



## **Australian and International Pilots Association**

### ***National Aviation Policy Green Paper: Flight Path to the Future***

**Submission  
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## Submission

This submission is comprised of comments on a selected range of proposed initiatives contained in the *National Aviation Policy Green Paper: Flight Path to the Future*. For ease of reference, the Government's proposed initiatives, upon which AIPA wishes to comment, are set out in **bold** type prior to each comment. The page number from the Green Paper (commencing at page 24) of each of the proposed initiatives is indicated in square brackets at the end of each extract.

## **The Australian and International Pilots Association**

The Australian and International Pilots Association (**AIPA**) is the professional Association representing pilots employed by Qantas Airways Limited and its wholly owned subsidiaries in domestic and international airline operations.

AIPA represents over 2,300 airline transport category flight crew and is the largest professional body of airline pilots in Australia. AIPA's membership comprises Training Captains, Captains, First Officers and Second Officers flying aircraft ranging from regional turbo-props to 569 tonne Airbus A380.

The Association encourages the Australian Government to view flight crew as an essential part of quality control process that ensures safety remains at the centre of aviation decision making. An independent role that AIPA believes to be increasingly important within liberalised aviation settings.

In assuming this role, AIPA takes an active stake in the Australian aviation industry through participating in a wide range of Government, legislative and regulatory inquiries and development processes. Internationally, AIPA members are recognised as being among the most experienced flight crew in the world and AIPA is an active member of the global pilot body, the International Federation of Air Line Pilots' Associations (**IFALPA**). A number of AIPA pilots hold IFALPA senior executive positions.

## Principle 1 - Safety

### Aviation Safety

#### Safety regulation and investigation

##### The Government will:

- **ensure safety is the first priority for all government agencies in performing their functions, with a particular emphasis on safety of passenger carrying operations;**
- **strengthen the Civil Aviation Safety Authority (CASA) by:**
  - **retaining CASA as an independent statutory agency with responsibility for aviation safety regulation;**

The current aviation environment is one of accelerating economic liberalisation in which operators are exposed to ever stronger competitive and cost based pressures. Simultaneously, Australia is shifting from prescriptive oversight toward an outcome based regulatory model that requires industry participants to assume greater levels of responsibility for safety compliance. This responsibility is set to sharply increase in the near future as the final phase of CASA's Regulatory Reform Programme is implemented.

However, unless carefully monitored, pressures created by liberalised aviation markets may be at odds with increased regulatory self-responsibility. This potential conflict highlights the need for a vigilant, effective and impartial safety regulator to ensure proper safety standards are not undermined by commercial pressures.

In response to this challenge, the Australian Government must ensure that CASA maintains appropriate independence from the industry it regulates and is provided with effective compliance enforcement systems. Only in this way will the Australian Government be able to address the contradictory challenges inherent in simultaneously liberalising the aviation sector's economic and regulatory frameworks.

- **reinforcing CASA's governance arrangements, including:**
  - **establishing a small expert CASA Board to guide the organisation and to recommend enhancements to CASA's approach to regulation and surveillance of airlines; [p. 24]**

AIPA has strongly supported the establishment of a small, expert board for CASA and was therefore pleased that the legislation implementing the change was passed by Federal Parliament. In AIPA's view, implementation of the board proposal will support CEO decision making and is a significant step towards returning credibility to CASA as an independent, arms-length regulator.

A further step towards this goal would also be achieved by selecting board candidates that are suitably distant from the operators and current CASA management, have significant industry peer group acceptance and possess either aviation or other critical industry experience in managing risk. While the new CASA CEO is a former airline pilot, AIPA believes that he should be supported by an

independent board member who also possesses significant flight crew operational experience.

- **boosting CASA's capacity to plan and act strategically in response to growth and change in the global aviation industry, which will continue to carry risks for air safety and their management;**
- **strengthening CASA's capabilities in technical standards development and supporting an expanded surveillance program;**
- **strengthening CASA's regulatory powers to inspect and regulate the operation of international carriers operating to Australia to ensure safety standards are being met;**

The Preamble to the Convention on International Civil Aviation states that the Convention was agreed in order that international aviation may be developed in a safe and orderly manner and that international air services may be established on the basis of equality of opportunity and operated soundly and economically.<sup>1</sup>

These principles of safety, equality and reciprocity articulated by the Convention have long supported the development of Australia's world-best aviation system. Airline pilots believe the National Aviation Policy Statement should reaffirm these long held principles and ensure they continue to underpin the strategic development of Australia's aviation system.

Reaffirming these principles will provide an accepted framework within which to ensure the orderly development of critical Australian strategic infrastructure, as well as an accepted basis upon which to inspect and regulate the operation of international carriers operating to Australia.

- **giving priority to ensuring CASA's regulatory reform program is completed by the end of 2010; and**
- **updating the regulatory powers and enforcement provisions in the Civil Aviation Act 1988 to ensure they support effective management of future safety risks, including:**
  - **giving CASA the necessary powers to deal decisively and properly with operations that do not meet safety standards;**
  - **strengthening CASA's capacity to obtain information on suspected safety deficiencies;**
  - **strongly supporting a culture of self-reporting by operators, affirming the obligation on AOC holders to notify CASA immediately of any failures in safety compliance;**
  - **ensuring CASA's penalty provisions provide a balanced and effective range of responses to breaches, including:**
    - **examining the operation of the demerits points system to ensure its balanced application;**

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<sup>1</sup> International Civil Aviation Organisation. (2001). Annex 6, Part 1 of the Convention of International Civil Aviation. International Commercial Air Transport . Aeroplanes: Operation of Aircraft (8<sup>th</sup> Edition). Montreal, Canada: ICAO

- **clarifying the circumstances in which breaches and the actions taken in response are to be made public, with an increased emphasis on transparency; and**
- **considering the options of substantially increased financial penalties where appropriate and revised disclosure provisions. [pp. 24-25]**

AIPA has previously indicated that pilots have viewed CASA as being too close to the industry it regulates and is not seen by stakeholders to be an arms-length regulator. While AIPA's views on this matter were fully articulated to the Australian Senate Inquiry into the Administration of the Civil Aviation Safety Authority (CASA) and related matters<sup>2</sup>, submission to the Miller Report on Aviation Safety Agency Relations and the previous NAP Green Paper, the Association believes it is appropriate to restate certain comments made to these fora within this current submission.

