs were simply accounted for in the relevant inter-company loan account balances.

<u>Aircraft leasing and financing arrangements</u>

49 Our Investigations revealed complex leasing and financing arrangements existed in relation to the use and operation of numerous aircraft by Ansett Group Companies, including AAL, AIL, Kendell and Skywest Airlines. In many instances, other Ansett Group Companies, such as AHL and AAHL, gave guarantees in connection with these arrangements.

50 If the assets and liabilities of the Ansett Group are not Pooled we will need to undertake a detailed, costly and time-consuming investigation into the nature and extent of the aircraft leasing and financing arrangements and the effect of the associated guarantees. To the extent that Ansett Group Companies are liable under guarantees for debts incurred by other Ansett Group Companies pursuant to aircraft leasing and financing arrangements, the former group of Companies (or some of them) may have rights of indemnity against the latter group of Companies.

Ansett Group tax

51 Our Investigations revealed that the wider Ansett Group was treated as a tax group. Group tax returns were prepared for each income tax year. The inter-company loan balances as at the date of Voluntary Administration may not accurately reflect the intra-Ansett Group treatment of Ansett Group tax losses.

"Charge-backs" / inter-company loans

52 If Pooling does not occur it will be necessary to review the extent of pre-Administration sharing of personnel, assets and other resources between Ansett Group Companies and to reconcile inconsistencies in the existing "charge-backs" contained in the relevant inter-company loan account balances. This process would entail reviewing many source documents contained in the Ansett Group archives which, as stated at paragraph 23, are in a state of disarray. The process would be extremely time consuming and cost-prohibitive.

53 In the course of our Investigations we have reviewed vast tracts of the Ansett Group's books and records, including the 2000 Audited Accounts and the 2001 Unaudited Accounts. The 2000 Audited Accounts and the 2001 Unaudited Accounts have been our starting point and best ready source of information in relation to inter-company loan accounts. We have relied on those Accounts to calculate the Ansett Group's inter-company positions. However, those Accounts would need to be exhaustively reviewed and analysed if Pooling does not occur and the Ansett Group Companies continue

to be separately administered, as explained more fully below. The 2000 Audited Accounts and the 2001 Unaudited Accounts, as supplemented by the Ansett Group books and records, revealed extensive and complicated inter-company loan transactions between Ansett Group Companies, to a total value of approximately $2.95 billion. As stated at paragraphs 29, 44(f) and 47, the inter-company loan balances also reflect "charge-backs" raised by certain Ansett Group Companies against other Ansett Group Companies.

54 As a result of our Investigations we have formed the opinion that the inter-company loan balances in each Ansett Group Company are either impossible or impracticable to accurately reconstruct and reconcile. In many instances the books and records contain insufficient information to determine whether the liabilities recorded are actually payable and, if so, whether those liabilities have, in fact, been paid.

55 Any reconstruction of the inter-company loan balances would require us to consider whether to charge interest on unpaid (or apparently unpaid) amounts and, if so, to undertake those calculations. That exercise would be complex, time-consuming and costly.

56 Even if the inter-company loan balances were capable of accurate reconstruction and reconciliation, the sheer complexity of the loan transactions and the lack of source documentation means that auditing and proving each loan balance to reconstruct the entire Ansett Group inter-company account would involve detailed and time-consuming accounting work at a total likely cost of between $2 million and $4 million.

57 In order to accurately reconstruct and reconcile all the inter-company accounts we would have to:

(a) re-employ or interview ex-staff from all business divisions of AAL (from cleaners to pilots to IT staff) and also from the other Ansett Group Companies; and

(b) together with the re-employed staff, perform a detailed review of the relevant Ansett Group Company's (or business') operations and of the referrable loan accounts, on a transaction-by-transaction basis.

58 However, in our view it is highly unlikely that we will be able to re-employ, and even then, obtain useful information from sufficient ex-staff to make the task worthwhile, in terms of scope and accuracy.

59 Now produced and shown to me marked "**MAK-22**" is a schedule showing the inter-company loan balances owed to each creditor company within the Ansett Group. The information is drawn from Ansett Group books and records.

Uncertainty about ownership of Ansett Group Assets

60 In many instances, despite our Investigations we have been unable to determine which Ansett Group Company or companies owned particular assets (whether in part or whole).

Head Office

61 As stated in paragraph 44, there is considerable uncertainty over which Ansett Group Company (or companies) beneficially owned Head Office. Settlement of the sale of Head Office occurred on 28 November 2002. 501 Swanston Street holds the proceeds of the sale, which total approximately $22.2 million (including interest) ("**Head Office Sale Proceeds**"). Given the difficulty in determining who owns Head Office (see below), there is a corresponding difficulty in determining which Ansett Group Company or Companies is entitled to the Head Office Sale Proceeds. Unless that uncertainty is resolved, the Head Office Sale Proceeds cannot be distributed.

62 Our Investigations into the ownership of Head Office revealed, among other things, that:

(a) 501 Swanston Street was incorporated on 12 September 1978 under the *Companies Act* 1961;

(b) an unexecuted copy of 501 Swanston Street's Memorandum of Association dated 1 September 1978 states that one of the objects for

which it was established was to *"act as Trustee for unit holders with respect to property acquired and developed by the company at 501 Swanston Street, Melbourne which property so developed shall be managed and controlled by Ansett Transport Industries Limited* [now AAHL]";

(c) at the time of its incorporation, one "A" ordinary share in 501 Swanston Street was issued to AAHL and three "B" ordinary shares were issued to Ansett Transport Industries (Operations) Limited (now AAL);

(d) AAHL purchased Head Office. The minutes of the first meeting of the directors of 501 Swanston Street held on 20 September 1978 indicate that AAHL sold Head Office to 501 Swanston Street by contract of sale. 501 Swanston Street obtained a loan to cover the purchase. It is likely that AAHL was the lender under the loan agreement. Title to the property was subsequently transferred to 501 Swanston Street;

(e) minutes of meeting of directors of 501 Swanston Street held on 28 June 1979 state that the directors resolved that the company would act as trustee over the Head Office on behalf of AAHL and AAL as beneficial owners. The minutes of meeting also state that a unit trust (later known as the "501 Swanston Street Unit Property Trust" ("**Unit Trust**")) would be executed to give effect to the resolution and that the following allocations of units would occur:

(i) AAHL, as to 25 fully paid $1 units; and

(ii) AAL, as to 75 fully paid $1 units (*"in its capacity as Trustee administering the Ansett Transport Industries Limited Superannuation Plans"* ("**Super Plans**"));

(f) on 3 August 1979 the directors of 501 Swanston Street resolved by special resolution that the company would affix its seal to a building contract in respect of Head Office. The special resolution states that the contract recognised the proprietor of the property as being AAHL;

(g) on 6 April 1981 the directors of 501 Swanston Street resolved by special resolution that the company would, in its capacity as trustee of the Unit Trust, borrow $6 million dollars from AAHL and approximately $12.3 million from AAL;

(h) on 7 April 1981 the directors of 501 Swanston Street resolved that the company would transfer AAHL's single "A" ordinary share in 501 Swanston to AAL. Thereafter, AAL (apparently) owned 100% of 501 Swanston Street;

(i) on 10 June 1993 for the purposes of obtaining class orders made by the Australian Securities and Investments Commission ("**ASIC**"), 501 Swanston Street, AAHL, AAL and other parties within the Ansett Group executed a deed of cross-guarantee. Pursuant to the terms of the cross-guarantee, creditors of any of the participating Ansett Group Companies can prove in the winding up of any other participating company (this matter, and the Group-wide effect of this and other cross-guarantees, is dealt with at paragraphs 73 to 74);

(j) a 501 Swanston Street statutory record dated 18 June 1997 shows that as at that date, the company was still trustee of the Unit Trust;

(k) a rates notice for Head Office for 2000-2001 was issued to AAL but an amended 2001 Land Tax Assessment for Head Office was issued to AAHL; and

(l) the AAL's Asset Register lists Head Office as an asset of AAL.

Now produced and shown to me marked "**MAK-23**" are copies of a numbered bundle of documents in relation to the above Head Office Proceeds matters.

63 The best that we can surmise from the above matters is that, up until at least 1997, 501 Swanston Street held the property as trustee for AAHL and AAL pursuant to the Unit Trust.

64 As part of our Investigations we have reviewed Ansett Group archives in order to locate the Unit Trust deed, any amendments to the Unit Trust deed and any

documents relating to AAL's status as trustee over the Super Plans. We have been unable to locate any such documents. It is therefore unclear whether the Unit Trust was in existence after 18 June 1997 and up until Voluntary Administration assuming the Unit Trust existed at the time of Voluntary Administration, the respective beneficial entitlements of AAL and AAHL over the subject of the Unit Trust cannot be conclusively determined. In all the circumstances, the beneficial ownership of the Head Office Sale Proceeds may be fractured between different Ansett Group Companies.

65 If the assets and liabilities of the Ansett Group were pooled it would not be necessary to resolve the complexities and uncertainties surrounding the beneficial ownership of the Head Office Sale Proceeds.

66 If Pooling does not occur we will need to seek directions from the Court about the ownership and proper allocation of the Head Office Sale Proceeds.

Other Melbourne CBD Properties

67 The Other Ansett Melbourne CBD Properties were sold to the purchaser of Head Office. The proceeds of sale of the Other Ansett Melbourne CBD Properties total approximately $11.2 million (including interest) and are also currently held in the bank account of 501 Swanston Street.

Issues arising from the post-Administration realisation of aircraft and engines

68 During the Administrations we have realised many Ansett Group aircraft and engines, in the course of which we discovered that the aircraft and engines were owned (or apparently owned) by a number of different Ansett Group Companies. Further, it became apparent that upon our appointment as Voluntary Administrators the majority of the aircraft in the Ansett Group's fleet were fitted with engines different to the engines originally supplied with the relevant aircraft. It is common aviation industry practice for operating airlines to "swap" engines among airframes to meet the airlines' operational and routine service requirements. For so long as an airline operates as a going concern, these arrangements usually present no extraordinary problems or expenses. However, following Voluntary Administration and the grounding of the Ansett Group fleet of aircraft, and for the purpose of asset realisation, we

needed to ascertain which particular Ansett Group Company or Companies owned which particular aircraft and/or engines, and in what proportions. In a number of cases it has been very difficult to determine which Ansett Group Company owned a particular aircraft or engines, and in what proportions. The problems associated with ascertaining ownership of these assets were magnified by the fact that critical documents, including Bills of Sale, could not be located in respect of some assets acquired up to 20 years ago. Some relevant documents were held by Air New Zealand and had to be recovered to resolve some of these issues.

69 As part of our Investigations and generally for the purposes of the Administrations we have attempted to accurately determine the ownership of aircraft and engines and accurately allocate the proceeds of their sale. There remains, however, a degree of uncertainty about whether the allocations are accurate and whether particular Ansett Group Companies hold proceeds of sale, effectively on trust, on behalf of other Ansett Group Companies.

IT systems and software

70 Our Investigations have revealed that the Ansett Group's extensive IT systems were highly integrated. As stated at paragraph 41, there were hundreds of software applications and programs used across the businesses of the Ansett Group. Although Ansett Group books and records suggest that AAL owned a significant share of Ansett Group IT systems and software, the cross-Ansett Group use of applications and programs has made it very difficult, if not impossible for us to determine accurately which particular Ansett Group Companies owned which particular IT systems and software.

71 Further, prior to our appointment as Voluntary Administrators the Air New Zealand Group and Ansett Group IT systems were partially integrated. These arrangements created further ambiguity in relation to the ownership of IT systems and software and ultimately led to a number of post-Administration disputes with Air New Zealand as to who owned those assets, including disputes over:

(a) the ownership of intellectual property rights in "PROS" revenue accounting and "SAP" engineering and accounts payable imaging software; and

(b) the ownership of Oracle financial analyser software, Compaq hardware and other networking equipment, such as Ethernet cards.

72 The partial integration of Ansett Group and Air New Zealand IT systems and assets also manifested in convoluted IT licensing arrangements (for example, Microsoft and Oracle licence assignments).

Ansett Group deeds of cross-guarantee

Background to deeds of cross-guarantee

73 Various Ansett Group Companies entered into the following deeds of cross-guarantee ("**Cross-Guarantees**") to obtain ASIC Class Order relief from certain statutory accounting and audit requirements. (The Ansett Group Companies currently party to a Cross-Guarantee, with the exception of the trustee companies, are referred to as "**Class Companies**" and each a "**Class Company**".)

