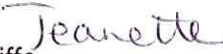


18 October 2011

Ms Jeanette Radcliffe  
Committee Secretary  
Senate Rural Affairs and Transport References Committee  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Ms Radcliffe



**Re: Inquiry into Air Navigation and Civil Aviation (Aircraft Crew) Bill 2011**

I refer to your letter of 25 August 2011 inviting Virgin Australia to lodge a submission regarding issues raised by the Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011 (the Bill). The Virgin Australia Group (VA Group) welcomes the opportunity to highlight the impacts that the Bill, if enacted, could have on our business and the broader Australian aviation and tourism industries.

Operating conditions continue to be challenging for many airlines in an industry which is highly competitive, typically characterised by thin margins and susceptible to exogenous shocks. In addition, the airline industry's financial performance is closely linked to the condition of world economies.<sup>1</sup> In the global context, falling business confidence and world trade, the weak economic outlook for several developed countries' economies and an increased dependence on developing countries for economic growth have the potential to soften demand for air transport in the medium term. Although Australia continues to derive economic benefits from its geographic proximity and close ties to several high-growth countries in the Asia-Pacific region, the aviation industry within this region is highly competitive and many Australian airlines' key markets are still in or linked to developed economies. The VA Group is pursuing a strategy designed to meet these challenges and capitalise on new opportunities as they emerge in the competitive landscape, in order to provide a high-quality experience for our guests, a stable and rewarding work environment for our employees and sustainable returns for our shareholders. This strategy aligns with and is supported by Australia's aviation policy settings.

**National Aviation Policy White Paper (White Paper)**

As a vast, island continent with geographically-dispersed communities, Australia's economic welfare and social cohesion is dependent on the existence of a vibrant and sustainable Australian-based aviation industry. Released in December 2009 following an extensive public consultation process, the White Paper brings together key aspects of aviation policy, as recognised and refined by successive governments, in a single statement designed to provide industry with long-term planning, investment and regulatory certainty. In recognition of the highly dynamic nature of the aviation industry, this policy framework has been developed to address future challenges expected to be faced by both industry and government in continuing to grow this sector, which is of national strategic importance to Australia.

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<sup>1</sup> International Air Transport Association (2011) "IATA Financial Forecast September 2011", viewed 23 September 2011, <<http://www.iata.org/whatwedo/Documents/economics/Industry-Outlook-September2011.pdf>>



The White Paper identifies a number of key goals for the industry over coming years. While safety and security will remain the highest priorities and underpin industry growth, the White Paper also recognises the role aviation plays in driving broader economic prosperity. Specific goals within this economic objective include the following:

- Australia should have an open and competitive international aviation market that benefits tourism, trade and consumers, allows Australian and overseas airlines to expand, and maintains a vibrant Australian-based aviation industry;
- Australia should maintain an open interstate domestic aviation market that maximises benefits to the Australian economy within the general framework of national competition policy;
- aviation businesses should be able to innovate and develop new and improved products for the market; and
- employment in the aviation industry should grow with more Australians training for and taking up jobs in the industry.<sup>2</sup>

As Australia's second largest airline, operating both domestic and international services, the VA Group occupies an important role in Australia's aviation industry.

### **VA Group operations and strategy**

The VA Group currently comprises Virgin Australia, V Australia, Pacific Blue and Polynesian Blue. Virgin Australia has an extensive domestic network, operating services to 32 destinations in Australia. Our international short and medium-haul services to 15 destinations in ten countries are operated by Virgin Australia, Pacific Blue and Polynesian Blue, while our international long-haul services to Abu Dhabi and Los Angeles are operated by V Australia. We are currently engaged in a process of brand consolidation which will see all of our domestic and international services (except for services operated by Polynesian Blue which is a majority Samoan-owned carrier) operated under the single brand of Virgin Australia by the end of the year. While the names of a number of companies within the VA Group will be changed as part of this process, the underlying legal entities themselves will remain in place.

Our brand consolidation, along with an enhanced network and product offering, are core elements of our strategy to transform our business in order to increase our competitiveness, especially in the corporate and government travel sector. To provide VA Group guests with access to a global network, we have formed alliances with Air New Zealand, Delta Air Lines, Etihad Airways and Singapore Airlines (subject to regulatory approval), enabling us to offer services to the key markets of New Zealand, the United States of America (US), Europe and Asia respectively through code share arrangements. We have also formed a partnership with the Western Australia-based operator, Skywest Airlines (Skywest), to increase our presence in the regional domestic market. In addition to complementing the domestic and international services we operate with our own aircraft, these strategic alliances will play a direct role in enhancing the performance of these services by feeding additional connecting traffic into our network, contributing to the long-term sustainability of our business.