AIPA highlights that within safety sensitive environments liberalised competition policy must be balanced by additional regulatory vigilance and backed by sufficient resources for safety compliance if higher Australian requirements are not to be undermined by global minimum standards. The Australian Government's challenge in developing a coordinated National Aviation Policy is therefore to demonstrate that liberalised economic policies are wholly consistent with aviation safety and security goals.

Unless national aviation policy recognises this underlying tension between economic and regulatory policies, CASA will encounter increasing difficulty in addressing the safety implications arising from a liberalisation policy paired with a regulatory model that places increased responsibility for safety compliance upon industry.

As a consequence, AIPA believes the National Aviation Policy Statement must ensure that CASA has more flexible compliance enforcement systems, greater resources and strengthened independence from industry to meet such challenges. Additionally, the Australian Government must ensure that extremely onerous evidence provision timetables, which appear to have reduced CASA's ability to take AOC suspension action where it believes a serious and imminent risk exists, are appropriate.

Lastly, CASA must ensure that its organisational structure and resource allocation is better aligned with the new prime mission of operator systems compliance auditing that is required under an outcome based regulatory model.

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<sup>2</sup> [http://www.aph.gov.au/Senate/committee/rrat\\_ctte/casa/submissions/sub48.pdf](http://www.aph.gov.au/Senate/committee/rrat_ctte/casa/submissions/sub48.pdf)

### **To maintain the highest standards of safety investigation in Australia, the Government will**

- **enhance the independence of the Australian Transport Safety Bureau (ATSB) as a safety investigation agency by establishing it as a statutory agency within the Infrastructure portfolio, working under a Commission structure. [p. 25]**

AIPA supports the Australian Government's move to separate the ATSB from the Department of Infrastructure, Transport, Regional Development and Local Government and establish it as an independent commission. Pilots believe that this action will provide a (quasi) tripartite separation between the Australian Government's aviation policy development, regulatory oversight and safety investigation functions. This is fundamentally appropriate.

In making this change it is imperative however, that a suitable budget be established for the ATSB. For example, the operational budget for the ATSB in 1995/96 was \$10.3m and this is the same for the current year. Considering that, over this time, accidents and incidents have doubled the budgeted amount is manifestly inadequate. AIPA supports the application of Industry Sector Priority policy to underpin the resource focus of both CASA and the ATSB in ensuring the highest priority remains the high capacity fare paying passenger sector.

Finally, in regard to ATSB the Green Paper contains the following passage at page 56:

The Government will also consider options for introducing a tiered system of voluntary and mandatory reporting of safety issues to CASA that will allow CASA to take appropriate safety action.

AIPA is concerned that a new system of voluntary or mandatory reporting may duplicate the ATSB role. CASA already has an anonymous process and, in the Association's view, this seems to be sufficient.

### **Air traffic management**

#### **The Government is committed to supporting international best practice in safe air traffic management in Australian airspace through:**

- **supporting technological applications that offer safety, efficiency and environmental benefits, including as a high priority, aviation agencies finalising a proposal for the wider adoption of satellite based technology (ADS-B) for air traffic navigation and surveillance; [p. 25]**

AIPA is pleased to note the Australian Government's commitment to supporting international best practice in safe air traffic management in Australian airspace through supporting technological applications that offer safety, amongst other, benefits. Australia's airline pilots strongly recommend the Australian Government investigate and share in the cost of installing new air traffic related safety technology such as Light Detection And Ranging Doppler (**LIDAR**) at code 3 and 4 airports nationally.

Windshear related accidents have resulted in more than 1,400 fatalities worldwide since 1943. The Hong Kong Observatory reported that LIDAR has achieved nearly 70 percent probability of detecting windshear and this success has now led to the acquisition of a second LIDAR system for

improved coverage and redundancy<sup>3</sup>. Investment in technology such as LIDAR is likely to significantly aid the prevention of events such as the microburst incident involving a Qantas Boeing 747-438 at Sydney Airport on 15 April 2007. The incident is still under investigation by the ATSB. The preliminary aviation safety investigation report can be viewed via:

[http://www.atsb.gov.au/publications/investigation\\_reports/2007/AAIR/air200702272.aspx](http://www.atsb.gov.au/publications/investigation_reports/2007/AAIR/air200702272.aspx)

- **ensuring advanced air traffic management infrastructure and systems are used to protect and enhance air safety, with air traffic management services being extended to more regional areas as appropriate, particularly in areas where there are growing passenger transport operations;**
- **work on proposals for continued development of a joint national air traffic management platform by Airservices Australia and the Air Force, having proper regard to both the safety of the travelling public and defence capabilities which are sensitive to national security;**
- **development of a strategic Air Traffic Management Plan, in consultation with industry, which will assist agencies and industry in their planning and investment, and will:**
  - **identify key milestones and objectives for Australia’s air traffic system**
  - **establish clear responsibilities for meeting those objectives;**
  - **facilitate ongoing investment in, and maintenance of, key air traffic infrastructure; and**
  - **establish a basis for ongoing workforce planning recognising the importance of a properly trained air traffic controllers and aviation fire fighters to the safety of the Australian aviation Industry.**
- **delivering an updated Airspace Policy Statement under the Airspace Act 2007 to improve airspace classification and administration in Australia;**
- **improving coordination across Government agencies and consultation with industry on directions in air traffic policy, including:**
  - **using the Aviation Policy Group (APG), chaired by the Secretary of the Department of Infrastructure, Transport, Regional Development and Local Government, to coordinate the development and implementation of the air traffic management plan; and**
  - **formalising the role of the Australian Strategic Air Traffic Management Group (ASTRA) as the industry advisory group on air traffic management directions. [p. 25]**

As previously stated in AIPA’s submission to the National Aviation Policy Statement Issues Paper, many of the key challenges and proposals by the Australian Government have been addressed in the Australian Strategic Air Traffic Management’s (ASTRA) Air Traffic Management (ATM) Strategic Plan and Operational Evolution Document. The Strategic Plan established a vision of ATM in Australia to 2025 and beyond.

