

**Senate Rural and Regional Affairs and Transport References Committee**

**Questions on Notice – Friday, 18 March 2011  
CANBERRA**

**Inquiry into Pilot Training & Airline Safety**

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**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT  
REFERENCES COMMITTEE**

**Inquiry into Pilot Training & Airline Safety**

**Public Hearing –Friday, 18 March 2010  
CANBERRA**

**Questions Taken on Notice – Virgin Blue**

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**1. HANSARD, RA&T 10**

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**Mr Borghetti**—Just to be clear, if I may, ‘Other’ includes any other airline from anywhere where there is only a small number from each. So to your direct point on Qantas, the answer to that is, no, there are not many that come from Qantas to Virgin Blue, with the exception, obviously, our chief pilot, and a couple of others.

**Senator STERLE**—Thank you, Mr Borghetti, because, with me, I like a straight, simple answer. I would appreciate that.

**Mr Borghetti**—Yes, I am a simple guy, too.

**Senator STERLE**—How many is ‘not many’? I have got figures here: Skytrans, one; Brindabella, one—you cannot go much lower than one.

**Mr Borghetti**—No, that is true. We can give you a breakdown of that. We will take it on notice and send you a list. That is very simple to do.

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**2. HANSARD, RA&T 14-15**

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**Senator STERLE**—Do you have any pilots based offshore that fly to and from Australia?

**Mr Borghetti**—For V Australia or across the group?

**Senator STERLE**—Let us say across the group.

**Mr Borghetti**—We have a Pacific Blue operation based in New Zealand, and those pilots fly from New Zealand to Australia and some Pacific islands.

**Senator STERLE**—Is that individual agreements for those pilots or collective?

**Mr Donohoe**—They have a collective bargaining agreement. Is that true for Pacific Blue, Rick?

**Capt. Howell**—I am not aware.

**Mr Donohoe**—We will take that on notice.

**Senator STERLE**—Please come back to me and, while you are at it, let me know if they are employed by Virgin or by an external company, if you could.

**Mr Donohoe**—Yes.

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### 3. HANSARD, RA&T 15

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**Senator STERLE**—How do the salaries and conditions of these New Zealand based pilots compared to those of your domestic pilots? You may want to take that on notice unless you have the answer now.

**Mr Borghetti**—We can give you an answer now, but we might give you more specific detail by way of dollars as a comparison, if that is okay with you.

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### 4. HANSARD, RA&T 16

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**Capt. Howell**—No, that is our own internal risk management decision. Using that as an example, as part of the risk management for any change to the way that we recruited pilots, we would manage the risk associated with a change in the standard of experience—not necessarily the standard of the pilot—through a certain format. There are things that you can do such as running extra simulator sessions, lengthening line training or making sure that the standards that they have to meet before they can fly with a line pilot are different to the normal.

**Senator XENOPHON**—Can you provide details of that ‘green on green’ restriction on notice?

**Capt. Howell**—Yes, we can.

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### 5. HANSARD, RA&T 17

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**Senator XENOPHON**—Do you have a view about the pay for training model? There has been a lot of criticism of that. They get their endorsement through paying for their training. How many pilots do you recruit from those sorts of flying schools?

**Capt. Howell**—I do not know when we actually would have last done that. I will take it on notice to find out when we last did it. It is certainly not our standard.

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### 6. HANSARD, RA&T 24

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**Senator CAMERON**—I have always been concerned, since the debate a few years ago, about the establishment of a virtual airline in Australia. Mr Borghetti, you would have read the literature, as I did, and I am glad to see that you are not heading that way. Maybe you could take this on notice, Mr Hockin. Could you provide the total number of maintenance hours on all Virgin Blue aircraft undertaken in the last 12 months, the number of hours undertaken overseas, the

number of hours undertaken by contractors for Virgin Blue and the number of hours undertaken by direct Virgin Blue maintenance employees? Is that clear?

**Mr Hockin**—Certainly.

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**7. HANSARD, RA&T 24-25**

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**Senator CAMERON**—Could you also take on notice the issue of skill availability. You say you will have a new facility in Sydney. One of the key issues, as Mr Borghetti is aware, is the availability of skilled labour in the Sydney area. What are you doing to ensure that you will get the skilled labour for this new facility? Can you provide me an assessment of the salaries earned by maintenance employees? How much of those salaries is the annual salary and how much depends on overtime? One of the issues that I have been concerned about over the years is that maintenance employees in airlines are very modestly paid, and I notice that they rely on overtime. The company that you do the training for actually advertise that you can make good wages but they also advertise on their site that you get it tax free if you go overseas. I was quite surprised to see that. Can you tell me the average hours worked by your maintenance employees, the number of licensed employees you employ directly and the number of unlicensed employees employed directly? Qantas have agreed to meet with me to analyse a number of these questions, along with the ACTU. Mr Borghetti, are you prepared to make the same offer to me and the ACTU?

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**8. HANSARD, RA&T 30**

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**Senator STERLE**—I have some questions to put on notice; I do not expect the answers today. Do you have collective agreements with all your cabin crew? If you do not have collective agreements with the V Australia cabin crew despite that airline having been in operation from a number of years now, I would like to know why not. If you do not have a collective agreement, how do you ensure that rostering for cabin crews is fair and does not lead to issues like fatigue? Do you use any foreign based cabin crew for operations to and from Australia? If you do have them, why and where are they based? Are these cabin crew employed under a collective agreement? If not, why not? If that is the case, what is the difference in pay and conditions between these foreign based cabin crews and your Australian based cabin crews? Thank you.