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<sup>2</sup> Commonwealth of Australia (2009), "National Aviation Policy White Paper", p 2.



## **VA Group's approach to industrial relations**

Over 7,400 people are employed by the VA Group, approximately 93 per cent of whom are based in Australia. We recognise that our employees are the most important asset of our business, and their capabilities provide us with a source of competitive advantage. This is reflected in a positive workplace culture and strong levels of employee engagement and productivity, all of which are supported by a collaborative approach to engaging with employees and unions regarding industrial relations matters. We seek to achieve industrial outcomes which balance fair terms and conditions with productivity and operational flexibility, and we have been able to attain such outcomes within the relevant industrial relations frameworks during our 11 years of operations. Our recent successful negotiations with the Australian Federation of Air Pilots and Virgin Independent Pilots Association (on behalf of long-haul international pilots) and the Flight Attendants Association of Australia (on behalf of long-haul international cabin crew) in respect of two new collective agreements demonstrates the effectiveness of this approach. The VA Group has not experienced an industrial dispute to date, notwithstanding that unions relevant to our industry have a presence among a large section of our workforce.

The constructive industrial relations climate within the VA Group is supported by a philosophy of creating employment opportunities for Australians, by undertaking as many activities and operations as possible within Australia. While cost and scale considerations will always be relevant in decisions regarding the location of operational bases and offices, the VA Group is of the view that in many cases, additional costs associated with performing activities onshore will be offset by the realisation of productivity gains and logistical efficiencies. In pursuit of this philosophy, we have announced that we will be establishing a maintenance facility in Sydney that will involve the creation of up to 300 new Australian jobs. Plans to establish a pilot cadetship program in partnership with Skywest are also being developed, with a Request for Tender issued earlier this month, and will contribute to ensuring that there is supply of skilled aviation professionals in Australia. On the commercial side of our business, we are transferring to Australia up to 100 call centre roles which are currently performed overseas. Our philosophy, as an Australian-based airline, also supports the White Paper's specific policy objective regarding growth in employment opportunities for Australians in the aviation industry.

## **VA Group's approach to safety (including fatigue risk management)**

The VA Group has an uncompromising commitment to the safety of our guests, employees and the general public. We review and invest in our systems, standards, training and people on an ongoing basis to ensure that our overall approach to safety continuously improves and is consistent with world's best practice. Our approach to safety is underpinned by established and measurable safety standards and strong engagement with the key regulatory agencies, especially in the jurisdictions within which our aircraft are registered, viz Australia's Civil Aviation Safety Authority (CASA) and the Civil Aviation Authority of New Zealand (CAANZ).

The VA Group Safety Management System systematically and comprehensively manages safety risks in all our operations and incorporates Fatigue Risk Management Systems (FRMSs). A FRMS is a data-driven means of continuously monitoring and managing fatigue-related safety risks that aims to ensure that aircraft crew members are performing at adequate levels of alertness. The VA Group has established a separate FRMS for Virgin Australia/V Australia and Pacific Blue/Polynesian Blue, notwithstanding that there is no legislative requirement, in either Australia or New Zealand, for us to do so. VA Group's



FRMSs use fatigue risk management controls and are supported by structured policies and procedures under a defined governance model.

As the internal systems that support the VA Group's FRMSs are aligned, the work rules regarding duty limitations and rest requirements for aircraft crew are similar for Virgin Australia/V Australia and Pacific Blue/Polynesian Blue. These FRMSs have been approved by CASA and CAANZ respectively and are audited annually by these regulatory agencies. Notwithstanding that CASA and CAANZ regulations<sup>3</sup> only prescribe work rules which define the duty limitations and rest requirements for flight crew, the work rules for VA Group cabin crew are also determined by reference to the applicable VA Group FRMS. Accordingly, the VA Group has implemented measures which transcend compliance, in conformance with the principles of effective safety management systems.

We consider ourselves an industry leader in the area of fatigue risk management, and would highlight that Virgin Australia/V Australia are the only high-capacity regular public transport operators in Australia to have a CASA-approved FRMS. In the New Zealand context, both Pacific Blue/Polynesian Blue and Air New Zealand have an FRMS approved by the CAANZ. Each FRMS also complies with the relevant International Civil Aviation Organization (ICAO) standards, which were finalised in June 2011.