<sup>3</sup> Keohan, C. (2007). Ground-based wind shear detection systems have become vital to safe operations. ICAO Journal, 2007 (2), 16-19.

Whilst AIPA commends the Australian Government's desire to lead and coordinate the development of an ATM plan, it is important that the Australian Government review the ASTRA ATM Strategic Plan, which has already been endorsed by high level industry stakeholders, including four government aviation agencies. Australian Government recognition of the ASTRA ATM Strategic Plan would avoid unnecessary duplication by providing a starting point for further development of the proposed Government ATM plan.

In the Australian Government's development of a strategic ATM plan, industry, including the nation's airline pilots through AIPA, must continue to be included in consultation.

## Principle 2 – Driver of economic prosperity

### International aviation

**The Australian Government is committed to continuing the growth of Australia's international air services, providing additional opportunities for trade and tourism, while maintaining a strong Australian aviation sector.**

**In addition, the Government proposes to:**

- **continue the liberalisation of international aviation towards 'open skies' agreements, balancing the economic, trade and tourism benefits that flow from opening up international aviation markets and the need to ensure a strong Australian-based aviation sector; [p. 27]**

AIPA supports the current approach of assessing Australia's national interest in the course of negotiating bilateral agreements on a case by case basis. AIPA also calls for greater transparency in the Australian Government's decision making process where decisions over negotiating priorities are based on national interest criteria. In negotiating open skies agreements, AIPA calls for greater recognition of the Australian aviation industry's interests. There is also a need to acknowledge that trade and tourism interests may not be aligned with the interests of the Australian aviation industry. Further, Australia's economic and tourism interests cannot be consistently billed as the top priority when setting negotiating priorities<sup>4</sup> over ensuring a sustainable and profitable Australian aviation sector. In negotiating open skies agreements, putting economic and tourism interests first every time is at odds with weighing up Australia's national interest on a case by case basis.

The Australian Government's negotiating priorities must afford sufficient flexibility to enable industry's interests to be placed before those of tourism when warranted. In the Australia-Singapore bilateral for example, granting unlimited 5<sup>th</sup> freedom or 7<sup>th</sup> freedom rights across the Pacific is not in the best interests of the Australian aviation industry and Australia's national interest. AIPA contends that greater competition on the route can be engineered within the confines of the current Australia-United States bilateral via new Australian and US carriers operating on the route. Enhanced competition will occur with a doubling of carriers on the route following the entry of V Australia and Delta

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<sup>4</sup> National Aviation Policy Green Paper, December 2008, page 107.

airlines. And from a strategic point of view, granting valuable beyond rights in the Australia. Singapore bilateral is unlikely to bring with it comparable returns to Australian carriers.

In relation to the Australian Government trading 7<sup>th</sup> freedom rights on a case by case basis subject to the national interest, AIPA asserts that the aviation industry's interests must take precedence over tourism's interests. Seventh freedom rights are akin to international cabotage and would grant considerable benefits to foreign airlines wanting to fly the trans-Pacific route between Australia and the US. With an increased level of competition on this route, the costs to industry would be greater than the gains to tourism from granting 7<sup>th</sup> freedom rights. AIPA contends that 7<sup>th</sup> freedom rights should not be granted to foreign airlines except where comparable market access (by route value) can be gained for Australian international airlines. AIPA contends that in continuing to move towards open skies agreements the Australian Government give preference to the Australian aviation industry's interests and liberalise only where clear and related benefits flow to industry. The pace of liberalisation must also allow for the aviation industry to adjust to a more competitive operating environment with sufficient time.

- **ensure the capacity available to foreign airlines under our bilateral agreements remains ahead of demand to ensure that airlines can plan for long term growth into the Australian market; [p. 28]**

AIPA supports this initiative on the basis that it also applies to Australian international airlines. In a similar fashion, Australian international airlines should be provided certainty in their operating environment. so far as that is possible. when planning their operations.

- **offer foreign airlines unlimited access to secondary gateways (international airports other than Brisbane, Sydney, Melbourne and Perth) to provide opportunities for regional areas to attract international services; [p. 28]**

AIPA supports this initiative provided that the Australian Government stipulate that foreign airlines make investments in the Australian aviation sector as a condition for market access.

- **seek fully open arrangements for dedicated cargo services to support Australia's vital air freight export industries; [p. 28]**

AIPA supports this initiative where it is offered in the context of bilateral negotiations and Australia receives comparable access in return (such as fully open cargo arrangements). Nevertheless, AIPA notes that Australian international airlines provide valuable underbelly international and domestic freight services and these services, along with Australian dedicated freight services, compete with foreign air freight operators's services. The Australian Government's negotiating priorities must therefore ensure foreign airlines do not gain an advantage over Australian airlines through agreeing to less liberal dedicated cargo arrangements for Australian operators.

- **include as a factor to be taken into account in assessing the national interest for bilateral negotiations, the extent to which international airlines are prepared to invest in Australia, through marketing Australia as a tourist destination and through direct investments, such as enhanced commitments to employment of Australian based staff and establishing maintenance and training centres; [p. 28]**

AIPA supports this initiative in principle but highlights the challenges of assessing foreign international airlines preparedness to invest locally and correlating it with the investments they make post market-entry. Under this initiative, foreign airlines would naturally have an incentive to announce investments they plan to make subject to being granted market access. Assessing whether these announced investments come to fruition may be difficult unless they are easily identifiable, such as in the case of marketing programmes. But with regard to other areas such as employing Australian based staff (versus bringing in staff from overseas operations), the airline may not wish to disclose commercially sensitive information on the size and composition of its operations. With regard to establishing Australian based maintenance and training centres, the Australian Government might consider requesting that a percentage of the operational expenditure go towards these activities upon entry. In the case of the Australian defence industry, Australian subsidiaries of foreign companies bidding for Commonwealth defence contracts need to satisfy an Australian industry content provision. The content provision ensures they utilise Australian companies in their supply chain as much as possible, thereby supporting the Australian defence industry. A similar requirement could be put in place for foreign airlines seeking to operate new or expanded services into Australia.