**QUESTIONS ON NOTICE TO VIRGIN BLUE  
PUBLIC HEARING 18 MARCH 2011**

**HANSARD, RA&T 10**

Q: Breakdown of the category headed "other" in table indicating company of origin for last 150 pilots employed by Virgin Blue provided in responses to previous questions on notice.

<b>OTHER AIRLINES</b>	<b>B737</b>	<b>EMBRAER</b>	<b>TOTAL</b>
Aeropelican	1	1	2
Air Link Airlines	1		1
Air Nelson	1		1
Air Niugini	1		1
Air Pacific	1		1
Air Vanuatu	2		2
Air Wisconsin Airlines	1		1
Airlines of PNG		1	1
Alliance Airlines	1		1
Aust. Aerial Surveys	1		1
Australasian Jet	1		1
CAE		1	1
China Airlines	2		2
China Southern		1	1
Cobham		1	1
Easternwell Group	1		1
Easyjet	1		1
Eva Airlines	2		2
Express Freighters	2		2
Hardy Aviation	2	1	3
Hawker Pacific	1		1
Heavylift		1	1
Hong Kong Airlines	1		1
Hong Kong Express	2		2
Macair	1	1	2
Maroomba Airlines		1	1
Nasair	1		1
Nauru Air Corp	1		1
Network Aviation		2	2
Our Airline	2		2
Paramount		1	1
Pelair	2	1	3
RFDS		1	1
Royal Brunei	1		1
SAT		1	1
Solomon Airlines	1		1
Vincent Aviation		1	1
	<b>34</b>	<b>16</b>	<b>50</b>

**HANSARD, RA&T 14-15**

Q: Can you provide details of the Pacific Blue collective agreement for pilots and a salary comparison with Virgin Blue?

There is currently no collective agreement covering Pacific Blue pilots, but the Company is in the process of negotiating such an agreement with the relevant pilots union in New Zealand.

Base salaries for Pacific Blue and Virgin Blue pilots are currently as follows:

Part of this answer is commercial-in-confidence and will not be published.

The above base salaries will increase on 1 July 2011.

All flight crew are employed by wholly owned subsidiaries within the Virgin Blue Group.

**HANSARD, RA&T 16**

Q: Can you provide further details of the "green on green" restriction?

1. A flight crew member is deemed to be 'inexperienced' following completion of a type rating or command course (and the associated line flying under supervision), until achieving the following additional experience on the type in their respective flight crew station:
  - 100 flying hours and flown 10 sectors, within a consolidation period of 120 consecutive days; or
  - 150 flying hours and flown 20 sectors (with no time limit).
2. At the roster construction stage, the Aircrew Rostering Officer shall not roster flight crew together unless one or both crew members have achieved the minimum experience requirements listed above.
3. Once the flight crew rosters have been issued, and control of day-to-day rostering is passed to the Crew Controller, the following policy applies:
  - Where a published roster has to be varied for any reason the Crew Controller shall ensure that, as far as possible, one or both flight crew members meet the minimum experience requirement listed above; and

If the first officer does not meet the minimum experience requirement then the captain must have a minimum of 300 hours and 100 sectors total experience on that aircraft type.

**HANSARD, RA&T 17**

Q: How many pilots do you recruit from ["pay for training"] flight training schools?

Virgin Blue has not recruited from these types of flying schools.

**HANSARD, RA&T 22**

Q: Can you provide further details on fatigue management systems restrictions in relation to back-of-the-clock operations?

Virgin Blue has implemented a number of restrictions on the ability of the crewing software to produce roster patterns that, while compliant with the approved flight and duty time limitations potentially produce an elevated fatigue risk.

"Back-of-the-clock" (BOC) operations are a necessary part of the commercial network and specifically defined through written policies. Rostering practices, through documented work rules, incorporate a restriction on the length of the subsequent sector following a BOC sector and also limit the length of the time between operating sectors to minimise the total operational duty time.

As a practical example, flight crew would not be able to be rostered a duty that incorporated the combination of an evening Perth - Bali sector followed by a return to Adelaide. The restriction in this example ensures that operations into and out of Bali at that time of the operation (night) are single sectors.

In addition, the Preferential Bidding System allows flight crew to bid on their preferred roster patterns to avoid BOC pairings. Clearly this is not possible for all flight crew and the protections mentioned above have been put in place as a result. In conjunction with all these activities it is also accepted practice to actively intervene from both a management and crew level to mitigate fatigue risks associated with BOC flying in the roster. In most instances this involves a review of a roster pattern with the affected crew and where necessary changing these duties to mitigate risk.

Virgin Blue also applies targeted investigation of the roster prior to its publication to prevent the occurrence of multiple fatigue elements. The incidence of this undesired alignment of fatigue risk factors is rare.

**HANSARD, RA&T 24**

Q: What is the total number of maintenance hours undertaken on Virgin Blue aircraft during the past 12 months and:

- In Australia
- Overseas
- By contractors
- By direct Virgin Blue maintenance employees

Total maintenance hours: 339,000

Overseas maintenance hours (New Zealand): 57,000  
Contract maintenance hours (includes overseas component above): 154,000  
Virgin Blue Maintenance (Virgin Tech) hours: 185,000

**HANSARD, RA&T 24-25**

Q: What is Virgin Blue doing to ensure will have the skill availability necessary for the operation of the Sydney maintenance facility?

As the new facility has only just been announced, planning is still in the early stages, however Virgin Blue will assess the available skill base and take a long term view of requirements. Accordingly, we will work with appropriate training organisations in the Sydney basin (as we do in Brisbane) if we identify a need to populate training programs to ensure that enough skilled staff are available.

