

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA
DISTRICT REGISTRY

NO VID 621 OF 2005

IN THE MATTER OF:

ANSETT AUSTRALIA LTD
(ACN 044 209 410)
& ORS (ALL SUBJECT TO A DEED OF COMPANY
ARRANGEMENT)

AND

MARK ANTHONY KODA AND MARK FRANCIS
XAVIER MENTHA (AS DEED ADMINISTRATORS OF
THE COMPANIES)

Plaintiffs

AFFIDAVIT
(ORDER 14, RULE 2)

On 18 October 2005, I, Jenet Barbara Connell of Level 2, 64 Northbourne Avenue, Canberra City, in the Australian Capital Territory, Public Servant, affirm that:

1. I am the Group Manager, Workplace Relations Services Group, Commonwealth Department of Employment and Workplace Relations (the Department). The Workplace Relations Services Group has functional responsibility for the Special Employee Entitlements Scheme for Ansett group employees (SEESA) in the Department.
2. I make this affidavit from my personal knowledge and from the records contained in the relevant files maintained by the Department in relation to the Ansett Administration, unless otherwise stated.
3. I am authorised to make this affidavit on behalf of the Commonwealth.

HOW WAS SEESA ESTABLISHED?

4. SEESA was established following the passage of the *Air Passenger Ticket Levy (Collection) Act 2001* (the Collection Act) and the *Air Passenger Ticket Levy (Imposition) Act 2001* (the Imposition Act). The Imposition Act provided that a levy was payable on air passenger tickets purchased on or after 1 October 2001, while the Collection Act provided for the proceeds of this levy to be used to help fund costs associated with the scheme.

Filed on behalf of the Commonwealth of Australia by:

Australian Government Solicitor
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Nicholas Jordan

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Page 1

Jenet Barbara Connell

5. The terms of SEESA were specified in a determination made under s. 22 of the Collection Act by the Workplace Relations Minister on 9 October 2001. The Minister subsequently repealed this determination and replaced it with a new determination on 4 December 2001. The Minister repealed the 4 December 2001 determination and replaced it with a further determination on 9 August 2002.
6. Put simply, the 9 August 2002 determination specifies:
- the companies covered by SEESA;
 - the employees covered by SEESA;
 - the entitlements covered by SEESA; and
 - the terms on which payments under SEESA are made.
7. In the process of establishing SEESA, the details of which are set out below, the Commonwealth entered into a deed with the Ansett Administrators on 14 December 2001 (the SEESA Deed). The basis on which SEESA payments are made to the Administrators is set out in the SEESA Deed. The SEESA Deed reflects the position set out in the Deeds of Company Arrangement and the Order of the Federal Court on 14 December 2001 that the Government's priority position in relation to the repayment of the SEESA advances is equal to the priority enjoyed by former Ansett employees

WHAT IS SEESA?

8. SEESA was established by the Australian Government to provide a safety net arrangement for former employees of the Ansett Group who were terminated on or after 12 September 2001 due to their employer's insolvency.
9. SEESA payments are the equivalent to the existing unpaid entitlements to:
- wages;
 - accrued annual leave
 - long service leave
 - pay in lieu of notice
 - up to 8 weeks redundancy payments.

COMMONWEALTH POSITION ON POOLING IN THE ESTABLISHMENT OF SEESA

10. Clause 2.5 of the SEESA Deed states that:

"2.5 If the Administrators decide to recommend that each eligible company enter into a Deed of Company Arrangements, the Deed of Company Arrangements which the Administrators recommend will:

Nicholas Jordan

[Signature]

2.5 1 seek to pool all of the assets and liabilities of the eligible companies, so that for the purpose of the Deed all eligible companies are treated as one company;

2.5 2 otherwise be consistent with the provisions of this Deed (and in particular the incorporation of the priority regime contemplated under sections 550 and 560 of the Corporations Act in the manner provided for in this Deed) "