- **retain the existing arrangements that prevent foreign operators from carrying domestic passengers, except in exceptional circumstances and subject to a national interest test; [p. 28]**

AIPA supports this initiative. AIPA agrees with the generally held view that granting cabotage rights would bring marginal economic benefits<sup>5</sup>, potentially at the expense of less profitable regional routes currently serviced by local carriers. As a result, the gains from granting cabotage are likely to be small while the costs are likely to be large. Further, AIPA maintains that the current policy of allowing 100% foreign owned airlines to operate domestically has significantly increased competition in the domestic market. The entry of two new domestic airlines, Virgin Blue and Tiger Airways, is a direct result of this policy. And the current pricing of services between Melbourne, Sydney and Brisbane now reflects this more competitive market. This policy setting has had a comparable effect to what would have occurred had cabotage rights been granted. The new carriers service predominantly trunk routes (as foreign airlines would under a relaxation of cabotage restrictions) and seek to undercut the incumbents pricing structure. The new carriers focus on price as their major point of difference and target the price-sensitive traveller. Consequently, the current policy setting has brought about increased competition in the Australian domestic market, delivering a comparable effect to the granting of cabotage rights.

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<sup>5</sup> See Productivity Commission, *International Air Services*, Report No. 2, 11 September 1998.

- **seek greater investment opportunities in international airlines for Australian investors through the incorporation of principal place of business criteria in bilateral agreements; [p. 28]**

AIPA does not support application or extension of the principle place of business definition in bilateral agreements.

Proponents of expanded liberalisation argue that there are clear benefits of liberalising air carrier ownership and control through the extension of principle place of business definitions. These advantages are said to include wider access to capital markets, reduced reliance on government support, deliver more extensive aviation networks through mergers and acquisitions, improve economic efficiency, and provide more competitive carriers.

Investment is certainly an issue for many carriers, and a very real concern for aviation employees, but these aspects do not of themselves substantiate the case that liberalising ownership would make a significant contribution to resolving problems of access to capital. A majority of the world's carriers are already listed in national stock markets; the principal problems of the market capitalisation of the sector stems from poor share and dividend performance. The primary reason airlines have difficulties raising money is because of their business models, long-term marginal profitability, and a continuing and damaging inability to manage the business cycle.

There is no lack of available capital in the dominant aviation markets of the world; rather there is a significant lack of investor confidence, which inhibits access to such capital. Promoting stable and ordered growth in the industry based upon the established principles of bilateral reciprocity and equality within a low-risk (or at least predictable risk) environment, rather than the new uncertainties resulting from relaxing national ownership provisions through expansion of principle place of business designations, would be a far better means of promoting access to future investment.

A reduction in reliance on government support is also often cited as a benefit accruing from liberalisation of ownership and control criterion. There are, on the other hand, many cases in which there are specific advantages for governments to retain ownership over their designated carriers. This is another feature of aviation that undermines pure economic competition and creates an unlevel playing field. Australian carriers [Qantas] faces intense competitive pressure from carriers backed by sovereign funding and off market logistical support (such as preferential fuel, tax and other charge funding).

While national ownership and control criterion may be said to act as a barrier to the global consolidation of the airline industry, this has not always necessarily been the case. In fact, where mergers have taken place at a national or regional level, the result has often been a reduction in routes served or frequencies offered.

Typically, mergers have been deployed as an economic tool for stripping out capacity in the sector. Far from offering passengers greater choice, as usually claimed by airlines, recent airline mergers have more often than not resulted in a concentration of monopoly power, reduction in services and increase in price to the consumer. For example, this was considered a

feature of the ACCC's failure to approve anticompetitive conduct facilitated by the proposed Qantas/Air New Zealand Tasman Networking Agreement. In declining authorisation the ACCC stated "Authorisation of the agreement would fundamentally change the competitive process on the trans-Tasman" and "the agreement would only result in limited public benefits in the form of cost savings to the airlines as well as marginal improvements in schedule spread, connectivity and frequent flyer options for consumers<sup>6</sup>."

Underpinning the critically poor health of many international carriers has been the relentless pursuit of market share. Breaking the established link between nationality and designation by widely adopting the principle place of business definition within Australia's bilateral agreements risks reinforcing this negative trait by focusing on acquisition and takeover based growth that is not always in the national interest. For example, perceived weakness in the Qantas Sale Act drew private equity to bid for Qantas Airways in an attempted takeover that AIPA strongly believed was not in the national interest.

While that bid ultimately failed, and it is generally now accepted that it would have had catastrophic consequences for Qantas and the Australian air transport sector, AIPA calls on the Australian Government to strengthen the Qantas Sale Act and national ownership criteria, not undermine it by adoption of principal place of business criteria. Permitting free movement of aviation capital would likely facilitate relocation of aviation activity to the most commercially conducive (i.e. lowest cost) locations. This submission suggests that Australia's National Aviation Policy Statement must consider how such a process can be managed in a way that ensures protection of the critical infrastructure functions of aviation, and prevents safety standards being undermined or reduced to the global minimums.

Australia must maintain standards acceptable to the risk requirements of this nation and not reduce our higher standards to the minimum standards adopted by many other countries. Rather than being a cost disadvantage to industry, pilots believe that higher Australian safety standards provide a marketing advantage and clear point of differentiation of Australian air transport services, as well as a significant national social dividend.

- **retain the basic restriction to 49 per cent on foreign investment in Australia's international airlines under the *Qantas Sale Act 1992* and *Air Navigation Act 1920* to ensure that our airlines remain majority Australian owned and controlled, but**
  - **consider removing the additional restrictions on foreign ownership (i.e. 25 per cent for foreign individual shareholdings and 35 per cent for total foreign airlines shareholdings) under the *Qantas Sale Act*; and [p. 28]**

AIPA reaffirms its position that the 49% foreign ownership cap is appropriate for Qantas as is the removal of the current intermediate caps of 25% and 35%. However, AIPA strongly recommends that a new intermediate cap of 24.5% on any single foreign owner be implemented. This variation would allow foreign airlines to take larger (combined) stakes in Qantas but continue to restrict one airline from wielding what would be effective control.