(a) The Class Companies of the "Class A" Cross-Guarantee, dated 25 June 1993 are:

(i) Skywest Holdings Pty Ltd (ACN 008 905 646) (now ANST Westsky Holdings Pty Ltd) ("**Skywest Holdings**");

(ii) Eastwest Airlines Limited (ACN 000 063 972) ("**Eastwest**");

(iii) Rock-it-Cargo (Aust) Pty Ltd (ACN 003 004 126) ("**Rock-it-Cargo**"); and

with Eastwest Airlines (Operations) Limited (ACN 000 259 469) ("**Eastwest Ops**") as trustee.

(b) The Class Companies of the "Class B" Cross-Guarantee, dated 10 June 1993 are:

(i) AAHL;

(ii) Wridgways Holdings Limited (ACN 004 449 085) ("**Wridgways**");

(iii) 501 Swanston Street;

(iv) AAL; and

with Wridgways (Vic) Pty Ltd (ACN 004 153 413) ("**Wridgways (Vic)**") as trustee.

(c) The Class Companies of the "Class C" Cross-Guarantee, dated 29 June 1999 are:

(i) AHL;

(ii) Bodas Pty Ltd (ACN 002 158 741) ("**Bodas**");

(iii) Morael Pty Ltd (ACN 003 286 440) ("**Morael**");

(iv) Skywest Aviation Limited (ACN 004 444 866) (now ANST Westsky Aviation Limited) ("**Skywest Aviation**");

(v) Skywest Airlines; and

with AAL as trustee.

Now produced and shown to me marked "**MAK-24**" is a copy of the Class A Cross-Guarantee dated 25 June 1993 together with Revocation Deeds dated 27 June 1994 and 2 February 1999.

Now produced and shown to me marked "**MAK-25**" is a copy of the Class B Cross-Guarantee dated 10 June 1993 together with Revocation Deed dated 27 June 1994, Assumption Deed dated 23 June 1999 and Revocation Deed dated 29 June 2000.

Now produced and shown to me marked "**MAK-26**" is a copy of the Class C Cross-Guarantee dated 29 June 1999.

74 The likely operation and effects of the Cross-Guarantees reflect the degree to which the affairs of the Ansett Group were intermingled pre-Administration. The likely operation and effects of the Cross-Guarantees post-Administration also raise important considerations in assessing the utility of Pooling as a means of resolving (or avoiding having to resolve, in the interests of saving time and significant costs) the complexities of the Ansett Group.

75 Under the terms of each Class Order, an Ansett holding entity was permitted to prepare a consolidated financial statement in respect of the relevant Class companies.

76 In return for the disclosure concessions granted under the Class Orders, each Class company party to a Cross-Guarantee was required to cross-guarantee the debts of each other Class company party to that same Cross-Guarantee. Under each Cross-Guarantee, each Class company became co-surety for the deficiencies of the other Class companies in the liquidation of any of them.

77 With the exception of Skywest Airlines (no longer in administration) each of the Class Companies (including the trustee companies) is in administration. With the exception of Skywest Holdings and Skywest Aviation, each of the Class Companies is subject to an Ansett DOCA.

Key terms of Cross-Guarantees

78 To explain the effect of the Cross-Guarantees, I set out below key clauses relating to Classes A and B. (The corresponding clauses in the Class C Cross-Guarantee are materially similar and to the same practical effect.) Two separate guarantees ("**Underlying Guarantees**") are provided under each Cross-Guarantee by each Class company party to that Cross-Guarantee.

79 The first Underlying Guarantee is made pursuant to clause 3.1 of each Cross-Guarantee, which provides that:

> "*Each* [Class] *Company covenants with the Trustee for the benefit of each Creditor that the* [Class] *Company guarantees to each Creditor payment in full of any Debt in accordance with* [the relevant Cross-Guarantee]."

80 Clause 3.3 of the Cross-Guarantee states that:

> "*The Trustee and each* [Class] *Company acknowledge that the Trustee holds the benefit of the covenants and commitments of each* [Class] *Company made pursuant to this* [Cross-Guarantee] *upon trust for each Creditor.*"

81 The second Underlying Guarantee is made pursuant to clause 6.1 of each Cross-Guarantee, which provides that:

> "*As a separate covenant by way of Deed Poll each* [Class] *Company agrees with each Creditor that the* [Class] *Company will guarantee to each Creditor payment of any Debt due to the Creditor from any other* [Class] *Company in accordance with this* [Cross-Guarantee]."

82 Clause 3.2 of each Cross-Guarantee provides that the applicable Cross-Guarantee becomes enforceable in respect of the Debt of a Class Company:

> *"(a) upon the winding up of the* [Class] *Company under subsection 460(1) or paragraph 461(a) or (h) or (j) of the* [Act] *or on a Creditors' voluntary winding up under Part 5.5 Division 3 of the* [Act]*; or*
>
> *(b) in any other case – if six months after a resolution or order for the winding up of the* [Class] *Company any Debt of a Creditor of the* [Class] *Company has not been paid in full."*

83 The following definitions are contained in each Cross-Guarantee:

> *"**Creditor**" means a person (whether now ascertained or ascertainable or not) other than a* [Class] *Company to whom now or at any future time a Debt (whether now existing or not) is or may at any future time be or become payable;*
>
> *"**Debt**" means any debt or claim which is now or at any future time admissible to proof in the winding up of a* [Class] *Company and no other claim;*

84 The value of the combined net realisations of assets held in the Class Companies is approximately $512 million out of total net realisations of $590 million across the Ansett Group.

85 In our opinion the claims of creditors under the Cross-Guarantees are likely to be admissible for voting and all other purposes in the Administrations of all Class Companies.

"Charge-backs" for post-Administration use of assets

86 Since our appointment as Voluntary Administrators, for the sake of continuity and to avoid wastage of time and costs, the pre-Administration practice of certain Ansett Group Companies using assets owned (or apparently owned) by other Ansett Group Companies continued until the relevant assets were de-commissioned or sold.

87 Ansett Group asset realisations have taken a number of years. In our view, by selling the assets in an orderly manner we have maximised sale proceeds. For example, in the 2004 calendar year we realised $113 million worth of assets. In the first six months of the 2005 calendar year we realised approximately $30 million of assets.

88 Further, in order to obtain the best possible prices for Ansett Group assets, and to ensure the success of particular transactions, certain Ansett Group Companies have at times:

(a) been required to leverage benefits from AAL;

(b) been required to use AAL assets; and/or

(c) required AAL to assume residual liabilities in respect of certain assets disposed of.

89 Below are two examples of Ansett Group Companies using AAL's assets or leveraging other benefits in this way, for the overall benefit of the Ansett Group.

<u>Use of AAL assets by AAE</u>

90 Upon our appointment as Voluntary Administrators AAE had no cash of its own. However, it had significant assets in the form of aircraft and engines worth potentially $50 million. In order to maximise proceeds from the sale of its aircraft and engines, AAE used AAL's assets and resources to meet the following costs and expenses:

(a) the continuation of insurance;

(b) continual aircraft and engine maintenance; and

(c) the preservation of records fundamental to the underlying value of aircraft and engines, including certifications of registration and airworthiness.

91 The AAE aircraft and engines were stored and maintained using the staff employed, and the facilities owned by AAL at the Tullamarine airport facility.

Use of AAL assets by Kendell and other regional airlines

92 Upon our appointment as Voluntary Administrators up until the sale of its business to AWA on 1 August 2002, Kendell used numerous AAL assets and resources to enable it to continue operating its airline business and to maximise the price for which its business and "legacy assets" (including aircraft and spare parts) were sold as a going concern. Skywest and Aeropelican did likewise. The AAL assets and resources used by Kendell, Skywest and Aeropelican included:

(a) AAL terminals around Australia;

(b) AAL management around Australia, including those who held critical licenses which enabled some of the regionals to continue flying;

(c) various other human resources around Australia, including ticketing, "back office", accounting and support staff; and

(d) the Ansett Flight Simulator Centre (Kendell only).

No "charge-backs" for use of AAL assets by Kendell and other regional airlines

93 AAL has not benefited or received compensation for substantially supporting and effectively funding the sale the Kendell airline business and other regional airlines, as noted above.

94 Although the extent of post-Administration use of AAL's assets has been accurately recorded during the course of the Ansett Group Administrations, if Pooling does not occur it will be necessary for AAL to raise further "charge-backs" against Kendell and other Ansett Group Companies, to account for

their use of AAL assets post-Administration. Charges would need to be allocated based on market rates. Significant time and costs would be expended to resolve these issues. If Pooling occurs it will not be necessary to raise these "charge-backs".

Apportionment of Administration costs

95 Since our appointment as Voluntary Administrators AAL has incurred significant costs in relation to particular transactions, dealings and litigation on behalf of and for the benefit of other Ansett Group Companies. Examples include costs incurred in connection with:

(a) the MOU negotiations and the MOU Application;

(b) the SEESA negotiations, obtaining the SEESA Orders and the protracted litigation with the Ground Staff Superannuation Plan;

(c) the administration of payments received under SEESA;

(d) the preparation of the Ansett DOCAs and the Skywest/Aeropelican DOCAs;

(e) the organisation and convening of formal meetings of creditors (including the Second Meeting) and Committee of Creditors meetings for each Ansett Group Company;

(f) the preparation and dispatch of 69 Committee of Creditors' updates, 36 employee updates and detailed quarterly reports to the Commonwealth and to employee representatives;

(g) the administration and updating of the Ansett Websites; and

(h) the progressive de-commissioning of particular Ansett Group IT systems and hardware, the maintenance and implementation of other IT systems and the costs associated with unwinding contractual licensing issues and resolving IT disputes with Air New Zealand.

96 In our opinion, had AAL not borne these post-Administration costs on behalf of the regional airlines (in particular), they would not have been able to achieve

the asset realisations that they did. For example, Kendell is expected to realise $25 million in assets. Its liability to employees is approximately $9.4 million. We believe that had AAL not supported Kendell by incurring many of Kendell's post-Administration costs, Kendell would have been unable to realise enough from its assets to even cover its employee liabilities.

97 Although the post-Administration costs incurred by AAL have been accurately recorded, if Pooling does not occur it will be necessary to undertake an "arm's length, commercial terms" apportionment across the Ansett Group of all of the costs incurred by AAL in relation to non-AAL transactions, dealings and litigation. This would be a time-consuming and costly exercise.

98 Apportionment of the Administration costs referred to in paragraph 95 would involve extensive review of the books and records of the Administrations. Interviews of KordaMentha and ex-Andersen staff may be required.

Ansett Group tax issues

99 Many pre-Administration Ansett Group tax issues would need to be reviewed and resolved if Pooling does not occur. Those tasks are likely to cost a great deal of money and take months or years to conclude. For example, there are unresolved issues about the proper allocation of tax deductions among Ansett Group Companies.

Costs of proof of debt processes

100 We have not called for formal proofs of debt from unsecured creditors in the Administrations. Instead, as part of our Investigations we have reviewed the books and records of the Ansett Group for the purposes of identifying all potential creditors, as a result of which we have complied a database of Ansett Group creditor debt values ("**Creditor Database**"). The Creditor Database has been cross-referenced with all proofs of debt submitted by Ansett Group creditors for the purposes of voting at meetings of creditors held to date. In cases where the Ansett Group books and records record a debt or debts of different value(s) to that or those claimed by the relevant creditors in his, her or its proof of debt as submitted for voting purposes, we have recorded the higher amount(s) in the Creditor Database.

101 The Creditor Database lists 33,922 unsecured creditors of the Ansett Group who are recorded as being owed, or claiming to be owed (in total) in excess of $7.55 billion, comprising 182 related party unsecured creditors (with claims totalling approximately $2.95 billion) and 33,740 other unsecured creditors (including employees) (with claims totalling approximately $4.6 billion).

102 If required, the calling for and examining of formal proofs of debt is likely to be an extremely costly and time-consuming exercise. The number of proofs of debt likely to be submitted in the Ansett Group Administrations is huge. Approximately 25,000 unaudited proofs of debt have already been submitted by Ansett Group creditors for the purposes of voting at meetings of creditors. Those proofs of debt are currently stored in 77 archive boxes held in Melbourne. We estimate that AAL alone has in excess of 31,000 unsecured creditors (including employees) with claims totalling approximately $3.36 billion.

103 If Pooling does not occur it may be necessary to conduct a formal proof of debt process for each Ansett Group Company and will be necessary to do so in respect of at least those Ansett Group Companies which have a surplus of assets over employee entitlements. Before formal proofs of debt can be accepted or rejected, we will need to determine not only the precise amount of the proof, but also to identify (if possible) the true Ansett Group debtor Company. That will require a detailed, time-consuming and costly process of reviewing the Ansett Group's books and records. It may also entail interviewing former Ansett Group employees who, due to the effluxion of time since the termination of their employment, may no longer be able to recall necessary or useful information.