Q: What is the average salary of Virgin Blue maintenance personnel? What proportion of this is base and how much depends on overtime? What is the average hours worked? What is the number of licensed personnel employed directly and indirectly respectively?

Line maintenance engineering for Virgin Blue aircraft is performed by Virgin Tech, a wholly owned subsidiary of the Virgin Blue Group. Remuneration for Virgin Tech engineers is set out in the Virgin Tech Agreement 2010. Details are as follows:

Part of this answer is commercial-in-confidence and will not be published.

Number of Licensed employees directly employed: 227

Number of Unlicensed employees directly employed: 97

**HANSARD, RA&T 30**

Q: Does Virgin Blue have a collective agreement with all its cabin crew? If not, why not?

The Virgin Blue Cabin Crew Agreement 2009 covers all Virgin Blue cabin crew.

The Virgin Blue Group is in the process of negotiating two additional collective agreements covering Cabin Crew – one for V Australia cabin crew and one for Pacific Blue cabin crew.

Q: If there is no collective agreement, how is fair rostering ensured?

The Virgin Blue Cabin Crew Agreement 2009 contains a number of provisions dealing with rostering. All cabin crew are included in the Virgin Blue Fatigue Risk Management System.



Q: Are any foreign based cabin crew used for services to/from Australia? If so, why, how many and where are they based?

The Virgin Blue Group has cabin crew based in Australia and New Zealand only. The New Zealand crew operate on services between New Zealand and Australia and a number of countries in the South West Pacific. Numbers are as follows:

- Virgin Blue cabin crew (based in Australia) – 1,802
- V Australia cabin crew (based in Australia) – 435
- Pacific Blue cabin crew (based in New Zealand) – 314

Q: Is there any difference in the collective agreements or relevant arrangements between Australian and overseas based crews?

In a broad sense, the differences in employment arrangements between Australia and New Zealand based cabin crew are twofold:

1. Currently, only Virgin Blue cabin crew are covered by a collective agreement, however, that is in the process of being changed. The Virgin Blue Group is negotiating collective agreements to cover V Australia and Pacific Blue cabin crew. The negotiations for an agreement to cover Pacific Blue cabin crew are at an early stage. The negotiations for an agreement to cover V Australia cabin crew are at an advanced stage (we hope to conclude an agreement covering V Australia cabin crew in the next month or so).
2. In terms of content, while the structure of the remuneration package applicable to Australian and New Zealand based cabin crew is similar (ie base salary and allowances for things such as overnights etc), the rates are different. Terms and conditions of employment for Pacific Blue cabin crew are consistent with New Zealand law and market conditions. Terms and conditions of employment for V Australia and Virgin Blue cabin crew are consistent with Australian law and market conditions. We are happy to provide a detailed comparison if it would assist.

**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT  
REFERENCES COMMITTEE**

**Inquiry into Pilot Training & Airline Safety**

**Public Hearing –Friday, 18 March 2010  
CANBERRA**

**Questions Taken on Notice – AIPA**

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**1. HANSARD, RA&T 49**

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**Senator XENOPHON**—I just have a couple more questions. Captain MacKerras, are you saying that we need to have stricter regulations because mere compliance is not enough? You may want to take that on notice and give suggestions as to where you think regulations ought to be strengthened.

**Capt. MacKerras**—Could I just comment that, given the fact that CASA with all its resources still has not produced the goods since 1996—

**Senator XENOPHON**—That is about flight training?

**Capt. MacKerras**—In lots of areas. It is a very broad subject.

**Capt. Woodward**—I was sitting on the part 91 and 121 regulatory reform process and I agree with Stephen Phillips that we did it and it did not get issued. Part 91 is general operating flight rules and part 121 is air transport operations. We slaved for weeks here in Canberra to write those regulations; they never saw the light of day. They are doing it now, but that is years later.

**Senator XENOPHON**—Because I have limited time, could you take some of that on notice.

**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT  
REFERENCES COMMITTEE**

**Inquiry into Pilot Training & Airline Safety**

**Public Hearing –Friday, 18 March 2010  
CANBERRA**

**Questions Taken on Notice – AIPA**

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**Senator XENOPHON**—Because I have limited time, could you take some of that on notice.

I would firstly like to restate my concern that the subject covers such a vast array of regulatory issues across many areas of the aviation industry. Therefore, my response can only be generalised due to practical constraints.

The question on notice contains several elements. It is probably easier to deal with the “mere compliance” aspect first.

I do not believe that there is any safety oversight organisation in the world that believes that “mere compliance is enough”. The latest edition of ICAO Document 9859 “Safety Management Manual” published in 2009 constantly reinforces the need for far more organisational commitment than just compliance. This commitment is necessary because:

“Without denying the immense importance of regulatory compliance, its limitations as the mainstay of safety have increasingly been recognized, particularly as the complexity of aviation operations has increased. It is simply impossible to provide guidance on all conceivable operational scenarios in an operational system as open and dynamic as aviation.” (para 2.3.4)

Perhaps one of the saddest aspects of the evidence given to the Inquiry by the CEOs of Qantas and Jetstar (in particular) is the apparent reliance placed by them on regulatory compliance as sufficient support for their safety outcomes. As the ICAO Safety Management Manual goes on to say:

“2.8.10 Although compliance with safety regulations is fundamental to the development of sound safety practices, contemporary thinking is that much more is required. Organizations that simply comply with the minimum standards set by the regulations are not well situated to identify emerging safety problems.”