<sup>6</sup> <http://www.accc.gov.au/content/index.phtml/itemId/744922/fromItemId/565475>

The rationale outlined in the Green Paper for removing the current intermediate caps is contained on page 112:

The Qantas Sale Act and Air Navigation Act have played an important role in the development and maintenance of a strong Australian-based aviation industry and the Government does not propose to fundamentally change the current restrictions. *However, there would appear to be merit in ensuring that the investment regime applies equally and equitably to all Australian international airlines.* [italics added]

Given that Australian international airlines are currently comprised of the Qantas Group, the Virgin Group (the recently launched V Australia and Pacific Blue operating to New Zealand and some Pacific Islands), Ozjet/Indojet (operating Perth-Denpasar) and Airnorth (operating Darwin-Dili), it is disingenuous to proffer the level playing field as any sort of justification for removal of the intermediate caps on Qantas.

In AIPA's view, any change to the current investment regime based on ensuring such a regime applies equally and equitably to all Australian international airlines can only benefit Qantas at the expense of other Australian international airlines. In time, it may be that such a policy change is appropriate. At present it is not.

However, AIPA does propose that limitations on maximum ownership by foreign airlines should be lifted from 35% to 49% subject to no single, foreign owner holding more than 24.5% of Qantas. In AIPA's view, this proposal increases the relative attractiveness of Qantas as an investment to foreign investors, including foreign airlines, while limiting the opportunity for effective control by any, single foreign airline or investor.

In summary, AIPA views the current foreign investment restrictions as appropriate but recommends amending the Qantas Sale Act so as to increase the maximum aggregate equity that can be held by foreign airlines to 49% with a maximum held by a single foreign person or foreign airline limited to 24.5%.

#### **Amend the Qantas Sale Act to Incorporate Subsidiaries such as Jetstar**

When Qantas was privatised, the Qantas Sale Act set out measures considered appropriate regarding ownership and control of the national airline. These measures were reaffirmed by the Australian Government in 1999 following the Productivity Commission's inquiry into international air services and more recently in 2006 when Qantas sought amendments to the Qantas Sale Act.

Similarly, when the Qantas Sale Act was passed, no one envisaged that Qantas would shift significant parts of its flying to a subsidiary and effectively build a two-tiered work force. Neither was it envisaged Qantas could shift the bulk of its low cost international and domestic flying to a subsidiary that may not be subject to the Qantas Sale Act provisions.

With the recent establishment of Jetstar New Zealand, the scene is being set for more Australian jobs to be sent to New Zealand with the door open for

more of the Qantas business being shifted into subsidiaries and possibly away from the safeguards of the Qantas Sale Act.

The drafters of the Qantas Sale Act also could not have anticipated a situation where the Qantas Group, as a majority Australian owned airline group, might depend on majority foreign-owned subsidiaries for its aircraft, freight services or brand loyalty management.

On 3 December 2008, Minister Albanese responded to a question without notice on the potential Qantas-British Airways merger by referring to the mandatory requirements of the Qantas Sale Act and the fact that, in the Minister's view:

These provisions ensure that Qantas remains Australian. Qantas must remain Australian based and majority Australian owned, and that will not change- something that I believe has the bipartisan support of the House.

In the context of the potential Qantas-BA merger, the Minister must have been referring to the Qantas Group including Jetstar and other operations.

In a similar vein, at page 112 of the Green Paper the authors state:

The Qantas Sale Act and Air Navigation Act have played an important role in the development and maintenance of a strong Australian-based aviation industry.

While supporting these sentiments, AIPA believes that the Australian Government must take further steps to ensure this is, indeed, the case. To do otherwise risks significant safeguards in the Qantas Sale Act becoming essentially meaningless.

In order to maintain the integrity of the safeguards set out in the Qantas Sale Act, it is now imperative that it be amended to explicitly capture majority-owned subsidiaries of Qantas Airways. Limiting capture to majority owned subsidiaries avoids imposing an unreasonable burden on Qantas Airways as outlined in the Qantas submission to the Senate Economics Committee inquiry into the *Qantas Sale (Keep Jetstar Australian) Amendment Bill 2007*.

In summary:

AIPA recommends amendments to the Qantas Sale Act in relation to Qantas subsidiaries and other issues to restore the intent of the Qantas Sale Act and ensure that:

1. the head office of Qantas and each majority owned subsidiary is located in Australia;
2. the facilities taken in aggregate which are used by Qantas and its majority owned subsidiaries in the provision of scheduled international air transport services (for example, facilities for the maintenance and housing of aircraft, catering, flight operations, training and administration), located in Australia, when compared with those located in all other countries, represent the principal operational centre for Qantas and its majority owned subsidiaries;

3. at all times, at least two-thirds of the directors of Qantas and the directors of each of its majority owned subsidiaries are Australian citizens;
4. at a meeting of the board of directors of Qantas and of a meeting of the board of directors of each of its majority owned subsidiaries, the director presiding at its meeting (however described) is an Australian citizen; and
5. (a) Qantas and each of its majority owned subsidiaries must not, directly or indirectly, enter into, commence to carry out, or carry out any scheme if it would be concluded that the person or any of the persons who entered into, commenced to carry out or carried out the scheme or any part of the scheme did so for a material purpose of avoiding the application or operation of any provision of the Qantas Sale Act (including any of the mandatory articles), and any such scheme will have no force or effect;
- (b) In this part, scheme means:
  - (i) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
  - (ii) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

○ **examine whether Australia should move from a regime based on substantial ownership and effective control to one based on principal place of business, consistent with maintaining a commitment to a strong Australian-based aviation industry with high safety and security standards; [p. 28]**

AIPA questions the rationale for a greater inclusion of principal place of business criteria in bilateral agreements given the Australian Government proposes retaining the 49% foreign investment restriction in Australia's international airlines. AIPA contends that the two policy settings are incompatible. In a bilateral agreement, the principal place of business criteria only take on significance when the effective ownership and control criteria would otherwise have resulted in an airline losing its designation.

For principal place of business criteria to produce an outcome that would not have been the case under effective ownership and control criteria, an Australian airline's foreign ownership must exceed 49%. Hence principal place of business criteria only produce a different outcome to effective ownership and control criteria where airlines are majority foreign owned. But given the Australian Government's position on airline ownership, that Australian international airlines are at least 49% owned by Australian nationals, principal place of business criteria are not relevant in the designation of Australian international airlines.