104 We estimate that the administrative costs alone of conducting a formal proof of debt process across the entire Ansett Group could be between $2 million and $4 million, if not more. That estimate allows nothing for potential legal costs of and incidental to the calling for, and an assessment and (if advised) rejection of formal proofs of debt. In our opinion it is possible the legal fees could be more than $5 million.

The MOU

105 In late 1996 Air New Zealand Limited ("**Air New Zealand**") purchased a 50% stake in AHL and in June 2000 purchased the remaining 50%, thereby becoming 100% shareholder in AHL and its subsidiaries and the ultimate holding company of the Ansett Group.

106 Our Investigations revealed that the businesses, operations and records of the Ansett Group and the Air New Zealand Group of Companies were significantly intertwined.

107 Now produced and shown to me marked "**MAK-27**" and "**MAK-28**" are copies of Mentha's affidavits (excluding exhibits) sworn 8 and 10 October 2001 ("**Mentha MOU Affidavits**") in the MOU Application. Mentha's MOU Affidavits detail the background to the Ansett Group's entry into the MOU, which is exhibit "MAK-3" to my First Affidavit.

Operation of the MOU

108 The MOU required us to take all reasonable steps to propose and recommend to Ansett Group creditors that each Ansett Group Company enter into a DOCA which acknowledged and incorporated the terms of the MOU and which sought to Pool all of the assets and liabilities of the Ansett Group so that, for the purposes of the Ansett DOCAs, all Ansett Group Companies are treated as one company. The essential provisions of the MOU are summarised below.

(a) Air New Zealand agreed to procure the New Zealand Government to immediately pay on behalf of the Air New Zealand Group (as defined) to the Ansett Group the MOU monies (net of all New Zealand taxes). This ensured that the payment could not be disgorged should the Air New Zealand Group later become insolvent (clause 9).

(b) Air New Zealand and the Directors (as defined) would not seek repayment of trade debts or funds advanced. This waiver extended to the sum of $32 million advanced to the Ansett Group during its administrations for the purposes of paying wages to Ansett Group staff.

In addition, Air New Zealand would not prove in the Administrations or in any subsequent liquidations of the Ansett Group (clause 11).

(c) The MOU does not affect any investigations or legal claims against Air New Zealand or the Directors conducted by ASIC (clause 20).

(d) In consideration of payment of the MOU monies by the New Zealand Government, the Voluntary Administrators, the Ansett Group and the Hazelton Group Administrator released the Air New Zealand Group and the Directors from all actions, claims and demands arising out of the Letter of Comfort dated 8 August 2001 from Air New Zealand to AHL, AIL and AAL (**"Letter of Comfort"**) (clause 12).

(e) The Voluntary Administrators, the Ansett Group and the Hazelton Group Administrator conditionally released the Air New Zealand Group and all of the Directors, from *"claims and demands arising out of and/or relating directly or indirectly to"*:

(i) the management or affairs of the Ansett Group;

(ii) any claims arising at common law, equity or statute, including but not limited to the Act and the *Trade Practices Act* 1974 (Cth);

(iii) any claims arising in the Administration of the Ansett Group; and

(iv) any transactions or dealings between any company in the Ansett Group and any company in the Air New Zealand Group (clause 13).

(f) The conditional release was given regardless whether or not the Voluntary Administrators or any company in the Ansett Group were then presently aware of the existence of such action, claim or demand. However, the releases did not cover:

(i) any failure by Air New Zealand or the Directors to exercise their powers and discharge their duties in good faith in the best

interest of the Ansett Group and for a proper purpose or any reckless conduct or improper use of position (clause 22.5); and

(ii) the return of aircraft, assets and documents belonging to the Ansett Group (clause 13).

(g) The MOU was conditional upon the Court approving its terms or making orders or directions to the same effect (clause 6.1).

(h) The Directors made certain representations and warranties, including that they had not acted other than in good faith and for a proper purpose or recklessly in the management of the affairs of the Ansett Group and that any statements made and any affidavits filed by the Directors in the MOU Application would be true in all material respects and not misleading. The conditional release contained in clause 13 would become inoperative if the Voluntary Administrators were mislead in respect of any of the warranties given by Directors (clause 22).

(i) We were required to take all reasonable steps to propose and recommend that each company in the Ansett Group enter into a DOCA which acknowledged and incorporated the terms of the MOU and which sought to pool all of the assets and liabilities of the Ansett Group so that, for the purposes of the DOCA, all Ansett Group Companies are treated as one company (clause 18).

(j) We are required to use our best endeavours to ensure that the priority creditors of the Ansett Group are paid all their entitlements in full (clause 23).

MOU Application

109 Because the Air New Zealand settlement was negotiated with extreme urgency, it was not possible at the time for us to obtain detailed legal advice concerning the potential rights of action of the Ansett Group against the Air New Zealand Group, except for those which may have arisen under the Letter of Comfort.

110 In those circumstances, and pursuant to the condition precedent contained in clause 6.1 of the MOU, on 5 October 2001 we issued the MOU Application.

111 On 12 October 2001, the Court made orders, among others, that:

(a) pursuant to section 447A of the Act, section 447D(1) of the Act would operate in respect of each of the Ansett Group Companies so that the Court could give a direction that it approved the MOU and that the Voluntary Administrators could properly perform and give effect to its terms;

(b) pursuant to section 447D(1) of the Act (as it operated in accordance with the order set out above) the Court directed that:

(i) it approved the MOU; and

(ii) the Voluntary Administrators could properly perform and give effect to the MOU.

Events following Court approval of the MOU

112 Following Court approval of the MOU a dispute arose with the Hazelton Group Administrator as to what proportion of the MOU monies should be paid to the Hazelton Group. In October 2001 the Hazelton Group Administrator applied to the Court seeking a direction as to apportionment of the MOU monies ("**Hazelton Allocation Application**"). In response, we applied to the Court seeking directions as to the Hazelton Group's entitlement (if any) to the MOU monies ("**Ansett Allocation Application**"). (In this affidavit I refer to the Hazelton Allocation Application and the Ansett Allocation Application, jointly, as the "**Allocation Applications**".) Now produced and shown to me marked "**MAK-29**" to "**MAK-33**" are copies of the following affidavits (excluding exhibits) filed and served in the Ansett Allocation Application:

(a) affidavit of the Hazelton Group Administrator sworn 22 October 2001;

(b) my affidavit sworn 1 November 2001;

(c) affidavit of Leon Zwier sworn 20 September 2002;

(d) my affidavit sworn 26 September 2002; and

(e) affidavit of Bradley Fowler sworn 13 March 2003.

113 By reference to the above affidavits I note the following matters.

114 The Hazelton Group Administrator deposed to the effect that the Hazelton Group Companies were a *"late addition"* to the Ansett Group and that effective control of them passed to the Ansett Group (and thereby to Air New Zealand) only on or about 30 April 2001.

115 When the Ansett Group went into Voluntary Administration the Hazelton Group Companies constituted a very small part of the wider Ansett Group. Whereas the wider Ansett Group employed approximately 15,000 people and served over 130 domestic destinations, operating regionally, nationally and internationally, and owned or leased 133 aircraft, the Hazelton Group of Companies employed approximately 283 people, owned or leased 13 small aircraft and operated only regionally.

116 On 2 November 2001 the Court ordered in the Hazelton Allocation Application that we, as Voluntary Administrators, should pay to the Hazelton Group Administrators the sum of $1.545 million on account of the Hazelton Group's entitlement to an allocation of the MOU monies. That payment was made without prejudice to the Court's final orders in the Hazelton Allocation Application. Accordingly, provision was made for repayment of that sum of $1.545 million from the assets of the Hazelton Group of Companies following payment of priority liabilities under section 556(1) of the Act.

117 On 15 January 2002 the Hazelton Group companies executed deeds of company arrangement (**"Hazelton DOCAs"**). The Hazelton DOCAs did not contemplate pooling. (As an aside, I note that the Hazelton Group Administrator did not undertake by the MOU to recommend a deed of company arrangement, whether for the pooling of assets and liabilities of the Ansett Group, or otherwise. However, by clauses 5 and 19 of the MOU, the Hazelton Group Administrator did undertake that any deed he recommended would "*acknowledge and incorporate the terms of the* [MOU]".)

118 On 29 April 2002 the Court made orders in the Hazelton Allocation Application, standing both Allocation Applications over to enable the parties to those applications to file and serve affidavits and submissions as to the extent, assessment and valuation of the potential claims against the Air New Zealand Group which had been released pursuant to the MOU, in consideration of the Ansett Group's receipt of the MOU monies. His Honour Justice Goldberg stated at paragraph 32 of his reasons for judgment that:

> *"...the proper principle to be applied to determine the extent of the respective interests of the two groups in the fund and the manner of its apportionment between them is to determine what was bargained away or given up, by each group in exchange for the receipt of the $150m and then to place a value on what each group bargained away or gave up. In this way it is possible to identify the relative value of what was relinquished in exchange for an interest in the fund of $150m."*

119 At the time (April 2002), the only substantial issue between the parties was the proper valuation of the claims each had released in exchange for a share of the MOU monies.

120 On or about 1 May 2002 we, as Voluntary Administrators, advanced a further sum, of $1 million, to the Hazelton Group Administrator on the same terms and conditions on which the initial sum of $1.545 million had been advanced.

121 Between 7 May and 28 June 2002 extensive negotiations took place between the parties in an attempt to settle the Allocation Applications. Those negotiations took place against the background of the proposed sale of the Kendall and Hazelton businesses to AustraliaWide Airlines Limited ("**AWA**").

122 On 28 June 2002 the parties to the Allocation Applications executed a deed of settlement in compromise of the Hazelton Allocation Application ("**Hazelton Deed of Settlement**"). Relevantly, under the Hazelton Deed of Settlement the Ansett Group agreed to pay the sum of $3.045 million (including the total sum of $2.545 million already advanced) to the Hazelton Group. From our perspective on behalf of the Ansett Group, the agreed settlement sum was not an allocation of MOU Monies as such, but rather a sum calculated and paid to settle the Hazelton Allocation Application on commercial terms and to avoid further risk, inconvenience and expense to the Ansett Group. Now produced

and shown to me marked "**MAK-34**" is a copy of the Hazelton Deed of Settlement.

123 Settlement of the Hazelton Allocation Application (as documented in the Hazelton Deed of Settlement) was conditional on, among other things:

(a) completion of the sale of shares in Hazelton Air Services Pty Ltd and Hazelton Air Charter Pty Ltd to AWA, and the sale of shares in Kendall pursuant to a Share Sale Agreement between Bodas and AWA; and

(b) a direction from the Court to the effect that the parties to the Hazelton Deed of Settlement could properly perform and give effect to that deed and the transactions documented in it.

124 The Hazelton Group Administrator subsequently asserted that certain conditions precedent in the Hazelton Deed of Settlement had not been satisfied, such that the deed was ineffective or invalid and the Hazelton Allocation Application remained on foot.

125 In response, in that application we filed written contentions dated 5 May 2003 in which we contended, among other things, that if the Hazelton Deed of Settlement was determined not to be binding on the Hazelton Group Administrator or the Court did not direct the Hazelton Group Administrator to perform his obligations under the Hazelton Deed of Settlement, the Court would need to consider the value of the claims surrendered by the Ansett Group pursuant to the MOU. Now produced and shown to me marked "**MAK-35**" is a copy of our written contentions dated 5 May 2003.

126 Further, we asserted that each of the Ansett Group Companies to which the Letter of Comfort was addressed (namely, AHL, AIL and AAL) had viable claims against Air New Zealand which were released pursuant to the MOU. (In particular, Air New Zealand had promised to those companies a $400 million loan facility and a demand had been made under the Letter of Comfort which had not been complied with.) We maintained that these claims represented a collective entitlement of AHL, AIL and AAL to at least 90% of the MOU Monies. We also contended that the Hazelton Group Companies

had no viable claims against Air New Zealand or the Directors and that the value of any claims relinquished by the Hazelton Group Administrator pursuant to the MOU was effectively zero. Accordingly, we contended that the Hazelton Group Administrator was not entitled to any allocation of the MOU Monies, perhaps other than an amount representing the price Air New Zealand might have paid to eliminate "nuisance value" claims, however ill-founded.