To demonstrate best practice in FRMS development and implementation in the Australian context, the Virgin Australia/V Australia FRMS is formally reviewed each year by an independent third party, with the 2010 review having been conducted by the US-based organisation, Circadian, which is an internationally recognised world leader in fatigue risk management. Circadian's report documenting its review of the Virgin Australia/V Australia FRMS notes that:

"It is clear that FRMS will become the international standard and the ICAO FRMS policies are expected to be finally released in 2011. In this context, Virgin Blue is a leader in FRMS implementation in international aviation operations."

The Pacific Blue/Polynesian Blue FRMS will be reviewed by an independent third party by the end of 2012, following the implementation of a group-based audit system that will facilitate the consistent review of systems in all VA Group companies.

In fulfilling our commitment to safety in all aspects of our operations, the VA Group will continue to explore and adopt new and innovative approaches which improve the management of safety risks.

### **Potential impact of the Bill on VA Group operations**

The VA Group considers that the Bill could impact several areas of our operations, notwithstanding the approaches we adopt in relation to both industrial relations and safety for our aircraft crew.

#### Pacific Blue

Most of the VA Group's short and medium-haul international services are operated by, or on behalf of, Pacific Blue. The two key legal entities through which Pacific Blue operations are

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<sup>3</sup> Civil Aviation Order 48 (Australia); Civil Aviation Rule Part 121, subpart K (New Zealand).



conducted are Pacific Blue Airlines (NZ) Ltd (PBNZ) and Pacific Blue Airlines (Aust) Pty Ltd (PBA), both of which are wholly-owned subsidiaries of Virgin Blue Holdings Ltd (VBH).

PBNZ is a New Zealand-based and registered company, which holds an Air Operator's Certificate (AOC) issued by CAANZ. It also holds an International Airline Licence (IAL) issued by the Australian Department of Infrastructure and Transport as an authorised Single Aviation Market (SAM) airline of New Zealand, which permits the operation of scheduled international air services to and from Australia in accordance with the Australia-New Zealand air services arrangements. PBNZ commenced services on the trans-Tasman route in January 2004. In accordance with its rights as a SAM airline, PBNZ also commenced intra-New Zealand services in November 2007. These services were unprofitable and were discontinued in October 2010.

PBA is an Australian-registered company which holds an IAL issued by the Australian Department of Infrastructure and Transport as a designated airline of Australia. Under its IAL, PBA is authorised to provide scheduled international air services to and from Australia by means of a wet or damp-lease arrangement<sup>4</sup>, in accordance with Australia's air services arrangements with the various countries under which PBA has been designated. All PBA services are conducted via a wet-lease arrangement with either PBNZ or Virgin Australia. As PBA does not operate any services in its own right, it does not hold an AOC. PBA commenced services in September 2004 and currently offers services to the Cook Islands, Fiji, New Zealand, Papua New Guinea, the Solomon Islands, Thailand, Tonga and Vanuatu.

The decision to establish the base for Pacific Blue in New Zealand, rather than Australia, was based on competitiveness considerations. These considerations were not limited to costs, but included logistical efficiency, operational flexibility and operations of competitors. All services operated by PBNZ in its own right, or on behalf of PBA under a wet-lease arrangement, are crewed exclusively by employees based in New Zealand, each of whom is employed under an individual New Zealand employment contract with a New Zealand-registered company, Pacific Blue Employment and Crewing Ltd (which is a wholly-owned subsidiary of VBH). Pacific Blue currently employs 525 people, including 150 flight crew and 325 cabin crew.

Cost considerations, while important, are not solely determinative of whether PBA services will be operated under a wet-lease arrangement with PBNZ (utilising New Zealand-based employees) or Virgin Australia (utilising Australian-based employees). For example, Pacific Blue services to Thailand are operated under a wet-lease arrangement by Virgin Australia on behalf of PBA, and the crew operating these services are employed under Australian contracts. For logistical reasons, it is preferable to have the aircraft crew operating these services based in Australia, rather than New Zealand. A similar decision has been made in relation to Pacific Blue services to the Solomon Islands, which from November 2011, will be operated under a wet-lease arrangement by Virgin Australia on behalf of PBA, based on a preference to service the route with aircraft fitted with Virgin Australia premium product. The New Zealand-based aircraft crew that previously operated the Pacific Blue services to the Solomon Islands will be deployed on additional services on the trans-Tasman route.

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<sup>4</sup> Leasing is a widespread method used by air carriers to obtain equipment or increase their fleet capacity. A wet-leased aircraft includes a crew and a damp-leased aircraft is a wet-leased aircraft that includes flight crew but not cabin crew (International Civil Aviation Organization (2004), "Manual on the Regulation of International Air Transport" p5.2-2.