In these circumstances, AIPA is perplexed as to the basis for the Australian Government's apparent intention to replace effective ownership and control criteria with principle place of business criteria. AIPA questions whether the move to incorporate principal place of business criteria is synonymous with a desire to accept foreign airlines

flying under a country's designation that are not effectively owned and controlled by citizens of that country? On face value, the answer must be a resounding yes.

AIPA contends there are potentially serious ramifications for airline safety where regulatory oversight is weakened by the substitution of principal place of business criteria for effective ownership and control criteria. Under principal place of business criteria, operational decisions regarding an airline flying to, from or beyond Australia can be made by controlling foreign nationals of a third country and issues regarding which country has effective regulatory oversight may arise. The potential diminution in regulatory oversight perhaps explains why Australia has been unable to negotiate principal place of business criteria into bilateral agreements covering many of our major markets. By contrast, it has been accepted into numerous bilateral agreements covering minor markets (about 39).

As to whether the 49% cap on foreign investment in Australia's airlines restricts carriers from participating in consolidation opportunities and equity alliances with other carriers, the recent proposed Qantas-BA merger suggests it does not. The merger was to be structured in such a way that it complied with the current ownership restrictions. AIPA maintains that the current ownership restrictions are a cornerstone to a strong Australian-based aviation industry. They have served to ensure Australian carriers maintain their designation under the effective ownership and control provision criteria and provide a clear line of regulatory oversight.

Underpinning Australia's nationality provisions in air service agreements has been the recognition of the strategic importance of economic development and social functions of aviation. Nationality requirements (and the powers of designation and authorisation) have been a tool by which Australia has been able to ensure that air services meets the interests of all stakeholders, including shareholders, passengers, employees and dependent industries and communities.

This is not just a case of ensuring a balance of economic benefit, but of guaranteeing the right of participation in international air services, which is fundamentally an issue of national economic sovereignty and autonomy. These aspects are also tied to questions of Australia's defence security and national emergency resources.

Air carriers, of course, operate in a commercial environment, providing commercial services and are subject to market disciplines. However, air transport services are a strategic national asset and differ from many other commercial activities in terms of the impact of interruption, disruption or loss of service on the nation's wider economic, social or developmental well-being. It is for this reason, along with the potentially catastrophic nature of aviation accidents, that they are regulated differently to non-essential commercial activities.

The reaction of governments following critical downturns such as the SARS epidemic, the September 11 terrorist attacks and the near

bankruptcy of Air New Zealand has highlighted the importance that many States continue to place on the existence of stable aviation infrastructure. State intervention and support has taken a variety of forms depending upon circumstances and reflects an understanding that air transport is *more than* just another commercial activity; that it is indeed a critical national infrastructure asset with a clear public interest dimension. Aviation services are, in fact, more like utilities and require a specific economic and regulatory framework to ensure the national interest is not undermined by commercial factors.

- **use key international trade forums to pursue a multilateral approach to the liberalisation of international aviation; [p. 28]**

AIPA does not support the use of trade forums to pursue a multilateral approach to the liberalisation of international aviation. Rather AIPA reaffirms its support for ICAO as the appropriate forum within which bilateral and multilateral liberalisation can be achieved.

AIPA is well aware that there have been serious attempts by countries such as Australia to have civil aviation treated as simply another international commercial service that should be dealt with by the WTO through the General Agreement on Trade in Services (**GATS**) mechanism<sup>7</sup>. Fortunately, so far it remains accepted that the particular safety and regulatory needs of aviation make it a special case requiring its own international framework of regulation, oversight and technical support under the Convention on International Civil Aviation (Chicago Convention).

In AIPA's view the WTO's rules and the GATS do not sufficiently provide for limitations in trade rights on the basis of security or safety concerns. This limitation has already led to a number of disputes between States on the basis of safety or health concerns. Indeed, one of the principal sources of popular protest and challenge to the WTO is its failure to adequately address social and civic dimensions within its framework.

AIPA disagrees with the statement by the Australian Government that 'the traditional guarantees offered by the bilateral system may no longer be capable of meeting the legitimate national interests of many states.'<sup>8</sup> Further, AIPA notes that this view was not accepted by the majority of States when articulated at the 33<sup>rd</sup> ICAO General Assembly and Australia was seen to back away from it. The current global financial crisis, precipitated by regulatory failures at the macro level, provides a salient lesson for expansion of multilateral agreements within international trade forums. Regulatory oversight must be strengthened not weakened and ICAO's bilateral principles of equality and reciprocity should be reaffirmed as the continued basis upon which to achieve this goal.

<sup>7</sup> Australian Government. (2001). A33 WP/128: *Relevance of the General Agreement on Trade in Services (GATS) to the Future Development of International Air Transport Regulation*. Proceedings of the 33rd ICAO General Assembly. Montreal: Canada.

<sup>8</sup> Australian Government. (2001). A33 WP/128: *Relevance of the General Agreement on Trade in Services (GATS) to the Future Development of International Air Transport Regulation*. Proceedings of the 33rd ICAO General Assembly. Montreal: Canada.

## Domestic and regional aviation

### Domestic services

**The Government strongly supports the maintenance of a fully deregulated interstate domestic aviation market that has delivered significant economic benefits to the Australian economy and proposes to continue:**

- **allowing up to 100 per cent foreign ownership of domestic airlines based in Australia, subject to meeting the requirements of the *Foreign Acquisitions and Takeovers Act 1975*; and [p. 28]**

AIPA does not support this initiative where it is combined with the introduction of principal place of business criteria to enable majority foreign owned domestic airlines to take up Australia's international air services rights. Australia's policy of allowing foreign owned domestic airlines is extremely liberal and synonymous with a highly deregulated domestic aviation market. Under the theory of market contestability, the freedom of foreign owned domestic carriers to enter the market promotes competitive behaviour by incumbent airlines (to the extent natural barriers to entry such as airport slots and hub dominance are limited). So the actual and threatened entry of new airlines will work to ensure a competitive domestic market.