The final quotation from the ICAO Safety Management Manual that I would like to offer is about where we as an industry need to go:

“3.6.3 A contrasting, contemporary safety paradigm is evolving, which is the one favoured by this manual. It is based on the notion of managing safety through process control, beyond the investigation of occurrences, and it builds upon three basic assumptions also:

- a) The aviation system does not perform most of the time as per design specifications (i.e. operational performance leads to the practical drift);
- b) Rather than relying on regulatory compliance exclusively, real-time performance of the system is constantly monitored (performance-based); and
- c) Minor, inconsequential deviations during routine operations are constantly tracked and analysed (process oriented).

The second part of the question was about “stricter regulations”.

The thrust of my testimony was really about the appropriateness of the regulations. Our current regulations are almost entirely prescriptive and we have yet to see many of the proposed replacements. Professor Anthony Hopkins published a paper in 2005 entitled “New Strategies for Safety Regulators: Beyond Compliance Monitoring ” which explains part of the problem:

“There are other problems with prescriptive regulation in organisational contexts, which have led to a certain disillusionment with the approach. One problem is that prescription can never be complete. As industry and technology evolve, prescriptive regulation inevitably lags behind. This means that there will always be areas of activity that are not effectively covered by the existing regulations, and other areas in which the regulations are obsolete or inapplicable. Another problem is that prescription can give rise to a compliance mentality on the part of employers, which, paradoxically, may be detrimental to safety. The point is that some employers may seek to comply with the letter of the law without any real sensitivity to the risks that these rules are designed to control. Such employers are not motivated to find more effective or efficient ways of controlling risk. In short, prescriptive rules can discourage innovation in risk-management.

In some cases, we presently severely lag the processes and the technology and, in other cases, we are standing back so far from the issues that it looks like we do not understand the safety implications or that we are adopting an unsustainable *laissez-faire* approach.

In the particular case of flight standards, I am concerned that we purport to regulate so much with so few rules and even less guidance as to the regulatory intention of those rules. I believe this results in uncertainty, inconsistency and commercial advantage. There are many areas worthy of attention.

I think that the training of flight instructors in general is inadequate and particularly so for those who teach instrument flying. I do not believe there are any formal standards for teaching ground school instructors, simulator instructors, training captains or check captains. There are no set standards for the conduct of type rating ground or air training, the gaining of operational experience through line training or upgrading from First Officer to Captain. I am not convinced that the syllabus of training to gain an ATPL adequately reflects the demands of modern, highly automated aircraft and there are no continuing professional development requirements.

Equally, I am concerned that cabin crew are, for all intents and purposes, an essentially unregulated part of the operating crew. For those members of the Committee whose experience with cabin crew is limited to the generally genteel scenario of large carriers travelling at reasonable times, spare a thought for those cabin crew working alone on smaller aircraft or on the often disruptive mine site runs or the back of the clock backpacker specials, particularly now that they are isolated from the pilots by the cockpit security door.

As a final note, I want to reiterate that the new regulations may well address many of these concerns and I do believe that John McCormick is driving hard to get the rules published. But he is between the rock and a hard place when it comes to the content and supporting material of those rules, simply because he is hostage to the regulatory direction and human resource investments of his predecessors. The real question is whether those rules will have been improved during the incessant delays or whether they will provide another portal to the history of the industry five or ten years ago.

**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT  
REFERENCES COMMITTEE**

**Inquiry into Pilot Training & Airline Safety**

**Public Hearing –Friday, 18 March 2010  
CANBERRA**

**Questions Taken on Notice – CASA/ATSB**

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**1. HANSARD, RA&T 60**

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**Senator XENOPHON**—I think the report was quite careful in saying that no evidence had been provided to date. In other words, there was no positive evidence of, for instance, an appropriate strategic assessment of fatigue risk. It also refers to a scientific review of Darwin based flight crew rosters which indicated that there were predicted levels of fatigue risk that required further review by Jetstar, and that, in the absence of sufficient proactive fatigue risk assessment practice by Jetstar, there may be unacceptable fatigue risks that are not being identified and managed. Has that been attended to since that time?

**Mr Hood**—I would like to take that on notice, if I can. I will go back and review Jetstar's response to our audit recommendations.

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**2. HANSARD, RA&T 64-65**

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**Senator XENOPHON**—Is there a requirement within CASA—or, indeed, the ATSB, Mr Dolan—that if an employee of CASA or the ATSB is going to go somewhere else for employment to advise CASA that they are going to an airline, for instance, from the date that they know that they have got that job?

**Mr McCormick**—From CASA's point of view, yes, they would have to declare a conflict of interest.

**CHAIR**—Can I just ask a question. In terms of the exemption that was granted, could you clarify that?

**Senator XENOPHON**—I think there is some issue there in terms of order 48.

**CHAIR**—Is there a commercial advantage to Jetstar?

**Mr McCormick**—My understanding is that it was a standard industry exemption, but I will have to take that on notice. Your specific question is, 'Did we give Jetstar a commercial advantage?'

**Senator XENOPHON**—That was not my question.

**CHAIR**—I asked that. I am just trying to clarify what the exemption enables.

**Mr McCormick**—I will have to come back to you on this particular document on notice.

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### 3. HANSARD, RA&T 69

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**Senator XENOPHON**—Perhaps on notice you can provide details of: how did Jetstar respond to this and how were you satisfied that they have complied? I do not know whether Mr Hood can comment on this. How is it that, if it is the case that there were extensions in 12 out of the 21—which I think you have acknowledged seems quite high—and that you will be looking into that, is that something that CASA ought to monitor on a regular basis? You get all these undertakings, you give them the tick of approval, but if there are 12 out of 21 extensions out of more than half the flights in January alone, does that indicate there ought to be continual monitoring by CASA of this particular exemption?