127 In contrast, the Hazelton Group Administrator suggested an apportionment by reference to comparative liabilities based on a comparison of total unsecured debts as at Voluntary Administration or, alternatively, an allocation in some way referable to the trading losses of each participating company.

Subsequent events and final settlement of the Hazelton Allocation Application and later proceedings

128 On 1 August 2002 HZL Ltd (formerly Hazelton Airlines Ltd) went into liquidation and the Hazleton Group Administrator was appointed together with Lawrence Fitzgerald as liquidators of the company ("**Hazelton Liquidators**").

129 On 8 May 2003 the Deed Administrators and the Hazelton Liquidators reached a further agreement to settle the Hazelton Allocation Application. Pursuant to terms of settlement dated 8 May 2003 ("**Further Hazelton Terms of Settlement**"), in our capacity as Deed Administrators we agreed to pay the Hazelton Liquidators $3.2 million in full and final settlement of the Hazelton Allocation Application. As with the June 2002 settlement, we agreed to pay the revised settlement sum not as an allocation of MOU monies, but only to avoid further risk, inconvenience and expense to the Ansett Group. Now produced and shown to me marked "**MAK-36**" is a copy of the Further Hazelton Terms of Settlement.

130 Of the settlement sum, $2.545 million had already been paid to the Hazelton Group Administrator. Accordingly, a further $0.655 million was paid to the Hazelton Liquidators pursuant to the Further Hazelton Terms of Settlement. The Further Hazelton Terms of Settlement also effected mutual releases by the Hazelton Liquidators and the Ansett Group in respect of certain

inter-company debts and claims, all of which related to the period post-administration of the Ansett Group and the Hazelton Group Companies. The Court approved the settlement on 8 May 2003. Now produced and shown to me marked "**MAK-37**" are copies of the Court's orders and reasons for judgment.

131 Notwithstanding the contentions we have advanced about the respective value of the claims released by Ansett Group Companies under the MOU, we are of the view that there is a real risk that the process of allocating the MOU Monies among Ansett Group Companies will be imprecise and give rise to potentially costly disputes and litigation and conflicts of interest for ourselves as Deed Administrators. The time and expense associated with the Allocation Applications illustrates this real potential for significant disputes to arise.

132 In our opinion the Pooling of the MOU Monies into a single Ansett Group Company will avoid potential disputes or litigation about allocation of MOU Monies, save significant time and expense, and avoid delays. Further, Pooling would result in an outcome consistent with the terms of the MOU and would directly benefit Ansett Group priority creditors.

SEESA / employee entitlements

Background to SEESA

133 On Voluntary Administration there were about 15,000 employees in the wider Ansett Group who were owed approximately $760 million. The size of the redundant workforce and the amount of outstanding employee entitlements are without precedent in Australian corporate history.

134 In paragraph 14 of my First Affidavit I set out the key features of SEESA. The background to SEESA and the events leading up to its implementation are set out in my affidavit sworn on 3 December 2001 and filed in the SEESA Application ("**SEESA Affidavit**"), a copy of which (excluding exhibits) is now produced and shown to me marked "**MAK-38**".

135 The Commonwealth Department of Employment and Workplace Relations took responsibility for administering SEESA. The principal objectives of

SEESA were to achieve both the early payment of unpaid Ansett Group employee entitlements (to the community standard) and to "stand in the shoes of the employees" to recover from the Ansett Group assets the funds advanced under the scheme. In essence, SEESA operated as a "safety net" for Ansett Group employees.

136 The Commonwealth required that SEESA payments, once made, should be repaid to the Commonwealth with the same priority as all other employee entitlements pursuant to sections 556 and 560 of the Act.

137 On 9 October 2001 the Minister for Employment, Workplace Relations and Small Business made a formal determination under section 22(1) of the specially introduced *Air Passenger Ticket Levy (Collection) Act* 2001 ("**Determination**") ("**Levy Act**") specifying those Ansett Group Companies and employee entitlements to be covered by SEESA and the terms on which SEESA payments would be made. Payments for Ansett Group employee entitlements were to be made by SEESA to the extent that those entitlements could not be paid from the assets of the Ansett Group. Part 4 of the Schedule to the Determination stated that SEESA would provide payment of the following entitlements of Ansett Group employees:

(a) wages;

(b) annual leave and long service leave;

(c) pay in *lieu* of notice ("**PILN**"); and

(d) redundancy up to the community standard of 8 weeks.

138 An air passenger ticket levy ("**Levy**") was imposed on airline tickets by the Levy Act to meet the cost of SEESA. The Levy, which was administered by the Department of Transport and Regional Services, applied to air passenger tickets purchased on or after 1 October 2001 until 30 June 2003. The Levy Act provided for a total special appropriation of $500 million for use by SEESA.

139 On 14 October 2001 we reached an "in principle" agreement with the Commonwealth by which the Commonwealth would advance SEESA payments to redundant employees in respect of arrears of wages, unpaid annual leave, long service leave, superannuation contributions and redundancy of up to eight weeks, estimated at $195 million in total. As Voluntary Administrators, we agreed to pay from Ansett Group assets redundant employees PILN of between 4-5 weeks, estimated at $35 million in total.

SEESA Application

140 By 30 October 2001 approximately 4,000 Ansett Group employees had been made redundant. However, those employees could not receive their SEESA payments unless directions and orders could be obtained from the Court to ensure the priority of repayment to the Commonwealth. Without the benefit of Court orders, we may have been personally liable to repay the SEESA payments other than from the assets available to us in the Ansett Group Administrations.

141 In those circumstances, on 3 December 2001, in company with the Commonwealth and various unions, we issued the SEESA Application seeking, among other things, orders and directions to the effect that:

(a) it was appropriate for us, as Voluntary Administrators, to enter into a loan agreement to facilitate SEESA payments to redundant employees;

(b) debts incurred by us, as Voluntary Administrators, pursuant to SEESA were debts incurred in the performance and exercise of our functions for which we would not be personally liable except to the extent that there were Ansett Group assets available to us to do so; and

(c) that the SEESA advances be repaid with a priority equal to a priority in a winding up.

142 On 14 December 2001 the Court made the orders and directions we had sought ("**SEESA Orders**"). Justice Goldberg's reasons for judgment ("**SEESA Judgment**") were handed down on 4 January 2001. (See exhibit "MAK-7".)

SEESA Deed

143 As a consequence of the SEESA Orders, on 14 December 2001 the SEESA Deed was executed between the Commonwealth, AHL and each of the other 41 companies listed in the Determination (other than the Hazelton Group Companies), defined as the "eligible companies and ourselves as Voluntary Administrators. The SEESA Deed is exhibited to my First Affidavit and marked "MAK-4". The SEESA Deed set out the basis upon which the Commonwealth or its agent would make SEESA payments to us, as Voluntary Administrators.

144 Clause 2.5 of the SEESA Deed provides that if we, as the Voluntary Administrators, decided to recommend that the eligible companies enter into DOCAs, each DOCA will *"seek to "pool" all of the assets and liabilities of the eligible companies, so that for the purposes of the* [relevant DOCA] *all eligible companies are treated as one company"*.

Loan Deed

145 On 18 December 2001 we, as Voluntary Administrators, and SEES Pty Ltd ("**SEES**"), as service provider and agent of the Commonwealth under the SEESA Deed, executed a deed entitled "Administration and Loan Deed of Agreement" ("**Loan Deed**"). The Loan Deed set out the terms on which SEES would lend money to us, as Voluntary Administrators, for the purposes of SEESA and pursuant to the SEESA Orders.

146 Now produced and shown to me marked "**MAK-39**" is a copy of the Loan Deed.

147 Clause 6.4 of the Loan Deed largely mirrors the requirement in clause 2.5 of the SEESA Deed. It provides that the DOCAs proposed by us as Voluntary Administrators *"[m]ay seek to pool all of the assets and liabilities of the eligible companies, so that for the purposes of the* [DOCA] *all eligible companies are treated as one company"*.

SEESA payments made

148 All payments by the Commonwealth (via SEES) under SEESA have been made on the terms and conditions agreed to in the SEESA Deed and the Loan Deed, including the requirement that the Ansett DOCAs seek to pool the assets and liabilities of the "eligible" Ansett Group Companies.

149 By 30 June 2005 the Commonwealth had advanced approximately $380.6 million to us, as Voluntary Administrators and then as Deed Administrators, on the terms and conditions agreed in the SEESA Deed and the Loan Deed. Approximately 12,955 Ansett Group employees have received SEESA payments. It is expected that the Commonwealth will advance a total of $383.8 million under the SEESA Scheme.

150 Employees have now received $561.3 million of the total estimated employee claims of $760 million. We estimate that employees will ultimately receive a further $70.5 million, to a total of $631.8 million, in respect of the $760 million in total entitlements claimed. ($631.8 million equates to 83.1% of the total entitlements claimed.)

151 As Administrators, we have lodged tranches of claims (up to several thousand at a time) with the Commonwealth. The Commonwealth and its auditors undertake a detailed audit of each tranche of claims before advancing funds. The SEESA payments to date have been transferred by SEES to the "AAL Scheme Monies Account", from which we have made payments to employees of a number of Ansett Group Companies.

152 Although the Determination and subsequent SEESA Orders described 41 companies in the Ansett Group as "eligible companies", only four Ansett Group Companies have made SEESA claims for former employees, namely AAL, Aeropelican, Kendell and Show Group.

Repayments to the Commonwealth

153 As at 30 June 2005 the Commonwealth had been repaid $253 million of the total SEESA payments advanced. Repayments to the Commonwealth have generally been made at the same time as distributions have been paid to

employees, with one exception. To enable employees to receive a large dividend payment on 10 December 2003, the Commonwealth deferred a payment of $67 million due to it. This arrangement was reached pursuant to the terms of settlement dated 25 November 2003 executed between the Ansett Australia Ground Staff Superannuation Plan ("**Ground Staff Plan**"), the Deed Administrators and the Commonwealth (as to which, see paragraph 163). The Commonwealth's deferred dividend of $67 million was ultimately paid by October 2004.

154 We estimate that of the total of $383.8 million anticipated to be advanced under SEESA, the Commonwealth will be repaid $302 million. Consequently, SEESA will ultimately deliver a net benefit to the Ansett Group of approximately $81.8 million.

Ground Staff Plan litigation and settlement

155 By originating motion filed 25 July 2002 in Supreme Court of Victoria proceeding No. 2115 of 2001 the trustees of the Ground Staff Plan sought that Court's determination as to whether AAL was liable to pay the shortfall to the Ground Staff Plan which arose as a result of the mass retrenchment of Ansett Group employees following Voluntary Administration and, if so, whether that shortfall would rank to priority if the Ansett Group was wound up.

156 At the Second Meeting of AAL, creditors voted overwhelmingly in favour of DOCAs that, for the avoidance of doubt, relegated the shortfall claim to rank as ordinary unsecured debt.

157 In her judgment dated 20 December 2002 her Honour Justice Warren (as she then was) held that AAL was obliged to meet the Ground Staff Plan shortfall but that the obligation did not rank to priority on a winding up.

158 On 24 March 2003 the trustees of the Ground Staff Plan filed an appeal from Justice Warren's decision in the Victorian Court of Appeal. As Deed Administrators we filed a notice of cross-appeal.

159 The appeal and cross-appeal were heard by the Victorian Court of Appeal on 11 and 12 August 2003, following extensive submissions by the parties.

160 On 21 August 2003 the Court of Appeal allowed the appeal on technical grounds but ordered the Ground Staff Plan to pay AAL's costs of the appeal. The Court did not overturn Her Honour Justice Warren's decision on its merits but held that, in all the circumstances, it was inappropriate to determine the priority issue as it was hypothetical.

161 On 9 October 2003 the parties to the appeal and cross-appeal signed terms of settlement by which they agreed to discontinue the Court of Appeal proceedings.

162 Following settlement of the Court of Appeal proceedings, the trustees of the Ground Staff Plan resumed the conduct of an earlier-issued Federal Court application (No V3107 of 2002) to determine whether the Ansett DOCAs were unjust, unfair, oppressive or unfairly prejudicial on the basis that the Ground Staff Plan shortfall was, in truth, a priority amount that had been unjustly, unfairly or oppressively subordinated ("**AAL DOCA Variation Application**"). The trustees also sought orders from the Court to vary the Ansett DOCAs.