Freedom of domestic market entry combined with the introduction of new designation criteria would elevate foreign owned domestic airlines to being on par with Australian owned international airlines, bestowing on them an unfair advantage through their foreign ownership. This unfair advantage arises from their often considerably more favourable local commercial and regulatory settings.

As noted in the National Aviation Policy Green Paper, "commercial and regulatory settings in other countries, such as government subsidies and support, bankruptcy protection and divergent tax regimes create market distortions that undermine the competitiveness of Australian airlines". (p. 117). The attempt to provide a level playing field, where one clearly does not exist will significantly disadvantage Australian airlines, employees, communities that rely on air services and national interest.

The Australian Government must therefore ensure it does not confer an economic advantage to foreign owned domestic airlines by granting them the opportunity to operate international services in addition to domestic services.

- **ensuring the aviation industry is subject to the competition laws that apply to Australian industry more generally under the *Trade Practices Act 1974*. [p. 29]**

AIPA supports the Australian Government's approach of applying competition laws generally across the aviation industry. AIPA maintains that the Australian Competition and Consumer Tribunal must continue to ensure foreign international airlines comply with Australian competition laws, particularly where they are less robust than in their home country.

## General aviation

- **ensuring there are no unnecessary regulatory impediments to realising the growth potential of the flight training industry in Australia. [p. 29]**  
 AIPA acknowledges the need for CASA's regulatory reform programme to be expedited. However, it is imperative that time is taken when required to work through issues, especially when dissent is received from members of industry. Legislative development must not be rushed at the expense of the best safety outcome. Greater efficiency in regulatory development may be achieved through increasing the frequency of meetings (at least eight weeks notice should be provided), providing sufficient time for committee members to prepare by reviewing meeting agenda items, reports, previous minutes and other documentation related to the meeting.

Other regulatory impediments to realising the growth potential of flight training include the imposition of government fees and charges associated with flight crew licensing, medical processing and aviation security identity checks. Such fees add to the cost of already expensive flight training<sup>9</sup>. The Government should reduce, if not entirely eliminate, fees and charges associated with the issue of flight crew licences (including Student Pilot Licences) to stimulate the growth of flight training.

## Industry skills and productivity

**The Government recognises the importance of a suitably skilled and trained workforce to the future prosperity of Australia's aviation industry. The Government has:**

**To continue to ensure the Australian aviation industry's future needs can be addressed within an overarching national skills framework the Australian Government proposes to:**

- **continue to provide assistance to all Australian industries to address skills issues through the education and training framework, specifically encouraging the aviation industry to:**
  - **communicate industry workforce needs to Skills Australia to ensure that the allocation of Productivity Places Program training places considers the skills needs of the aviation sector; [p. 30]**

It is an indictment of the aviation industry's current workforce planning processes that a boom-and-bust cycle of demand for airline pilots is the prevalent characteristic of the workforce. AIPA is prepared to contribute both time and expertise to the industry and Skills Australia to ensure adequate places are available under the Productivity Places Program.

However, before this can occur a more fundamental process needs to occur in which the industry, airline pilots and other stakeholders determine fundamental questions about the current and future pilot workforce including:

- How many pilots do we currently have?
- How many do we need?
- When do we need them?
- Where do we need them?

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<sup>9</sup> Rochfort, S. (2006, September 16). Fear of pilot shortage. *Sydney Morning Herald*, p. 3.

It is to answer these questions, that AIPA proposed a multi-pronged approach to pilot training and workforce planning and the establishment of a National Institute of Professional Pilot Training (**NIPPT**). The NIPPT would be comprised of industry, government and pilot representatives to oversee and identify areas for improvement in pilot training in Australia, authorise the theory accreditation as part of the Air Transport Pilot Licence and monitor areas of current and future skills shortage.

In AIPA's view, relying on industry to communicate workforce needs to Skills Australia will not be sufficient to end the endemic workforce planning problems so readily evident.

- **form partnerships with schools to better define career pathways from school into aviation occupations; and [p. 30]**  
AIPA supports this recommendation and proposes a pilot outreach programme to co-ordinate airline pilots visiting schools and career fairs.
- **reinforce with industry that it needs to be more pro-active in developing attraction and retention strategies and broader workforce planning, including:**
  - **transparent workforce planning process to articulate future recruitment needs across industry sectors, e.g. progression of pilots;**
  - **improved conditions and flexible working arrangements to encourage retention of key personnel, taking account of the aging workforce; [p. 30]**

As part of AIPA's earlier recommendation on workforce planning, the NIPPT should examine some of these issues. In particular, the NIPPT could play a valuable role:

- in examining existing barriers to aviation as a career, including a focus on barriers to women and minority groups;
- undertaking research into mapping the career paths of Australian pilots, looking at when, why and how many pilots leave the industry or pursue career opportunities outside Australia, and what might bring them back; and
- acting on the results of the research, measures to improve conditions for pilots . including flexible employment practices such as part-time rostering and job shares. such that they are encouraged to remain in the Australian industry.

## Principle 3 – Infrastructure

### Aviation infrastructure

#### Better integration with state and territory and local government planning

The Government is keen to work with state and territory and local governments and industry on improved arrangements for planning and development on airports, subject to some key principles:

- the Commonwealth Minister will retain final decision-making authority for land use planning and development on-airport;

...

The Government's preferred position is that the Australian Government Minister be given the power to establish expert Airport Planning Advisory Panels for each of the major airports to assess, at the Minister's request, airport Master Plans and Major Development Plans.

- The Panels would report to the Minister, who would retain the final decision-making authority. [p. 31]

AIPA supports both the Federal Minister retaining final decision making authority and the establishment of Airport Planning Advisory Panels. However, given the commercial imperatives that private airport operators face, it is imperative that such panels are seen to be independent and are, in fact, independent from the airport operators.

In AIPA's view, such panels must include a representative of airline pilots where the development under consideration is applicable to a category 3 or 4 airport. The technical expertise that airline pilots bring to such a panel would be invaluable in addition to demonstrating the independence of the process. AIPA would be pleased to work collaboratively with the relevant governments, airport operators and community organisations to develop a template process for nominating expert panel members.

