REVISED

'Marshall'

Postal address: , Kew, Vic, 3101

Hon Anthony Albanese MP,
Minister for Infrastructure, Transport, Regional Development and Local Government,
c/o Department of Infrastructure, Transport, Regional Development and Local Government,
GPO Box 594
Canberra ACT 2601

Dear Minister,

'Towards a National aviation Policy Statement': response by J V Kimpton

The writer was involved in Ansett's relationships with Government between 1983 and 1999, chaired the Program Advisory Panel (PAP) appointed by the then Minister to oversight CASA reviews through 1996-98, was Deputy Chair of the CASA Board from 1999 to 2003 and currently is a Member of the Aviation Safety Forum (ASF) and undertakes other committee work for CASA. I edit 'Aviation Briefs' for the Aviation Law Association of Australia and New Zealand.

I have been separately involved in the preparation of a submission by the ASF on safety-related questions in the Issue Paper, the views in which I fully support. This note briefly discusses four issues that are not directly raised by the questions in the Issues Paper.

Code sharing by passenger operators: the paper raises questions regarding safety oversight of international operators' leased aircraft. This is not a difficult issue as such aircraft, incorporated in operators' fleets, are subject to oversight by CASA. However, code sharing is a different issue. This is a practice whereby, subject to commercial arrangements, airlines' IATA designators are assigned to other (normally foreign) airlines and their passengers carried by those airlines. Thus tickets give the impression of same airline travel even though those other airlines may be involved in some

or all of the journey. There is little difficulty where the ‘other’ airline operates to Australia: it will be subject to CASA’s oversight.

However, where the transfer of passengers to the ‘other’ airline takes place offshore, CASA’s oversight does not automatically apply as the other airline is not required to have an Australian Foreign Airline AOC (unless the ‘other’ airline operates to Australia).Thus, despite the passenger having a ticket with an Australian carrier’s designator, that passenger does not have the benefit of Australian safety regulatory oversight. Of course, the ‘other’ airline’s home country regulator will have a role as will regulators of countries to which the ‘other’ airline operates. Further, airlines do not share their designators lightly, given the goodwill issues involved. Nevertheless, it appears to the writer that this state of affairs should exist as the result of considered policy decision rather than as a result of history. During my time as Deputy Chair of the CASA Board it was not possible to obtain unequivocal advice as to whether this situation was one with which policy makers were comfortable or what CASA’s or the Government’s position would be in the event of an accident involving an Australian airline’s ‘offshore’ code share partner. It is suggested that clarification would be desirable.

This is a separate safety regulatory issue to the consumer protection-based requirements that passengers be informed of code shares at the time of ticketing.

Australia-New Zealand Single Aviation Market: this has been evolving for over a decade and makes great sense. However, care needs to be taken that each of the countries’ regulatory and other relevant policies (eg industry assistance) are in alignment. Otherwise, there could be drift of aviation activity from one nation to the other to take advantage of presumably unintentionally unequal policies.

Various sectors of the industry (eg flying training, maintenance) have already suggested that this situation to a degree already exists as a result of New Zealand’s regulatory review being further advanced than that of Australia.

New Zealand, while not yet having ratified the Cape Town Convention (which facilitates aircraft financing), has been more positive about taking that step than Australia.

Ownership and control of Qantas and Qantas-related entities: the special ownership and control rules in the Qantas Sale Act are arguably inappropriate given the way the Australian market has evolved since Qantas was privatised in 1992. In particular, wholly foreign owned airlines have entered the domestic market; Qantas itself has spawned a totally new low cost carrier in Jetstar. It would seem reasonable for Qantas' airline businesses to now be subject to the ownership controls in the Air Navigation Act and the Foreign Takeovers Act which apply to other airlines. This would allow Qantas to fairly and effectively compete in the much more mature aviation market that it now faces both domestically and internationally. I acknowledge that were this step to be taken Qantas' domestic airline and non-airline businesses might not be subject to any foreign ownership limits at all, except to the extent they might be imposed by the Foreign Investment Review Board under the Foreign Takeovers Act. For the record, I have not discussed this matter with Qantas, nor do I hold shares in Qantas or directly in any other airline. It just seems self-evident.

Self-administration: the issue of separate qualifications issued by self-administrative bodies: I support self administration but have difficulty with the tactical approach (as opposed to strategic objective) adopted in CASA's proposals to date to achieve this via Parts 103 and 149. At the outset it should be said that bringing this activity directly under the regulations and no longer relying on exemptions, given the large and increasing numbers of aircraft and personnel involved, is highly desirable and a step that must be taken before the coverage of self-administration is expanded. This is not the place to raise the issues that I have placed before CASA with respect to those proposed Parts (which relate to compatibility of operating rules and relevant standards for pilots and aircraft subject to those Parts with those generally applicable, CASA's ability to effectively ensure self-administrative bodies are fulfilling their responsibilities, the basis upon which self-administrative bodies can discipline their members and so forth) except to say that the step announced by the Minister on 17th June to align and recognise equivalent achievements in the Defence and CASA pilot licensing systems could usefully be applied for the same reasons and with even less difficulty between Certificates issued by self-administrative bodies and Licences issued by CASA. It is not always realised that the Certificates issued by sport and recreational self-administrative bodies and Licences issued under CASA auspices are not identical, even though the pilot's or engineer's professional development is at a similar stage. While the Minister's announcement was related to pilot qualifications at the 'advanced' end of the industry, it is equally important that there be as much

commonality is possible between qualifications issued by self-administrative bodies, on the one hand, and under CASA auspices, on the other, at the 'entry' end of the industry for both pilots and engineers. The policy justification for such an approach is the same as for the changes announced by the Minister with respect to licences issued under Defence and CASA auspices. When I chaired the CASA Reviews (see above) the expectation was that a 'Recreational Pilots' Licence' would be issued by all training establishments, regardless of which system in which they were located. This would solve the problem with respect to pilots. In fairness to CASA, I should indicate that there are signs that they are addressing these issues and the consultation process is thus far working as it should. Putting this activity on a sound safety regulatory foundation does not appear to have been as easy as may have first appeared.

I am happy to discuss any or all of the above.

Yours sincerely,

James Kimpton AM
26/6/08