163 The AAL DOCA Variation Application was settled on 25 November 2003. Under the settlement, the Commonwealth agreed to defer its entitlement to be repaid $67 million of the $335 million of SEESA advances made to that date, enabling us to pay a special distribution of $67 million to Ansett Group employees on account of unpaid severance pay in excess of 8 weeks. The amount was split between Ground Staff Plan members and non-Ground Staff Plan members so that none would be worse off as a result of the settlement. In addition, the settlement cleared the way for the release of approximately $300 million, which had previously been tied up as a result of the various litigations brought by the trustees of the Ground Staff Plan. Approximately half of that amount (the $67 million plus an additional $83 million) went directly to former Ansett Group employees on account of their unpaid severance pay in excess of 8 weeks and half to the Commonwealth in part repayment of monies advanced under the SEESA. Now produced and shown to me marked "**MAK-40**" is a copy of the terms of settlement of the AAL DOCA Variation Application. By orders made 25 November 2003 his Honour Justice Goldberg approved the terms of settlement and varied the AAL DOCA to

reflect the terms of settlement ("**AAL DOCA Variation Orders**"). Now produced and shown to me marked "**MAK-41**" is a copy of the AAL DOCA Variation Orders and his Honour Justice Goldberg's reasons for judgment.

164 Due to the settlement, the Ground Staff Plan resolved to distribute the remaining assets of the Ground Staff Plan to members in proportion to their "*Vested Benefit entitlements*" after provision was made for the Ground Staff Plan's costs. Steps were then taken to wind up the Ground Staff Plan in accordance with the *Superannuation Industry (Supervision) Regulations* 1994 (Cth).

165 $28 million of the $67 million special distribution was paid to Ansett Group employees who were not members of the Ground Staff Plan, to ensure they were no worse off than they would have been had we been successful in the Ground Staff Plan litigation. In my opinion, the Ansett Group employees who were not Ground Staff Plan members are better off as a result of the settlement than they would have been had the Deed Administrators been successful in the Federal Court proceeding and the AAL DOCA remained unamended.

Ansett Group DOCAs

Execution of DOCAs by Ansett Group Companies

166 On 2 May 2002 the Ansett Group Companies, with the exception of Skywest Airlines, the Skywest Entities and Aeropelican (as to which, see paragraphs 173 to 197), executed the Ansett DOCAs. A copy of the Ansett DOCA executed by AAHL is exhibited to my First Affidavit and marked "MAK-2".

167 The purposes and objects of the Ansett DOCAs are to provide for the business, property and affairs of each Ansett Group Company to be administered in a way that, among other things:

(a) provides the maximum possible return for Deed Creditors from the orderly sale and realisation of assets of each Ansett Group Company;

(b) does not compromise any Deed Creditor's debts;

(c) allows for subsequent meetings of Deed Creditors to consider variations to the Ansett DOCAs;

(d) results in a better return for the Deed Creditors of each Ansett Group Company than would result from an immediate winding-up;

(e) facilitates a commercial resolution to the financial difficulties of the Ansett Group without unnecessary impediment or legal dispute; and

(f) has due regard to any orders or directions made by the Court as to how Part 5.3A of the Act is to operate in relation to each Ansett Group Company.

Pooling provisions in Ansett DOCAs

168 In accordance with our contractual obligations under the MOU and the SEESA Deed, the Ansett DOCAs make provision for the possible pooling of Ansett Group assets and liabilities. (This is not the case with the Skywest/Aeropelican DOCAs, for reasons explained at paragraphs 173 to197.)

169 At paragraphs 9 to 12 of my First Affidavit I set out the content of clauses 13.1, 13.2, 18.4 and 20.2.14 and 20.2.15 of the Ansett DOCAs, insofar as they relate to possible Pooling.

170 Not only do the Ansett DOCAs require us to take reasonable steps to propose and recommend that each Ansett Group Company seek to Pool all of the assets and liabilities of the Ansett Group, the Ansett DOCAs also require that we convene further meetings of Deed Creditors to consider the necessary mechanical variations to the Ansett DOCAs to enable Pooling to occur. Clause 18.4 of each Ansett DOCA specifies that such a meeting is to occur after *"the Deed Administrators have sold or otherwise realised sufficient assets so that they are able to make an accurate estimation"* of likely distributions to creditors under the priority regime set out in the Ansett DOCAs. Clause 18.4 also requires that we *"advertise nationally and make available to Deed Creditors on the Administrators' Website particulars of the proposed variation and such information which would be sent to Deed*

Creditors as if the meeting were a Second Meeting of Creditors under section 439A of the Act". Our best estimates of the likely distributions to Priority Creditors if Pooling occurs, and if it does not, are set out and explained at paragraphs 198 to 211.

Ansett Group creditor returns under Pooling

Ansett DOCAs priority regime

171 Clause 18.2 of the Ansett DOCAs sets out the priority regime for payments to creditors of monies defined as the "Distribution Amounts" to creditors, as follows:

> "*18.2 The Distribution Amounts shall be applied in payment of the Voluntary Administrators, the Deed Administrators and the Participating Creditors of the Company as follows:*
>
> *18.2.1 firstly, the Voluntary Administrators and the Deed Administrators in relation to any amounts owing to them and unpaid pursuant to the terms of the Deed, to the extent they would be afforded priority in winding-up of the Company;*
>
> *18.2.2 secondly, the Secured Creditors of the Company, to the extent that their Security is valid;*
>
> *18.2.3 thirdly, Priority ROT Creditors of the Company in relation to their Priority ROT Amount;*
>
> *18.2.4 fourthly, in the order of priority set out in section 556:*
>
> *18.2.4.1 Employees of the Company;*
>
> *18.2.4.2 the SEESA Payer in accordance with the terms of the SEESA Deed and the SEESA Payments Deed;*
>
> *18.2.4.3 any trustee of a Superannuation Fund that is a Priority Creditor, to the extent of its Priority Creditor Amount (but, for the avoidance of doubt, excluding the amount of any Top Up Retrenchment Benefit Claim that trustee may have); and*
>
> *18.2.4.4 any other Participating Creditors of the Company entitled to a priority under section 556 of the Act as if the Company were to be wound up; and*

18.2.5 fifthly (but subject to Clause 18.4), other Participating Creditors of the Company (including Top Up Retrenchment Benefit Creditors to the extent of their 28 Top Up Retrenchment Benefit Claims) on a pro rata basis, in the amounts and on the dates determined by the Deed Administrators in their absolute discretion."

172 The AAL DOCA priority regime is slightly different from the other Ansett DOCAs. By reason of order 1(b) of the AAL DOCA Variation Orders, clause 18.2 of the AAL DOCA was varied in the terms set out in Schedule B to those orders, which relevantly provided that the following provisions be inserted immediately after existing clause 18.2.3 of the AAL DOCA:

*"18.2.4 fourthly, $39,000,000 to be paid as severance pay rateably in accordance with the amounts shown in the second column of figures, and to the employees of the Ansett Group Companies identified as members of the Ansett Australia Ground Staff Superannuation Plan ("**the Ground Staff Plan**"), in the schedule comprised in exhibit "**PDF-A**" to the affidavit of Paul Daniel Francis sworn 25 November 2003 filed in proceeding V3107 of 2002 in the Federal Court of Australia and on the basis that such payments are to be deducted from each employee's unpaid "Employee Amounts" (if any) (as defined in the deed of company arrangement concerning the relevant Ansett Group Company that employed them);*

18.2.5 fifthly, $28,000,000 to be paid as severance pay rateably to each employee of the Ansett Group Companies who is not a member of the Ground Staff Plan in proportion to his or her unpaid "Employee Amounts" (as defined in the deed of company arrangement concerning the relevant Ansett Group Company that employed them) and on the basis that such payments are to be deducted from each such employee's unpaid Employee Amounts (as so defined);

18.2.6 sixthly, to the SEESA Payer an amount equal to:

18.2.6.1 100 cents in the dollar for amounts advanced by the SEESA Payer to either the Voluntary Administrators or the Deed Administrators pursuant to the SEESA Deed and the SEESA Payments Deed that would have priority in a liquidation of the Company under sections 556(1)(e) or 556(1)(g) of the Act; PLUS

18.2.6.2 up to 27.5 cents in the dollar for amounts advanced by the SEESA Payer to either the

Voluntary Administrators or the Deed Administrators pursuant to the SEESA Deed and the SEESA Payments Deed that would have priority in a liquidation of the Company under sections 556(1)(h) of the Act;

LESS $67,000,000, on the basis that such payment is to be deducted from amounts owed by the Voluntary Administrators or the Deed Administrators to the SEESA Payer;

18.2.7 seventhly, up to 27.5 cents in the dollar (being a number of cents the same as the number of cents in the dollar of the payment under clause 18.2.6.2) as severance pay to each employee of the Ansett Group Companies in proportion to his or her respective unpaid "Employee Amounts" (as defined in the deed of company arrangement concerning the relevant Ansett Group Company that employed them) and on the basis that such payments are to be deducted from each such employee's unpaid "Employee Amounts" (as so defined);

18.2.8 eighthly, $67,000,000 to the SEESA Payer on the basis that such payment is to be deducted from amounts owed by the Voluntary Administrators or the Deed Administrators to the SEESA Payer;

18.2.9 ninthly, in the order of priority set out in section 556:

18.2.9.1 Employees of the Company;

18.2.9.2 the SEESA Payer in accordance with the terms of the SEESA Deed and the SEESA Payments Deed;

18.2.9.3 any trustee of a Superannuation Fund that is a Priority Creditor, to the extent of its Priority Creditor Amount (but for the avoidance of doubt, excluding the amount of any Top Up Retrenchment Benefit Claim that trustee may have);

18.2.9.4 any other Participating Creditors of the Company entitled to a priority under section 556 of the Act as if the Company were to be wound up; and

18.2.10 tenthly, (but subject to Clause 18.2.9), other Participating Creditors of the Company (including Top Up Retrenchment Creditors to the extent of their Top Up Retrenchment Claim) on a pro rata basis,

in the amounts and on the dates determined by the Deed Administrators in their absolute discretion."

(See exhibit "MAK-41".)

The Skywest/Aeropelican DOCAs

173 The Skywest/Aeropelican DOCAs were entered into by the following five Ansett Group Companies: Skywest Aviation (now ANST Westsky Aviation Pty Ltd), Skywest Holdings (now ANST Westsky Holdings Pty Ltd), ANST Westsky Jet Charter Pty Ltd (formerly Skywest Jet Charter Pty Ltd) ACN 008 800 155) (collectively **"Skywest Entities"**), Skywest Airlines and Aeropelican.

Skywest and Aeropelican

174 Meetings of creditors were convened under section 439A of the Act in respect of each of Skywest Airlines, the Skywest Entities and Aeropelican on 25 January 2002 ("**Skywest/Aeropelican Meetings**"). The Skywest/Aeropelican Meetings were held well prior to each Second Meeting of the other Ansett Group Companies, in order to facilitate the early sale of the Skywest Entities' businesses and the shares in each of Skywest Airlines and Aeropelican, as described below.

175 Now produced and shown to me and marked "**MAK-42**" are true copies of our Reports as Voluntary Administrators to creditors of Skywest Airlines, the Skywest Entities and Aeropelican, each dated 15 January 2002.

176 At each Skywest/Aeropelican Meeting it was resolved by a majority of creditors of each of Skywest Airlines, the Skywest Entities and Aeropelican, both in number and in value, that each of those companies would execute a DOCA. Skywest Airlines, the Skywest Entities, and Aeropelican executed the Skywest/Aeropelican DOCAs on or about 15 February 2002.

177 The Skywest/Aeropelican DOCAs are not in the same form as the Ansett DOCAs and do not contain clauses relating to the identification of persons who have admissible claims, the distribution of assets or the possible pooling of the Ansett Group.

178 Now produced and shown to me and marked "**MAK-43**" are copies of the Skywest/Aeropelican DOCAs.

179 Clause 6.5 of each of the Skywest/Aeropelican DOCAs provides:

> *"The method of calculation of and method of payment of Claims and the determination of persons entitled to a Claim will be determined at a meeting of creditors of the Company to be held on or about the date to which the second meeting of creditors of various companies in the Ansett group has been adjourned (**"the Subsequent Meeting"**) and to which the provisions of clause 10 will apply."*

180 Clause 10.1 of each of the Skywest/Aeropelican DOCAs states:

> *"Meetings of creditors of the Company may be convened by the Administrators from time to time in accordance with section 445F* [of the Act]."

181 Clause 11.5 of each of the Skywest/Aeropelican DOCAs states:

> *"This Arrangement may be varied by a resolution passed at a meeting of the Claimants convened under this Arrangement only if the variation is not materially different from a proposed variation set out in the notice of meeting."*

Skywest and Aeropelican sales

182 Pursuant to a Share Sale Agreement dated 21 February 2002 (**"Skywest Sale Agreement"**) Bodas sold all of the shares in Skywest Airlines to Airline Investments Limited (ACN 098 904 262) (**"Airline Investments"**). Skywest Airlines then came out of deed administration.