### Community engagement

The Government proposes that the Minister be empowered to require airport lessees to establish community consultation groups for each major airport to foster effective community engagement in airport planning and operations issues. It is envisaged the groups would:

- have an independent Chair;
- include airport and government representatives, as well as representatives from local communities and users;
- be funded by airport lease holders;
- have scope to address ongoing and current planning and development issues and other key areas of airport activity that impact significantly on the community, e.g. aircraft noise; and
- monitor community complaints relating to the airport and their handling. [p. 32]

It is necessary for the aviation industry, specifically airline pilots, to be included in consultation with airport operators. Pilots can offer a unique

perspective to airport planning and operations issues with safety as their number one priority. AIPA requests the Government expand this %community engagement+to %community and industry engagement+.

## Improved planning processes

**The Government considers that processes for approval of non-aeronautical and aeronautical development on airport sites should be refined and new measures applying to it could include:**

- **strengthening the airport master plan process to provide greater transparency and certainty about future land uses at airports, including the detailed articulation of plans for aviation and other development proposals for the three to five year period following the master plan review; [p. 32]**

The privatisation of Australia's airports has resulted in consortiums managing airport infrastructure under commercial pressure with a view to maximising commercial returns. These pressures have resulted in some airport operators failing to recognise that the primary purpose of airports is for aviation, not merely retail services.<sup>10</sup>

The regulatory regime must ensure that non-aeronautical developments at airports do not compromise the aeronautical requirements of airlines and airports. One means of achieving this objective is to ensure Australia subscribes to world's best practice with regards to aeronautical developments. The aeronautical requirements of airports must always take precedence. Once this is satisfied, airport operators should be free to pursue non-aeronautical developments. Unfortunately operators sometimes pursue non-aeronautical profit maximisation at the expense of aeronautical safety. For example, Sydney Airport refuses to upgrade its proposed 90 metre Runway End Safety Area (**RESA**) for Runway 25 to the 240 metre RESA recommended by ICAO and CASA. It is interesting to note that the Federal Aviation Administration (**FAA**) in the US requires all commercial airports to have a 305 metre RESA, well above the minimum ICAO Standards and Recommended Practices.

Despite the safety case presented by AIPA to Sydney Airport during its Major Development Plan public consultation process to further extend the RESA for Runway 07/25, the Airport is not prepared to fund such safety initiatives beyond the minimum international standard despite CASA's recommendation that:

Additional length of RESA *should* be provided especially at international aerodromes, in accordance with the following ICAO recommendations:

1. if the runway's code number is 3 or 4 - 240 m; or
2. if the runway's code number is 1 or 2 - 120 m.

Note: Where it is not practicable to provide the full length of RESA, the *provision may include an engineering solution to achieve the objective of RESA*, which is to enhance aeroplane deceleration. In the latter case,

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<sup>10</sup> O'Brien, K. (2006). Airports and their local communities: A way forward. Federal Labor's plan for airport planning.

aerodrome operators will need to liaise with the relevant CASA office.<sup>11</sup>  
(italics added)

Sydney Airport and other international airports around the country may be more likely to install Engineered Materials Arresting Systems (**EMAS**) and other critical safety infrastructure if the Government offered a cooperative funding arrangement.

AIPA calls on the Australian Government to conduct cost-benefit studies for the installation of 240 metre RESA, or EMAS as an alternative, at code 3 and 4 airports nation wide. Additionally such cost-benefit studies should be conducted to assess windshear at airports and the safety benefits derived from LIDAR technology (referred to earlier in this submission).

The FAA provides federal funding to support upgrades to Runway Safety Areas. EMAS is currently installed at 41 runway ends and 28 airports in the US, with plans to install an additional 15 EMAS systems at 9 airports as indicated by the tables below.<sup>12</sup>

<b>Airport</b>	<b>Location</b>	<b>No. of Systems</b>	<b>Installation Date</b>
JFK International	Jamaica, NY	2	1996/2007
Minneapolis St. Paul	Minneapolis, MN	1	1999
Little Rock	Little Rock, AR	2	2000/2003
Rochester International	Rochester, NY	1	2001
Burbank	Burbank, CA	1	2002*
Baton Rouge Metropolitan	Baton Rouge, LA	1	2002
Greater Binghamton	Binghamton, NY	2	2002
Greenville Downtown	Greenville, SC	1	2003**
Barnstable Municipal	Hyannis, MA	1	2003
Roanoke Regional	Roanoke, VA	1	2004
Fort Lauderdale International	Fort Lauderdale, FL	2	2004
Dutchess County	Poughkeepsie, NY	1	2004
LaGuardia	Flushing, NY	2	2005
Boston Logan	Boston, MA	2	2005/2006
Laredo International	Laredo, TX	1	2006
San Diego International	San Diego, CA	1	2006
Teterboro	Teterboro, NJ	1	2006
Chicago Midway	Chicago, IL	4	2006/2007
Merle K. (Mudhole)	Cordova, AK	1	2007

<sup>11</sup> Civil Aviation Safety Authority (2008, Apr). *Manual of Standards Part 139-Aerodromes, version 1.4*. Canberra, AUS: Author.

<sup>12</sup> [http://www.faa.gov/news/fact\\_sheets/news\\_story.cfm?newsId=6279&print=go](http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=6279&print=go)

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Charleston Yeager	Charleston , WV	1	2007
Manchester	Manchester, NH	1	2007
Wilkes-Barre/Scranton Intl.	Wilkes-Barre, PA	2	2008
San Luis Obispo	San Luis Obispo, CA	2	2008
Chicago-O'Hare	Chicago, IL	2	2008
Newark Liberty International	Newark, NJ	1	2008
Charlotte Douglas Intl	Charlotte, NC	1	2008
St. Paul Downtown	St. Paul, MN	2	2008
Worcester Regional	Worcester, MA	1	2008

\*Widened in 2008

\*\* General aviation airport

**Additional Projects Currently Under Contract**

Location	No. of Systems	Expected Installation Date
Key West, FL	1	2009
Winston-Salem, NC	1	2009
New Castle County, DE	1	2009
Lafayette , LA	2	TBD
Telluride, CO	2	TBD
Groton-New London, CT	2	TBD

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