**Mr McCormick**—We will take on notice, Senator, as you quite rightly said, the issue of the 12 out of the 21. I will go back to what I did say earlier on. We are auditing Jetstar's AOC SMS in May this year. That will be a more comprehensive look at the organisation rather than just looking at an individual piece of it. Perhaps you would care to request that document when we have finished that, to answer that question more fully rather than giving you pieces—

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### 4. HANSARD, RA&T 69-70

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**Senator XENOPHON**—Finally from me on this: CASA are satisfied that Jetstar is complying or has dealt with these fatigue issues? My concern is that there are pilots who are still complaining through their union, and pilots complaining to me and to others individually, that the issue of fatigue has not been addressed. Is there any proposal to seek out the views of pilots, on a confidential basis, to ensure that the issue of fatigue has been adequately addressed?

**Mr McCormick**—I would say to anybody who reads the transcript of this, or listens to it, that we would welcome anybody in the aviation industry that has issues, whether they be fatigue or otherwise, to report to us. We will treat it as confidential and we will investigate those requests.

**Senator XENOPHON**—Following up from that, does this report—I have not had a chance to read it in detail—deal with the perceived punitive nature of taking such actions? Referring to the report, does it deal with that culture of people fearing retribution? You might want to take that on notice, to be fair to you. I think you may want to consider that.

**Mr McCormick**—I do not see it in his report, but I will take that on notice. If someone has a fear or they have some concerns, the ATSB has REPCONS available. I do not know whether Mr Dolan has seen any REPCONS around from Jetstar pilots which may aid us in our discussion.

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### 5. HANSARD, RA&T 72-73

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**Senator O'BRIEN**—There are plenty of examples of contractual requirements that limit movement benefiting from an employment arrangement with one company to another company—taking advantage of the knowledge given by one company and then using it for another. Is there no means for CASA to introduce some sort of system which would penalise the taking of such an advantage? I guess you cannot prevent it because you cannot stop someone

from leaving when they resign, but is there no way that contractually you can limit where they can go?

**Mr McCormick**—Generally speaking, we have discussed this internally, particularly after the last rather high-profile departure we had. My understanding is concomitant with government policy—that we do not have very many tools available to us. Dr Aleck may wish to add a couple of points on this because it is a topical issue.

**Dr Aleck**—We have been very closely reviewing these things for the very reasons you have raised. Such a provision in a contract is possible. It is legal. Obviously, it can only prospective; we cannot insert it into an existing contract. The information—which I think the Attorney General’s Department has published, but I will take that on notice to confirm it—is that those provisions are notoriously difficult to enforce. Whilst they are legally available, as a practical matter there is great difficulty in enforcing them.

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## **6. HANSARD, RA&T 72-73**

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**Senator XENOPHON**—Chair, I just wanted to put this on notice. Going back to the Jetstar fatigue audit and the letter that went to Mr Buchanan, the CEO of Jetstar, on notice, can you provide details of the 12 recommendations and the other comments that were made? Which of those were put in the report to Mr Buchanan? And insofar as some of the matters were not raised with Mr Buchanan, could you indicate why CASA decided not to raise those matters with Jetstar?

**Mr McCormick**—My understanding is that you mean from the Ben Cook input to the final report?

**Senator XENOPHON**—Yes.

**Mr McCormick**—How many were bundled into the main report? Which ones were not? And why were they not?

**Senator XENOPHON**—Sure, that is fine.

**Mr McCormick**—Yes, that is no problem.





**Australian Government**  
**Civil Aviation Safety Authority**

OFFICE OF THE DIRECTOR OF AVIATION SAFETY

TRIM Ref: P11/1

12 April 2011

Senator Bill Heffernan  
Chair  
Pilot Training and Airline Safety Inquiry  
Senate Rural Affairs and Transport References Committee  
Parliament House  
CANBERRA ACT 2600

Dear Senator Heffernan

**Pilot Training and Airline Safety Inquiry**

Please find attached CASA's responses for the Questions on Notice taken at the hearing on 18 March 2011.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Jonathan Aleck', written over the typed name and title.

Dr Jonathan Aleck  
Associate Director of Aviation Safety

**Rural Affairs and Transport Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

Inquiry into Pilot Training and Airline Safety 18 March 2011

**Question no.:** CASA 01

**Division/Agency:** (CASA) Civil Aviation Safety Authority

**Topic:** Jetstar response to fatigue audit recommendations

**Proof Hansard Page/s:** Hansard, RA&T 60

**Senator XENOPHON**—I think the report was quite careful in saying that no evidence had been provided to date. In other words, there was no positive evidence of, for instance, an appropriate strategic assessment of fatigue risk. It also refers to a scientific review of Darwin based flight crew rosters which indicated that there were predicted levels of fatigue risk that required further review by Jetstar, and that, in the absence of sufficient proactive fatigue risk assessment practice by Jetstar, there may be unacceptable fatigue risks that are not being identified and managed. Has that been attended to since that time?

**Mr Hood**—I would like to take that on notice, if I can. I will go back and review Jetstar's response to our audit recommendations.

**Answer:**

CASA undertook a Special Audit of Jetstar, the report of which was published in May 2010. The audit scope encompassed aspects of crew planning methodology and application, use of the Civil Aviation Order (CAO) 48 standard industry exemption, flight planning methodology and the functional interface of flight operations with respect to operational control and safety management system oversight.