183 Now produced and shown to me and marked **"MAK-44"** is a copy of the Skywest Sale Agreement.

184 Similarly, under a Share Sale Agreement dated 6 March 2002 (**"Aeropelican Sale Agreement"**) Bodas sold all of the shares in Aeropelican to IAP Group Australia Pty Ltd (**"IAP"**). Aeropelican then came out of deed administration. The Aeropelican Sale Agreement was subsequently varied by a Deed of Variation dated 12 April 2002 and a letter from Bodas to IAP dated 24 April 2002 (**"Variation Documents"**).

185 Now produced and shown to me and marked **"MAK-45"** are copies of the Aeropelican Sale Agreement and Variation Documents.

186 As a result of these transactions, since early March 2002 the Ansett Group has comprised 39 Ansett Group Companies (that is, the 41 Companies that

went into Administration in September or October 2001, less Skywest Airlines and Aeropelican).

Westsky and Pelican Trusts

187 As part of the sale of the Skywest Airlines shares by Bodas to Airline Investments, and of the Aeropelican shares by Bodas to IAP, respectively, certain Skywest and Aeropelican assets were agreed to be sold and transferred to Bodas for Bodas to hold as trustee (as explained below).

188 By a Transfer of Assets Agreement dated 21 February 2002 ("**Skywest Transfer Agreement**"), Skywest Airlines agreed to transfer certain of its assets to Bodas. This transfer was interdependent on the completion of the Skywest Sale Agreement. By a separate Trust Deed dated 7 March 2002, Bodas, as trustee, determined to declare a trust over the assets transferred to it by Skywest Airlines in favour of creditors who may have had claims against Skywest Airlines as of the date of the appointment of the Initial Administrators ("**Westsky Trust Deed**" and "**Westsky Trust**", respectively).

189 Now produced and shown to me marked "**MAK-46**" are copies of the Skywest Transfer Agreement and the Westsky Trust Deed.

190 Pursuant to a Transfer of Assets Agreement dated 24 April 2002 ("**Aeropelican Transfer Agreement**"), Aeropelican agreed to transfer certain of its assets to Bodas. Again, this transfer was interdependent on the completion of the Aeropelican Sale Agreement. By a separate Trust Deed dated 11 June 2002, Bodas, as trustee, determined to declare a trust over the assets transferred to it by Aeropelican in favour of creditors who may have had claims against Aeropelican as at the date of the appointment of the Initial Administrators ("**Pelican Trust Deed**" and "**Pelican Trust**", respectively).

191 Now produced and shown to me and marked "**MAK-47**" are copies of the Aeropelican Transfer Agreement and the Pelican Trust Deed.

192 Under the terms of the Westsky Trust Deed and the Pelican Trust Deed, we were appointed as agents of Bodas as trustee.

193 Clause 3.2 of each of the Westsky Trust Deed and the Pelican Trust Deed states:

> "*In exercising any of the powers conferred by this trust and carrying out duties or functions arising under the or by reason of or in connection with this trust, the Administrators shall act as agents for and on behalf of the Trustee* [that is, Bodas]".

194 Creditors who may have had claims against Skywest Airlines or Aeropelican, as at the date of the appointment of the Initial Administrators to those companies, may have their claims recognised under the Westsky Trust and the Pelican Trust, respectively. However, like the Skywest/Aeropelican DOCAs, the Westsky Trust Deed and the Pelican Trust Deed do not currently provide a regime for:

(a) the identification of persons who have admissible claims;

(b) the distribution of assets; and

(c) the possible Pooling of the Ansett Group assets and liabilities.

195 Clause 6.1 of each of the Westsky Trust Deed and the Pelican Trust Deed states:

> "*A meeting of creditors of the Company will be called by the Administrators at such time and place as is determined by the Administrators. Unless otherwise determined by the Administrators, the meetings shall be held on or about the date to which the second meeting of creditors of the Ansett Group has been adjourned. Subject to any order of the Court to the contrary, that meeting of creditors of that Company will determine:*
>
> *(a) Admissible Claims and persons entitled to Admissible Claims; and*
>
> *(c) the distribution (including the method of distribution) of the Fund to Admitted Creditors or as otherwise resolved at the meeting.*"

196 Clause 9 of each of the Westsky Trust Deed and the Pelican Trust Deed states:

> *"9.1 ...*
>
> *Meetings of Admitted Creditors may be convened by the Trustee from time to time.*
>
> *9.2 ...*
>
> *Except to the extent (if any) they are excluded or modified by any resolution of the Company's Creditors or the Admitted Creditors or are inconsistent with the terms of this deed, Regulations 5.6.12 to 5.6.36A of the Corporations Regulations apply, with such modifications as are necessary, to meeting of the Admitted Creditors or the Committee as if the references to 'the liquidator' "the liquidator or provisional liquidator', 'the chairperson' or 'trustee for debenture holders', as the case may be, were references to the Trustee."*

197 Clause 10.1(a) of each of the Westsky Trust Deed and the Pelican Trust Deed states:

> *"Subject to clause 10.1(b), the deed (and any one or more or all parts of it) may be varied by a simple majority Resolution passed at a meeting of those Admitted Creditors who attend the meeting (whether personally or by proxy or attorney) but only if the variation is not materially different from a proposed variation set out in the notice of meeting".*

Distribution tables and assumptions

198 We have prepared tables setting out our estimates of distributions to Priority and non-Priority Creditors ("**Distribution Tables**"). The estimated distributions reflect the Ansett DOCA priority regime. The Distribution Tables show estimated distributions, first, after Pooling of the Ansett Group (including the effect of the AAE Pooling Deed) and, second, as though Pooling does not occur (but also including the effect of the AAE Pooling Deed).

199 We have made the following assumptions and taken into account the following matters ("**Assumptions**") in preparing the Distribution Tables.

(a) We have used the 2000 Audited Accounts and the 2001 Unaudited Accounts as a starting point, particularly in relation to the inter-company loan positions.

(b) Estimated final net realisations assume Pooling occurs and the AAE Pooling Deed is given effect (in which case, following the Pooling of

AAE's available assets into AAL, AAL will make "settlement" payments to some of AAE's non-Priority Creditors, totalling $27 million).

(c) AAL is assumed to be the beneficial owner of Head Office.

(d) Priority and non-Priority Creditors of each of the Class Companies party to a Cross-Guarantee have contingent claims in the Administrations of each other Class Company party to that Cross-Guarantee. Under the Class B Cross-Guarantee, Priority Creditors and non-Priority Creditors of AAL would have contingent claims in the Administration of AAHL and non-Priority Creditors of AAHL would have contingent claims in the administration of AAL. Likewise, under the Class C Cross-Guarantee, Priority Creditors and non-Priority Creditors of the Westsky Trust (in substitution for Skywest Airlines) would have contingent claims in the Administration of AHL and non-Priority Creditors of AHL would have contingent claims against the Westsky Trust. (Class A is immaterial because the relevant Class Companies hold no assets.)

(e) The priority afforded to employee entitlements (and SEES) under section 556(1) of the Act would not be afforded to employees who prove as creditors of related Ansett Group Companies by virtue of the operation of the Cross-Guarantees (including where funds flow into the Class Companies from an Ansett Group Company not subject to the relevant Cross Guarantee).

(f) The Creditor Database accurately reflects likely proofs of debt in the Ansett Group, were formal proofs of debt to be called.

(g) Post-Administration "charge-backs" are not factored in, except in respect of AAE.

(h) The MOU Monies have not been apportioned among individual Ansett Group Companies.

(i) The Ansett Group post-Administration costs set out at paragraphs 95 to 98 have not been apportioned to individual Ansett Group Companies, except in respect of AAE costs.

(j) All outstanding matters between the Ansett Group and the Commonwealth are assumed to be settled.

(k) The Commonwealth (including ATO & SEES) agrees to vote in favour of Pooling (or agrees not to oppose Pooling).

(l) The "round robin" effect of repeated distributions through the inter-company loan accounts is factored in. To explain, when initial distributions are received by AAHL those payments are, in turn, distributed to various related company creditors to satisfy inter-company indebtedness. Some of the initial distributions are eventually returned to AAL or AAHL from related company debtors by virtue of distributions effected pursuant to further inter-company indebtedness.

Distribution Table 1

200 Distribution Table 1 (below) lists seven "asset holding" Ansett Group Companies ("**Asset Holding Entities**") all of which, with the exception of AAL, have a surplus of assets over employee entitlements ("**Surplus**"). The estimated net realisations for the Asset Holding Entities have been projected following our review of Ansett Group books and records. Distribution Table 1 also shows the gross entitlements of Ansett Group employees as recorded in the Ansett Group's books and records and following an external audit confirmation from SEES.

1. Ansett Asset Holding Entities Employee Entitlements and Surplus over Entitlements (if applicable)								
	The Westsky Trust	AIL	The Pelican Trust	Show Group	AAE	Kendell	AAL	Total
	$m	$m	$m	$m	$m	$m	$m	$m
BEFORE INTERCOMPANY DISTRIBUTIONS								
Estimated Net Realisations	2.23	1.90	5.57	9.63	38.00	25.72	506.95	590.00
Gross Employee Entitlements		0.16	0.25	0.87		9.36	749.36	760.00
Surplus over Emp'ee Ent's	2.23	1.74	5.32	8.76	38.00	16.36	0.00	72.41

Distribution Table 2

201 Distribution Table 2 (below) shows the estimated distributions of the Surplus on a pro-rata basis to the non-Priority Creditors of each Asset Holding Entity in isolation. The non-Priority Ansett Group Creditors include AAL and AAHL, together with third party non-Priority Creditors. As Distribution Table 2 shows, AAL stands to receive $20.35 million and AAHL stands to receive $17.13 million in distributions.

2. Distribution of Surplus (over Employee Entitlements)							
	Distribution - Round 1.				Related Party Receipts		Third Party Receipts
Dist'ns to Related Party Creditors	Funds Avail (after Priority Cr's)	Unsecured Third Party Crs	Unsecured Related Party Crs	Dist'n to Related Party Creditors	AAL	AAHL	Third Party
	$m	$m	$m	$m	$m	$m	$m
The Westsky Trust *	2.23	23.74	12.75	0.78			
AAL (from The Westsky Trust)					0.78		1.45
AIL	1.74	221.06	290.68	0.99			
AAL (from AIL)					0.02		
AAHL (from AIL)						0.97	0.75
The Pelican Trust	5.32	0.86	4.50	4.46			
AAL (from The Pelican Trust)					4.46		0.86
Kendell	16.36	36.63	162.70	13.35			
AAL (from AIL)					1.09		
AAHL (from AIL)						12.27	3.01
Showgroup	8.76	6.75	24.96	6.89			
AAL (from AIL)					3.00		
AAHL (from AIL)						3.89	1.86
AAE	38.00			11.00			
AAL (via Pooling)					11.00		27.00
Total	72.41	289.05	495.59	37.48	20.35	17.13	34.93

* The Westsky Trust - third party creditors include those of AHL as part of Class C Deed of Cross-Guarantee

Distribution Table 2A

202 Distribution Table 2A (below) shows further estimated distributions to non-Priority Creditors as a result of inter-company debts. The $17.13 million that flows into AAHL is subject to further distributions to non-Priority Creditors under the Class B Cross-Guarantee with claims of a gross value of $4.96 billion. There are essentially four further distributions, as follows:

(a) Monies are distributed to AAL directly as a result of AAL proving as a non-Priority Creditor in the Administrations of each of the Asset Holding Entities.

(b) Monies are distributed to AAL indirectly as a result of AAL proving as a non-Priority Creditor in the Administration of AAHL by virtue of the Class B Cross-Guarantee.

(c) Monies are distributed to AAL Priority Creditors directly as a result of those creditors proving in the Administration of AAHL by virtue of the Class B Cross-Guarantee.

(d) Monies are distributed to AAHL and AAL non-Priority Creditors indirectly as a result of those non-Priority Creditors proving in the Administration of AAHL by virtue of the Class B Cross-Guarantee.

From each of these further distributions the monies flow directly to AAL Priority Creditors.

203 Each of the further distributions that pass through AAHL are subject to approximately 100 "round-robin" iterations through 19 Ansett Group Companies until such distributions reach an immaterial level (ie, less than $100).