11. The Department has reviewed the description of the manner by which this clause came to be included in the SEESA Deed in Mark Korda's affidavits of 21 June 2005, 12 September 2005 and 13 October 2005. I note that paragraphs 56 to 58 of Mark Korda's affidavit of 13 October 2005 clarify the position of the Commonwealth in negotiating the SEESA Deed.
12. At the time of entering into the SEESA Deed, the Commonwealth sought to ensure that any advances made by the Commonwealth under SEESA would attract a right of priority repayment equal to that enjoyed by former Ansett employees. The Commonwealth also agreed to the inclusion of clause 2.5.1 to reflect the administrators' obligations under the Ansett Memorandum of Understanding with Air New Zealand.
13. However at the time of establishing SEESA the Commonwealth was not in a position to require that the administrators enter into a particular pooling arrangement, as the Commonwealth did not possess sufficient information to form a view on the merits of any particular pooling arrangement. Furthermore, at no stage did the Commonwealth make it a condition of advancing funds under SEESA for the Administrators to seek to pool the assets and liabilities of the Ansett group companies

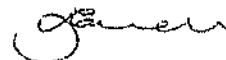
HOW DOES SEESA OPERATE?

14. The Department is responsible for administering SEESA. The Department entered into a contract with SEES Pty Ltd (SEES) on 17 December 2001 for SEES to provide services in relation to the administration of SEESA.
15. SEES secured a \$350 million loan facility on 18 December 2001 to ensure Ansett employees received their entitlements in a timely and efficient manner, recognising that the levy would not collect the required funds for some time. The Department paid regular instalments of \$8 million a month from the levy collections to SEES, which the latter used to repay the loan. The loan was paid out in April 2004.
16. The Department terminated its contract with SEES on 30 June 2005. On that date, approximately 99 per cent of eligible entitlements under SEESA had been advanced. The remaining outstanding claims will be administered by the Department.

HOW MUCH HAS BEEN PAID UNDER SEESA?

17. As at 17 October 2005, \$381.2 million has been advanced to 12,963 former Ansett employees. Under the terms of the Deeds of Company Arrangement and the 14 December 2001 Federal Court Order, the Commonwealth is owed \$127,979,187.62 by the Ansett group companies.

Nicholas Kordan



COMMONWEALTH VIEW ON THE PROPOSED POOLING ARRANGEMENT

18. The Department has considered the proposed pooling arrangement set out in paragraph 13 of Mark Korda's affidavit in these proceedings sworn on 12 September 2005, including the "AAE Pooling Compromise Deed", for which the Court's approval is sought. On the basis of the information provided by the Ansett Administrators, the Department understands that the proposed arrangement:

- 18.1. will provide for cost savings in the administration of the Ansett group companies of between \$9.9 million and \$24 million (paragraphs 40 to 49 of Mark Korda's affidavit sworn on 30 September 2005);
 - 18.2. will allow priority creditors of the Ansett group companies to receive an estimated \$21.4 million more than they would have received if pooling were not to occur (paragraph 205 of Mark Korda's affidavit sworn on 12 September 2005);
 - 18.3. avoids the need for potentially lengthy and costly litigation with unsecured creditors of Ansett Aviation Equipment Pty Ltd (paragraphs 212 to 217 of Mark Korda's affidavit sworn on 12 September 2005).
19. For the above reasons, the Commonwealth supports the proposed pooling arrangement.

POST-ADMINISTRATION LIABILITIES TO THE COMMONWEALTH


20. The Commonwealth's support for the proposed pooling arrangement should not be taken as a release by the Commonwealth, or any entity representing, related to or controlled by the Commonwealth, of any post-administration claim they have or may have in the future against any company in the Ansett Group or against the Administrators. The Commonwealth and those entities intend to preserve any such claim.
21. Exhibit MAK-69 to the affidavit of Mark Anthony Korda sworn 13 October 2005 exhibits communications between the Commonwealth and the Administrators and their respective representatives on this and other issues. As stated in paragraph 20 above, the Commonwealth supports the proposed pooling arrangement but does not thereby relinquish any post-administration claims, including any claim for tax, that it has or may have.

AFFIRMED at CANBERRA in the AUSTRALIAN CAPITAL TERRITORY

Before me:

Nicholas Jordan

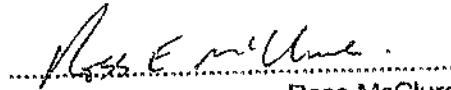
Solicitor



AFFIDAVIT - CERTIFICATE OF COMPLIANCE

I, Ross McClure, certify to the Court that the affidavit of Jenet Barbara Connell sworn on 18 October 2005 filed on behalf of the Commonwealth of Australia complies with Order 14, rule 2 of the Federal Court Rules.

Date: 19 October 2005



Ross McClure
A solicitor employed by
Australian Government Solicitor
Solicitor for the Commonwealth of Australia