The audit scope did not specifically include the future requirements for strategic fatigue risk management. There was, however, significant evidence provided by Jetstar that supported the continuing development of a fatigue risk management program which, at the time, was at the conceptual stage. Jetstar advised that they were awaiting International Civil Aviation Organization (ICAO) and CASA standards to be finalised and published. There was also evidence provided by Jetstar of informal but proactive fatigue mitigating measures in use within the crew roster planning area. This evidence was also referred to in the body of Mr Cook's Human Factors Report as tabled.

There was no evidence found of any non-compliance within the elements that were audited. There were observations made in relation to the interpretation of CAO 48 exemption conditions. The auditors learned these matters had been under consideration by Jetstar before the audit. These elements were recorded as Audit Observations as a matter of record. The "scientific" review undertaken by Mr Cook of the Darwin rosters was not included in the audit report itself due to uncertainty about the validity of the methods utilised. Many of the recommendations made by Mr Cook and submitted to the audit team for consideration were based on opinion, with some not supported by facts and objective evidence.

Jetstar responded to the 12 CASA Audit Observations issued. CASA was satisfied with the remedial actions and process improvements proposed by Jetstar. CASA has since met with Jetstar regarding the further development of its Fatigue Risk Management System in advance of the soon to be released ICAO Standards for fatigue management.

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**Question no.:** CASA 02

**Division/Agency:** (CASA) Civil Aviation Safety Authority

**Topic:** CAO 48 industry exemptions

**Proof Hansard Page/s:** Hansard, RA&T 64-65

**Senator XENOPHON**—Is there a requirement within CASA—or, indeed, the ATSB, Mr Dolan—that if an employee of CASA or the ATSB is going to go somewhere else for employment to advise CASA that they are going to an airline, for instance, from the date that they know that they have got that job?

**Mr McCormick**—From CASA's point of view, yes, they would have to declare a conflict of interest.

**CHAIR**—Can I just ask a question. In terms of the exemption that was granted, could you clarify that?

**Senator XENOPHON**—I think there is some issue there in terms of order 48.

**CHAIR**—Is there a commercial advantage to Jetstar?

**Mr McCormick**—My understanding is that it was a standard industry exemption, but I will have to take that on notice. Your specific question is, 'Did we give Jetstar a commercial advantage?'

**Senator XENOPHON**—That was not my question.

**CHAIR**—I asked that. I am just trying to clarify what the exemption enables.

**Mr McCormick**—I will have to come back to you on this particular document on notice.

**Answer:**

a) The Civil Aviation Order (CAO) 48 Standard Industry Exemption offers no commercial advantage to Jetstar as it is also available to all other holders of Australian Air Operator's Certificates. CASA may, by instrument in writing, exempt a person from any of the requirements set out in CAO Part 48 (Flight Time Limitations). This is subject to such conditions as CASA considers necessary in the interests of the safety of air navigation.

b) A "Standard Industry Exemption" is an exemption from the flight and duty time limitations set out under CAO Part 48. Under CAO 48 Paragraph 4.1, CASA is authorised to issue an instrument in writing to exempt a person from any of the requirements set out in Part 48. It is in effect a permission from CASA for an operator to work to a different set of flight and duty time limitations. CASA will only issue such an exemption to an operator who has applied in writing to operate to the exemption and satisfied CASA that the applicant is operationally capable of working

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at an equivalent level of safety to CAO 48, when operating to the flight and duty time limitations set out in the exemption.

The Standard Industry Exemptions (Part II-International High Capacity Air Transport, Part III Domestic (High Capacity) Operations) provide a greater degree of flexibility in rostering air crew taking into consideration the variables of a duty periods, duty period commencement times, flight duty period times, flight deck times when applied to aircrew complements of either two pilots or multiple pilot numbers (augmented crew numbers).

The Standard Industry Exemptions, in the parts identified above, provide flexibility in the start and finish times and in-flight rest times when the crew complement has multiple crew members that can facilitate in-flight rest.

The underpinning requirement of the Standard Industry Exemptions is that adequate rest is provided for aircrew through the means of managing duty times and in-flight rest to accommodate scheduled aircraft departure and arrival times. The nature of the aviation business requires that operators have the flexibility to stagger the frequency of schedules. The Standard Industry Exemptions support to the notion that aircrews may operate throughout the spectrum of day and night provided that fatigue is managed to a satisfactory (safe) level.

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**Question no.: CASA 03**

**Division/Agency: (CASA) Civil Aviation Safety Authority**

**Topic: Jetstar flight extensions**

**Proof Hansard Page/s: Hansard, RA&T 69**

**Senator XENOPHON**—Perhaps on notice you can provide details of: how did Jetstar respond to this and how were you satisfied that they have complied? I do not know whether Mr Hood can comment on this. How is it that, if it is the case that there were extensions in 12 out of the 21—which I think you have acknowledged seems quite high—and that you will be looking into that, is that something that CASA ought to monitor on a regular basis? You get all these undertakings, you give them the tick of approval, but if there are 12 out of 21 extensions out of more than half the flights in January alone, does that indicate there ought to be continual monitoring by CASA of this particular exemption?

**Mr McCormick**—We will take on notice, Senator, as you quite rightly said, the issue of the 12 out of the 21. I will go back to what I did say earlier on. We are auditing Jetstar's AOC SMS in May this year. That will be a more comprehensive look at the organisation rather than just looking at an individual piece of it. Perhaps you would care to request that document when we have finished that, to answer that question more fully rather than giving you pieces—

**Answer:**

CASA does not consider that these extensions require continual monitoring.

The duty extensions recorded in January 2011 by Jetstar were a result of flight crew agreeing to operate beyond the standard 12 hour initial limits as provided for within Civil Aviation Order 48 Exemption. No breaches of the 14 hour condition were recorded.