Distribution - Round 2. etc.		
Dist'ns to Related Party Creditors	**Funds Avail (from above) $m**	
AAL	20.35	- straight to priority creditors
AAHL		
AAHL distribution would be:		
- AAL	2.70	- being portion of AAHL funds that flow back to AAL (via interco) and straight to Priority Creditors via approx 100 "round robin" iterations
- AAL Priority Creditors	0.96	- being $329m/$4.96 billion - which is the pro-rata portion of distribution to AAL Priority Creditors via a non-Priority distribution of Class B
- AAL, AAHL non-Priority Creditors	13.47	- being amount to non-Priority Creditors of Class B (being AAL and AAHL) via a non-Priority distribution of Class B
	17.13	
Total	37.48	

Distribution Table 3

204 Distribution Table 3 (below) shows distributions to employees and third party Deed Creditors. The monies that are distributed to AAL flow directly to Priority Creditors (namely, Ansett Group employees and SEES).

3. Ansett Group End Distribution Tables

Scenario	Pooling With AAE Compromise Scenario 1.				No Pooling With AAE Compromise Scenario 2.			
Dist'ns to Employees	**Overall Rtn to Emp'ees:**	**Total Emp'ees Claims:**	**Number of Emp'ees (with o/s $) to be paid:**	**Cents in the Dollar to Emp'ees:**	**Overall Rtn to Emp'ees:**	**Total Emp'ees Claims:**	**Number of Emp'ees (with o/s $) to be paid:**	**Cents in the Dollar to Emp'ees:**
	$m	**$m**			**$m**	**$m**		
AIL	0.16	0.16	0	100.00c	0.16	0.16	0	100.00c
The Pelican Trust	0.23	0.25	7	92.00c	0.25	0.25	7	100.00c
Kendell	9.21	9.36	66	98.40c	9.36	9.36	66	100.00c
Show Group	0.76	0.87	11	87.36c	0.87	0.87	11	100.00c
AAL	629.31	749.36	9,431	83.98c	616.13	749.36	9,431	82.22c
Total	639.67	760.00		84.17c	626.77	760.00		82.47c
Dist'ns to Third Party Creditors	**Dist'n to go to Third Party Crs:**	**Total Third Party Cr Claims:**	**Number of Third Party Crs to be paid:**	**Cents in the Dollar to Third Party Crs:**	**Dist'n to go to Third Party Crs:**	**Total Third Party Cr Claims:**	**Number of Third Party Crs to be paid:**	**Cents in the Dollar to Third Party Crs:**
	$m	**$m**			**$m**	**$m**		
AAHL *					13.47	3,697.02	31,296	0.36c
The Westsky Trust **					1.45	23.74	239	6.11c
AIL					0.75	221.06	96	0.34c
The Pelican Trust					0.86	0.86	79	99.19c
Kendell					3.01	36.63	745	8.21c
Show Group					1.86	6.75	673	27.62c
AAE	27.00	up to 215	up to 4	12.50c	27.00	up to 215	up to 4	12.50c
Total	27.00				48.41	up to 4,001	up to 33,130	

* AAHL - includes distributions to AAHL native third party creditors and to AAL third party creditors via a claim on the assets of AAHL under the Class B Cross-Guarantee

** The Westsky Trust - includes distributions to Westsky Trust native third party creditors and to AHL via a claim on the assets of the Westsky Trust under the Class C Cross-Guarantee

Distribution Table 4

205 Distribution Table 4 (below) is a consolidated summary of the estimated final position of Ansett Group employees, SEES and non-Priority Creditors under "Pooling" and "no Pooling" scenarios. Under the "Pooling" scenario, Ansett Group employees stand to receive $639.7 million, SEES stands to receive $307.1 million and non-Priority Creditors stand to receive $27 million. By contrast, under the "no Pooling" scenario Ansett Group employees stand to receive $626.6 million, SEES stands to receive $298.9 million and non-Priority Creditors stand to receive $48.4 million.

4. Global Receipts (Employees, SEES and Non-Priority Creditors)

Summary of Specific Stakeholder Positions:	Pooling (with AAE Compromise) Scenario 1. $m	No Pooling (with AAE Compromise) Scenario 2. $m
Group employees:		
Group employees receive:	639.7	626.6
out of total of:	760.0	760.0
which is a % rtn of (on average):	84.2%	82.4%
Group employees shortfall	120.3	133.4
SEES:		
SEES receive:	307.1	298.8
out of total of:	383.8	383.8
which is a % rtn of:	80.0%	77.9%
SEES shortfall	76.7	85.0
Non-Priority Creditors		
Unsecured Third Party Creditors receive:	27.0	48.4

Evaluation of the likely effect of Pooling and not Pooling on Ansett Group creditors

206 On the basis of the Assumptions and, in turn, the information contained in the Distribution Tables, we have evaluated the likely effect on Ansett Group creditors of the Ansett Group Pooling and not Pooling, as follows.

Creditors for whom Pooling delivers a better outcome

207 In our opinion AAL's Priority Creditors would be better off under Pooling by a total of approximately $21.4 million, representing an increase of 1.5 cents in the dollar.

Creditors for whom pooling has nil effect

208 In our opinion the creditors of all Ansett Group Companies except the Asset Holding Entities (listed in Distribution Table 1) and AHL would be unaffected by Pooling.

Creditors for whom pooling may have an adverse effect

209 In our opinion the following third party non-Priority Creditors may be adversely affected by Pooling (scenario 1 in Distribution Table 3).

(a) 31,296 third party non-Priority Creditors of AAHL in the sum of approximately $13.47 million, representing a maximum reduction in their likely distribution of 0.36 cents in the dollar.

(b) 239 third party non-Priority Creditors of the Westsky Trust in the sum of approximately $1.45 million, representing a maximum reduction in their likely distribution of 6.11 cents in the dollar.

(c) 96 third party non-Priority Creditors of AIL in the sum of approximately $750,000, representing a maximum reduction in their likely distribution of 0.34 cents in the dollar.

(d) 79 third party non-Priority Creditors of the Pelican Trust in the sum of approximately $860,000, representing a maximum reduction in their likely distribution of 99.19 cents in the dollar.

(e) 745 third party non-Priority Creditors of Kendell in the sum of approximately $3.01 million, representing a maximum reduction in their likely distribution of 8.21 cents in the dollar.

(f) 673 third party non-Priority Creditors of Show Group in the sum of approximately $1.86 million, representing a maximum reduction in their likely distribution of 27.62 cents in the dollar.

210 In our opinion the following Priority Creditors may be adversely affected by Pooling:

(a) 11 Priority Creditors of Show Group in the sum of approximately $110,000, representing a maximum reduction in their likely distribution of 12.64 cents in the dollar.

(b) 66 Priority Creditors of Kendell in the sum of approximately $150,000, representing a maximum reduction in their likely distribution of 1.6 cents in the dollar.

(c) 7 Priority Creditors of the Pelican Trust in the sum of approximately $20,000, representing a maximum reduction in their likely distribution of 8 cents in the dollar.

211 I note the following, further relevant matters.

(a) Distribution Table 4 shows that Priority Creditors will receive $21.4 million more if Pooling occurs than would be the case if Pooling does not occur. However, the same is not necessarily true in reverse, to the benefit of non-Priority Creditors, because the Distribution Tables and Assumptions do not take into account the additional "separate Administration" costs (many of which I have described in this affidavit) which each Ansett Group Company would incur were the Ansett Group not Pooled and the Ansett Group Companies to continue to be separately administered.

(b) With the exception of the Deed Creditors listed in paragraph (c) below, the Distribution Tables do not take into account the operation of the provisions in the Ansett DOCAs dealing with "Non Cost Effective Claims", being:

> *"the Claim of a Deed Creditor whose Claim in the bona fide assessment of the Deed Administrators would receive a dividend for an amount less than $AUD25 after an accurate estimation of the dividend is made in accordance with Clause 18.4."*

Such claims are extinguished by the Ansett DOCAs and Deed Creditors with such claims are not entitled to prove in the Administrations. Since the definition is by reference to the amount of the dividend and not the amount of the claim then, for example, in the case of AAHL where the expected dividend is approximately 0.36 cents in the dollar, a Deed Creditor of AAHL would need to have a provable claim worth at least ($25/0.0036) = $6,945 to avoid extinguishment.

(c) The Distribution Tables do not take into account claims of Deed Creditors who are Global Rewards Creditors or Golden Wing Creditors (as defined in any Ansett DOCA), for the following reason. Such creditors would be entitled to prove in the Administration of AAHL as a result of the operation of the Class C Cross-Guarantee. However, by the operation of the "Non Cost Effective Claims" provision such creditors would need to have a claim worth at least approximately $6,945 in the Administration of AAHL to avoid extinguishment. As Frequent Flyer points are carried in the Ansett Group books and records at no more than 0.2 cents per point then a Global Rewards Creditor or Golden Wing Creditor (as defined in the Ansett DOCAs) would need at least ($6,945/0.002) = 3,472,500 Frequent Flyer points to have a provable claim in the Administration of AAHL that was not extinguished. To the best of my knowledge only one person had more than 3 million Frequent Flyer points upon Administration. Accordingly, we have not included Global Rewards Creditors and Golden Wing Creditors in the Distribution Tables.

AAE POOLING DEED

212 If we obtain the orders or directions described in paragraphs 13(a) and 13(b) we currently intend to vote in favour of Pooling at the Pooling Meetings. Were that to occur, we are confident that at the Pooling Meetings all Ansett Group Companies (including the Asset Holding Entities) would resolve to Pool.

However, but for the AAE Pooling Deed, in respect of which we seek the orders or directions described in paragraphs 13(c) and 13(d), we are certain that the creditors of AAE would reject Pooling, for the following reasons.

213 The following parties claim to be creditors of AAE for the following amounts (excluding interest).

Alleged creditors	**Amount of claim (approximate)**
AEF (inter-company debt)	$14,050,000
ATO	$3,500,000
National	up to $179,600,000
CBA	$20,000,000
BNP Paribas	$20,000,000
Total	up to $237,150,000

214 As Administrators of AAE we have not admitted or otherwise conceded the validity of any of the above alleged claims. If AAE continues to be separately administered and formal proofs of debt are called for we are confident that very complex, time-consuming and expensive litigation will ensue in relation to those proofs of debt, in particular in relation to National's claims.

215 Regardless of the outcome of any such litigation we are confident that, ultimately, were we required to call for and admit proofs of debt in AAE, third party creditors (together) would control a significant majority of votes and value. We believe the same would apply in any AAE Pooling Meeting.

216 There were additional complications between the Ansett Group and National. In summary, pre-Administration, National was the Ansett Group's principal financier. It provided multiple facilities to the Ansett Group, including bank accounts. From the day after the Ansett Group went into Administration until January 2002, National periodically "swept" the Ansett Group's bank accounts,

purportedly pursuant to contractual rights of set off. The amounts "swept" totalled approximately $60 million, of which approximately $10.75 million was received by the Ansett Group after it went into Administration, which monies were subsequently "swept" by National. Disputes arose between the Ansett Group and National in relation to these matters, all of which are compromised by the AAE Pooling Deed.

217 For the reasons set out at length in the "Background" section of the AAE Pooling Deed (in particular, paragraphs M to P) we entered into the AAE Pooling Deed. In our opinion:

(a) having regard to our duties and obligations as Administrators;

(b) in light of the National, CBA and BNP claims against AAE;

(c) to avoid potentially costly and uncertain litigation; and

(d) with a view to maximising refunds to Deed Creditors,

a compromise with National, CBA and BNP on the terms of the AAE Pooling Deed is in the best interests of the Ansett Group as a whole.

NOTICE TO CREDITORS OF POOLING MEETINGS

218 As noted in paragraph 13(e), the plaintiffs seek orders or directions that the relevant provisions of Part 5.3A of the Act are to operate in relation to each of the Ansett Group Companies as if section 445F(2) of the Act provided that notice of each Pooling Meeting is to be given by posting on the Ansett Websites notice of those meetings and causing details of the said websites and meetings to be published in a national newspaper, or in each jurisdiction in which the Ansett Group carries or carried on business, in a daily newspaper that circulates generally in that jurisdiction, and ancillary orders.

219 Section 445F(2) of the Act provides:

> *'A meeting under this section must be convened by the deed's administrator:*
>
> *(a) giving written notice of the meeting to as many of the company's creditors as reasonable* [sic] *practicable; and*

(b) causing notice of the meeting to be published:

(i) in a national newspaper; or

(ii) in each State or Territory in which the company has its registered office or carries on business, in a daily newspaper that circulates generally in that State or Territory;

at least 5 business days before the meeting.'