Jetstar have since advised that the January rate of extensions was considered at the January meeting of their Flight Standards and Safety Committee. It was identified that due to a number of factors associated with ground operations provision at Singapore, the schedule did not live up to planned expectations. The Flight Standards and Safety Committee again considered the matter in February, and while some improvement was noted in the duty extension rate for February, the Chief Pilot resolved to split the pairing and overnight flight crews in Singapore. This decision is being implemented.

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**Question no.: CASA 04**

**Division/Agency: (CASA) Civil Aviation Safety Authority**

**Topic: Reporting of fatigue in Jetstar**

**Proof Hansard Page/s: Hansard, RA&T 69-70**

**Senator XENOPHON**—Finally from me on this: CASA are satisfied that Jetstar is complying or has dealt with these fatigue issues? My concern is that there are pilots who are still complaining through their union, and pilots complaining to me and to others individually, that the issue of fatigue has not been addressed. Is there any proposal to seek out the views of pilots, on a confidential basis, to ensure that the issue of fatigue has been adequately addressed?

**Mr McCormick**—I would say to anybody who reads the transcript of this, or listens to it, that we would welcome anybody in the aviation industry that has issues, whether they be fatigue or otherwise, to report to us. We will treat it as confidential and we will investigate those requests.

**Senator XENOPHON**—Following up from that, does this report—I have not had a chance to read it in detail—deal with the perceived punitive nature of taking such actions? Referring to the report, does it deal with that culture of people fearing retribution? You might want to take that on notice, to be fair to you. I think you may want to consider that.

**Mr McCormick**—I do not see it in his report, but I will take that on notice. If someone has a fear or they have some concerns, the ATSB has REPCONS available. I do not know whether Mr Dolan has seen any REPCONS around from Jetstar pilots which may aid us in our discussion.

**Answer:**

The audit team were unable to substantiate the claims of punitive action from any evidence gathered. The flying operations inspector on the audit team interviewed a number of Darwin based Jetstar pilots and was satisfied they had the willingness and capability to report safety matters including fatigue. The auditors sought and received information from the Jetstar safety management system on reporting statistics and, on review, were satisfied that there was no evidence of reluctance to report fatigue.

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**Question no.:** CASA 05

**Division/Agency:** (CASA) Civil Aviation Safety Authority

**Topic:** Contractual requirements and movements after employment

**Proof Hansard Page/s:** Hansard, RA&T 72-73

**Senator O'BRIEN**—There are plenty of examples of contractual requirements that limit movement benefiting from an employment arrangement with one company to another company—taking advantage of the knowledge given by one company and then using it for another. Is there no means for CASA to introduce some sort of system which would penalise the taking of such an advantage? I guess you cannot prevent it because you cannot stop someone from leaving when they resign, but is there no way that contractually you can limit where they can go?

**Mr McCormick**—Generally speaking, we have discussed this internally, particularly after the last rather high-profile departure we had. My understanding is concomitant with government policy—that we do not have very many tools available to us. Dr Aleck may wish to add a couple of points on this because it is a topical issue.

**Dr Aleck**—We have been very closely reviewing these things for the very reasons you have raised. Such a provision in a contract is possible. It is legal. Obviously, it can only prospective; we cannot insert it into an existing contract. The information—which I think the Attorney General's Department has published, but I will take that on notice to confirm it—is that those provisions are notoriously difficult to enforce. Whilst they are legally available, as a practical matter there is great difficulty in enforcing them.

**Answer:**

There is no current CASA policy, pre-employment contract or clause within the current Enterprise Agreement that expressly constrains an officer's future employment in the aviation industry on separation from CASA.

The imposition of such constraints is problematic from both a legal and practical perspective. Even where they might lawfully be introduced prospectively by agreement, the enforceability of such an agreement would be extremely difficult.

The information to which the response referred is published by the Australian Public Service Commission (APSC), not the Attorney-General's Department. It appears in Chapter 14 of the *APS Values and Code of Conduct in Practice* (<http://www.apsc.gov.au/values/conductguidelines16.htm>) and it is here that explicit reference is made to legal advice the APSC has obtained to the same effect.

Because of the small size of the domestic pool from which both CASA and the Australian aviation industry must draw potential employees, the introduction of such constraints could serve to deter otherwise attractive candidates from applying to work for CASA. At the same time, CASA's *Conflict of Interest* policy (CEO\_PN008), currently gives rise to a clear expectation that any officer seeking employment with an operator subject to regulation by CASA would inform CASA of his or her intentions,

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so that appropriate steps can be taken to mitigate the risk of any actual or perceived conflicts of interest. CASA's Code of Conduct policy is currently under review with a view, amongst other things, to strengthening these provisions.

As Commonwealth officers, all former CASA employees are prohibited by section 70 of the *Crimes Act 1914* from publishing or communicating—to their subsequent employers or anyone else—information that came to their knowledge by virtue of their position as a CASA officer, which, at the time they ceased to be a CASA employee, it was their duty not to disclose.



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**Question no.:** CASA 06

**Division/Agency:** (CASA) Civil Aviation Safety Authority

**Topic:** Audit report on Jetstar fatigue

**Proof Hansard Page/s:** Hansard, RA&T 72-73

**Senator XENOPHON**—Chair, I just wanted to put this on notice. Going back to the Jetstar fatigue audit and the letter that went to Mr Buchanan, the CEO of Jetstar, on notice, can you provide details of the 12 recommendations and the other comments that were made? Which of those were put in the report to Mr Buchanan? And insofar as some of the matters were not raised with Mr Buchanan, could you indicate why CASA decided not to raise those matters with Jetstar?

**Mr McCormick**—My understanding is that you mean from the Ben Cook input to the final report?

**Senator XENOPHON**—Yes.

**Mr McCormick**—How many were bundled into the main report? Which ones were not? And why were they not?

**Senator XENOPHON**—Sure, that is fine.

**Mr McCormick**—Yes, that is no problem.

**Answer:**

Mr Cook was a member of a larger audit team whose collective views informed the final audit report. Due to the late submission of Mr Cook's comments there were some difficulties in assessing and incorporating his inputs.

However, the final audit report did include references to the applicable facts and evidence noted in Mr Cook's report.

Dot points 1, 2, 3 and 6 in the section from Mr Cook's report entitled *Key findings from CASA Human Factors* related to Jetstar reliance on the Civil Aviation Order (CAO) 48 exemption and its interpretations for managing fatigue. The matters associated with the following dot points were referred to by Audit Observation 2 on the Application of CAO 48 Exemptions:

No 1 - no strategic assessment of fatigue risks;

No 2 - no pro-active fatigue risk assessment when Darwin base was established;

No 3 - a reactive system for managing fatigue; and

No 6 - operational outcomes with insufficient consideration of fatigue risk.

It should be noted that there was no requirement for Jetstar to conduct a strategic fatigue risk assessment for establishment of the Darwin base or for the flight crew rosters.

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Dot point 4 of Mr Cook's report described the "scientific review" of Darwin pilots' rosters. The results of Mr Cook's review were not included in the audit due to the late submission of his recommendations, as well as the identification of some methodological issues and data deficiencies.

Dot point 5 of Mr Cook's report related to two separate subjects. One concerned the auditing of duty times and pilot logbooks. The other item concerned overtime arrangements for pilots when operating outside the published roster. Mr Cook may not have been aware of further evidence provided by Jetstar to the flying operations inspector who was responsible for preparing this element of the report. Evidence was also provided to CASA following this audit that satisfied the auditors that compliance was not adversely affected by the automation of licence and duty time records in 2008.

The matters raised in dot point 7 of Mr Cook's report (flight crew paid to commute between other cities and Darwin) were referred to in Audit Observation 4 on crew positioning flights prior to duty.

The matters associated with dot point 8 of Mr Cook's report (evidence of operational priorities taking precedence over strict compliance with rules) were referred to in Audit Observation 8 (use of minimum turnaround times).

The matters associated with dot point 9 of Mr Cook's report (pressure to accept extensions of duty) were referred to in Audit Observation 3 on guidelines for crewing officers and Audit Observation 5 on acceptance of extensions to duty periods.

The matters associated with dot point 10 of Mr Cook's report (no culture of open and honest reporting) were not supported by objective evidence. Evidence from within the flight crew ranks did not support the finding of a reluctance to report fatigue risk or to elect to refuse an extension of duty request.

The matters associated with dot point 11 of Mr Cook's report (cabin crew fatigue risk) were not part of the scope of this audit.

The matters associated with dot point 12 (time to develop proactive fatigue processes and possible withdrawal of CAO 48 exemption) were not included as they were not found to be adequately supported by objective evidence.

# **ATSB RESPONSES TO QUESTIONS ON NOTICE**

## **– HEARING 18 MARCH 2011**

### **SENATE INQUIRY INTO PILOT TRAINING AIRLINE SAFETY INCLUDING CONSIDERATION OF THE TRANSPORT SAFETY INVESTIGATION AMENDMENT (INCIDENT REPORTS) BILL 2010**

#### **1. QUESTION: Conflict of Interest Policy**

**Senator XENOPHON**—Is there a requirement within CASA—or, indeed, the ATSB, Mr Dolan—that if an employee of CASA or the ATSB is going to go somewhere else for employment to advise CASA that they are going to an airline, for instance, from the date that they know that they have got that job?

#### **ANSWER – ATSB Conflict of Interest Policy:**

The ATSB has in place policies and procedures to manage real and perceived conflicts of interest. The policies and procedures are consistent with the *Public Service Act 1999*. Subsection 13(7) of the Public Service Act requires that an Australian Public Service employee must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment.

The ATSB Quality System Manuals provide the practical requirements for complying with this requirement of the Public Service Act. The Investigation Guidelines Manual advises:

As the transport investigation agency, the ATSB and its staff must be independent of the transport industry and be seen to be so.

At no time should staff members involved in an investigation, as a team member or involved in the review process, be seen as being too close to any participant, company or organisation, including other government agencies.

At the same time, however, the bureau must establish and maintain good relationships with the organisations and individuals in the wider industry.

Where there is the potential for a real or apparent conflict of interest, or relevant background of a potentially controversial type – for example, prior employment with the body being investigated – the investigator must immediately inform the relevant Manager. The Manager is to inform the appropriate General Manager of the conflict.

If operational requirements of the ATSB require an investigator, who may be perceived to have a conflict of interest, to investigate the occurrence, a written declaration by the investigator must be placed on the investigation record together with the Chief Commissioner's agreement to continue with the investigator being involved in the investigation.

Further, the Manual advises:

At the time of an investigator's six monthly performance exchanges, any potential conflict must be declared to the relevant Manager. For example, ownership of shares or a directorship in a company, organisation or body that may be investigated should be declared. Managers should advise the ATSB Executive of any such conflicts.

Outside of the six monthly performance exchanges, investigators are still required to declare conflicts to their Manager wherever it may arise.

During a very high profile investigation, consideration will be given to placing a statement on the ATSB website concerning any relevant background of investigators involved that could be misperceived as a potential conflict.

This action is to ensure transparency so that the independence of the investigation is not brought into question by a subsequent inquiry