220 Section 445F(3) of the Act relevantly provides:

'The notice given to a creditor under paragraph (2)(a) must:

(a) set out each resolution (if any) under section 445A…'

221 Section 445A of the Act provides:

'A deed of company arrangement may be varied by a resolution passed at a meeting of the company's creditors convened under section 445F, but only if the variation is not materially different from a proposed variation set out in the notice of the meeting.'

222 By operation of Regulation 5.6.11, Regulation 5.6.12 would, subject to any orders or directions we might obtain in this Application, apply to the Pooling Meetings. In particular, Regulation 5.6.12(2) provides:

'The notice [of meeting] *must be given to a person:*

(a) by delivering it personally; or

(b) by sending it to the person by prepaid post; or

(c) if the person has a facsimile transmission number to which notices may be sent to the person - by faxing it to the person at that number; or

(d) if the person has a document exchange number to which notices may be sent to the person - by lodging it with the exchange at, or for delivery to, the person's receiving facilities identified by that number.'

223 I refer to Distribution Table 3 which shows that we estimate that up to 33,212 Priority and non-Priority Creditors may be adversely affected by Pooling. The table below lists those Creditors. Were section 445F(2) of the Act to apply to the Pooling Meetings, we would be required to give written notice of those meetings, and any proposed resolutions, not only to those 33,212 Creditors, but also to approximately 2.7 million other non-Priority Creditors (largely Global Rewards Creditors and Golden Wing Creditors).

AAHL	Nil	31,296
The Westsky Trust	Nil	239
AIL		96
The Pelican Trust	7	79
Kendell	66	745
Show Group	11	673
Sub-totals	84	33,128
TOTAL	33,212	

I estimate that the cost of a mail-out to 2.73 million Deed Creditors of a three-page notice would be approximately $1.5 million.

224 Given:

(a) the estimates set out in Distribution Table 3 in relation to AAHL and AIL (which included estimated returns to those companies' non-Priority Creditors for about a third of a cent in the dollar);

(b) the $25 materiality test in the Ansett DOCAs; and

(c) paragraph 211(c),

in our opinion notice of the Pooling Meetings could adequately be given to all non-Priority Creditors not adversely affected by Pooling and those AAHL and AIL non-Priority Creditors noted in the above table (ie, 2.73 million Deed Creditors in total) in the manner set out in clause 18.4 of each Ansett DOCA (namely, national advertising and publication of notice of the meeting of the proposed variations to the relevant Ansett DOCAs and the section 439A-type information). In our opinion, were section 445F(2) of the Act to operate such as to relieve us of the obligation to give notice to those non-Priority Creditors in the manner set out in section 445F(2), that would be likely to reduce the

estimated mail-out cost from approximately $1.5 million to approximately $20,000.

Previous communications to creditors regarding Pooling

225 Throughout the course of the Administrations, and in light of our obligations under the MOU, SEESA and the Ansett DOCAs, we have regularly advised creditors about the potential Pooling of the Ansett Group. In particular, Pooling has been repeatedly referred to in the context of estimating the likely return to unsecured creditors of the Ansett Group.

226 Our first Report to Creditors included the following observations in relation to Pooling.

> *"If the sale to Tesna does not complete, it is likely that there will be shortfall in meeting employee entitlements and there will be no return to the unsecured creditors.*
>
> *If the sale to Tesna completes and if all of the assets and liabilities of the Ansett Group Companies are pooled, a dividend to unsecured creditors of between zero and 5 cents in the dollar is possible."* (Page 71)
>
> *"The primary objective of the DOCA is to give certain Ansett companies the election to pool all of the assets and liabilities of each company in the Ansett Group into one company.*
>
> ...
>
> *Pooling may be appropriate for many of the companies for a number of reasons including:*
>
> - *Distributing the $150m lump sum payment from Air New Zealand (net of any Hazelton payments).*
> - *Distributing the proceeds of sale from the Tesna transaction.*
> - *The large internal inter-company loan accounts of the Ansett Group.*
> - *Potential claims between companies in the Ansett Group."* (Page 76)

227 Our second Report to Creditors contained a number of references to Pooling, as follows:

"*A further meeting of the creditors will be held once the major assets have been sold to consider whether to place the companies in liquidation or vary the DOCAs. These variations may include whether the assets and claims of creditors of the various companies should be 'pooled'*". (Page 2)

"*After the major assets have been realised, a further report will be prepared outlining the outcome of the asset realisations and details of the investigations conducted. A recommendation would also be made whether all of the assets and liabilities of the companies should be pooled.* (Page 27)

Creditors will vote at a meeting of creditors whether to place the companies in liquidation or vary the DOCA to take into account the pooling of assets and the inclusion of mechanisms for distributions to creditors."

"*In our First Report we indicated that if the sale to Tesna did complete, and if all of the assets and liabilities of the Ansett Group Companies were consolidated, a dividend to unsecured creditors of approximately 5 cents in the dollar was possible. We also indicated that if the sale did not complete, it was likely that there would be a shortfall in meeting priority payments and there may be no return to the unsecured creditors. This is now the expected outcome.*" (Page 31)

228 Our third Report to Creditors included the following statements in relation to Pooling:

"*Pooling of companies may result in a reduction in funds to the Ansett Group up to $60m.*" (Paragraph 3.7)

"*The ... estimated return to creditors has been calculated on a consolidated basis on the assumption that when the creditors are asked to vote on whether to pool the assets and liabilities of the Ansett Group, that they will vote in favour of it.*

However, if some companies do not vote in favour of pooling, this may affect the amount available for distribution. Specifically:

- *If the creditors of a company vote against pooling the assets and liabilities of that company with the assets and liabilities of the Ansett Group, and that company has assets available for distribution, then this will reduce the amount available in the consolidated position. There are up to eight companies that may cause a reduction in the amount available to creditors on a consolidation basis if they do not vote in favour of pooling. The reduction in the pool could be up to $60m.*
- *The consolidated basis has been calculated without allocating the distribution of the $150m received from Air Zealand pursuant to the MOU on a company by company basis. If it was*

determined that a company was entitled to a portion of the $150m and that company was not in the Ansett pool, then this may reduce the amount available to employees on a consolidated basis." (Paragraph 3.7.4)

229 Our fifth Report to Creditors included the following statements in relation to Pooling:

"Of $151.1m in the bank at 31 December 2004, $122.8m remains unavailable for distribution. $22.5m is held for continuing and past employees or for the Commonwealth Government. A further $100.3m relates to Ansett entities other than AAL (the entity which employed most of the employees). We need to apply to Court to determine if we can:

- *Combine all of the assets and liabilities of all the Ansett entities under administration, and*
- *Make distributions from the combined "pool" of assets and liabilities.*
- *This process is known as pooling, and may take up to December 2005 to resolve."* (Paragraph 1.3)

"No further large distributions can be made until pooling is resolved. If it is determined that pooling can occur, we can pay a further dividend of approximately half of the 35% outstanding to employees, together with the relevant amount payable to the Commonwealth Government. Approximately $40m may be distributed to financiers with the benefit of guarantees by AAL." (Paragraph 1.4)

"No further large distributions can be made until pooling is resolved which may take up to December 2005. Of the $100.3m cash at 31 December 2004 that relates to non AAL Group entities, we estimate that should pooling be resolved, approximately $60m would be distributed to SEES and employees and $40m may be distributed to financiers with the benefit of guarantees by AAL.

If the Ansett Group is not pooled, in the worst case up to $70m may not be available to be distributed as dividends to SEES and employees.

Issues affecting whether or not the companies ought to pool, include:

- *The Memorandum of Understanding between Air New Zealand, the Administrators and other parties to the agreement*
- *The set-off of related Ansett companies bank accounts by the Ansett Group's pre-appointment banker*
- *Class orders*
- *Ownership of property issues*

- *Related company use of Ansett Group assets, e.g. the use of cash, brand, intellectual property and the sharing of employees across companies*
- *Allocation of costs across the Ansett Group*
- *Charge back issues*
- *Tax and tax losses issues*
- *Issues within individual companies e.g. Traveland trust money dispute, use of AAL assets by Kendell, intercompany loan balances, etc.*

We are currently preparing a detailed report on pooling. There are many complex issues relating to the Ansett Group as a whole and to individual companies that need to be understood before decisions are made on whether or not companies ought to pool. We anticipate this detailed report to be completed by the end of the first half of 2005." (Paragraph 5.3)

Previous similar "abbreviated notice" orders or directions

230 We previously obtained similar orders or directions in Federal Court proceeding V3106 of 2001 in relation to the form and content of notification to be given to creditors about the Second Meetings pursuant to section 439A of the Act, ("**Abbreviated Notice Application**"). Now produced and shown to me marked "**MAK-48**" to "**MAK-51**" are copies of the application, the affidavits of Leon Zwier sworn 27 December 2001 and 3 January 2002 and the final orders of the Court together with his Honour Justice Goldberg's reasons for judgment dated 7 January 2002 in the Abbreviated Notice Application.

VOTING AT THE POOLING MEETINGS

231 As stated in paragraph 17, we intend convene Pooling Meetings to consider proposed variations to the Ansett DOCAs and the Skywest/Aeropelican DOCAs to effect Pooling. We intend to demand a poll at each Pooling Meeting in relation to the votes on the Pooling Resolution.

232 Regulation 5.6.21(2) relevantly provides:

"(1) This regulation applies to a poll taken at a meeting of creditors.

(2) A resolution is carried if:

(a) a majority of the creditors voting (whether in person, by attorney or by proxy) vote in favour of the resolution; and

(b) the value of the debts owed by the corporation to those voting in favour of the resolution is more than half the total debts owed to all the creditors voting (whether in person, by proxy or by attorney).

(3) A resolution is not carried if:

(a) a majority of creditors voting (whether in person, by proxy or by attorney) vote against the resolution; and

(b) the value of the debts owed by the corporation to those voting against the resolution is more than half the total debts owed to all creditors voting (whether in person, by proxy or by attorney).

(4) If no result is reached under sub-regulation (2) or (3), then:

(a) the person presiding at the meeting may exercise a casting vote in favour of the resolution, in which case the resolution is carried; or

(b) the person presiding at the meeting may exercise a casting vote against the resolution, in which case the resolution is not carried."

233 Regulation 5.6.23 relevantly provides:

(1) A person is not entitled to vote as a creditor at a meeting of creditors unless:

(a) his or her debt or claim has been admitted wholly or in part by the...administrator ... of a deed of company arrangement; or

(b) he or she has lodged, with the chairperson of the meeting or with the person named in the notice convening the meeting as the person who may receive particulars of the debt or claim:

(i) those particulars; or

(ii) if required - a formal proof of the debt or claim.

(2) A creditor must not vote in respect of:

(a) an unliquidated debt; or

(b) a contingent debt; or

(c) an unliquidated or a contingent claim;

(d) a debt the value of which is not established;

unless a just estimate of its value has been made."

234 In light of paragraphs 52 to 59, and in light of our capacities as the "*administrator*" referred to in Regulation 5.6.23(1)(a), we will for the purpose of voting at the Pooling Meetings admit the Ansett Group inter-company loans in the amounts we have calculated as described in paragraph 53.

CONCLUSION

235 We humbly request this Honourable Court to grant the relief sought in this application.

SWORN at Melbourne in the State of Victoria on 12 September 2005)
)
)

Before me:

ALEXANDER WILLIAM KING
ARNOLD BLOCH LEIBLER
LEVEL 21, 333 COLLINS STREET
MELBOURNE 3000
A NATURAL PERSON WHO IS A CURRENT
PRACTITIONER WITHIN THE MEANING OF
THE LEGAL PRACTICE ACT 1996

IN THE FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY

No. VID 621 of 2005

IN THE MATTER OF:

ANSETT AUSTRALIA LIMITED (ACN 004 209 410) & ORS (in accordance with the Schedule attached) (All Subject to a Deed of Company Arrangement)

and

MARK ANTHONY KORDA and **MARK FRANCIS XAVIER MENTHA (as Deed Administrators of the Companies)**

Plaintiffs

AFFIDAVIT - CERTIFICATE OF COMPLIANCE

(Order 14, rule 5A)

I, **ALEXANDER WILLIAM KING**, certify to the Court that the affidavit of **MARK ANTHONY KORDA** sworn on 12 September 2005 filed on behalf of the plaintiffs complies with Order 14, rule 2 of the Federal Court Rules.

Date: 12 September 2005

.....
ALEXANDER WILLIAM KING
Legal representative for
the plaintiffs

Filed on behalf of the Plaintiffs

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