The total number of Pacific Blue employees in New Zealand has decreased in recent years and the VA Group's Chief Executive Officer and Managing Director, Mr. John Borghetti, has publicly stated that he does not intend to expand the Pacific Blue base. Nonetheless, our Pacific Blue operational structure remains an important component of our business. Consistent with the VA Group's approach to industrial relations as outlined above, we are currently engaged in negotiations to establish the first set of collective agreements for Pacific Blue flight crew and cabin crew.

It would seem that the Bill's proposal to insert a new section 16A into the *Air Navigation Act 1920* would require that all flight and cabin crew working in connection with a scheduled international air service of PBA (as an Australian international airline holding an IAL), which are not directly employed by PBA, receive wages and conditions of employment that are no less favourable than they would have received if they had been directly employed by PBA. As PBA does not have any employees, it would appear that the VA Group would be obliged to provide the New Zealand-based aircraft crew, which operate services on behalf of PBA under a wet-leasing arrangement with PBNZ, with the minimum terms and conditions of employment for aircraft crew provided under Australian law, viz, the *Air Pilots Award 2010* and the *Aircraft Cabin Crew Award 2010*, together with the National Employment Standards in the *Fair Work Act 2009*. As PBA is an associated entity (within the meaning of the *Corporations Act 2001*) of Virgin Australia Airlines Pty Ltd (Virgin Australia) and Virgin Australia International Airlines Pty Ltd (V Australia), the proposed section 16B is also potentially relevant and may require the VA Group to provide the New Zealand-based aircraft crew operating services on behalf of PBA with wages and conditions of employment equivalent to those embodied in collective agreements negotiated with the Australian-based aircraft crew of Virgin Australia and V Australia (as Australian airlines). We expect the same conclusion would be reached regarding the application of section 16B to PBNZ itself, which also holds an IAL and is an associated entity (within the meaning of the *Corporations Act 2001*) of PBA, Virgin Australia and V Australia.

The Bill's proposal to amend the *Civil Aviation Act 1988*, by amending subsection 28C(1) and inserting a new section 28CA, may also apply to the VA Group, as PBNZ holds a New Zealand AOC containing ANZA privileges. Given that PBNZ is an associated entity (within the meaning of the *Corporations Act 2001*) of PBA, Virgin Australia and V Australia, the implication is that PBNZ's AOC would not come into force for Australia unless we provided our New Zealand-based Pacific Blue aircraft crew with the same wages and conditions of employment that are provided to our Australian-based crew.

In our view, the Bill represents an attempt to legislate extraterritorially regarding industrial relations law, and we question whether the Bill, if enacted, would be capable of enforcement in New Zealand.

As outlined above, work rules regarding duty limitations and rest requirements for VA Group aircraft crew are determined in accordance with the Virgin Australia/V Australia or Pacific Blue/Polynesian Blue FRMS. These FRMSs are quite similar, but to the extent that there are any differences which amount to the conditions of employment of our New Zealand-based aircraft crew being less favourable than our Australian-based aircraft crew, changes to these conditions may only be effected with the approval of CAANZ, as this is an issue related to safety, rather than industrial relations. It would also seem that the Bill's attempt to modify duty limitations and rest requirements for aircraft crew based in New Zealand is inconsistent with the Mutual Recognition Principle embodied in the Arrangement between the Australian and New Zealand Governments on Mutual Recognition of Aviation-Related Certification. The Mutual Recognition Principle provides, *inter alia*, that a person authorised under Australian



law to carry out an aviation activity in Australia may carry out the same kind of activity in New Zealand, and similarly, a person authorised under New Zealand law to carry out an aviation activity in New Zealand may carry out such activities in Australia. Underpinning the Mutual Recognition Principle is the Australian and New Zealand Governments' understanding that:

- while their aviation safety regulatory systems may differ, they nevertheless achieve comparable safety outcomes;
- mutual recognition should be addressed at the level of whole safety systems rather than their constituent parts; and
- home regulators should retain regulatory oversight and responsibility of persons they authorise to carry out aviation activities.

This understanding demonstrates that while the duty limitations and rest requirements specified by CASA and CAANZ may differ, it is assumed that comparable safety outcomes will still be achieved. It also confirms that CAANZ should retain regulatory oversight of New Zealand-based operators, such as PBNZ, with CASA responsible for operators whose principal place of operations is in Australia.

If the Bill was enacted, it would have an impact on Pacific Blue's competitiveness in the markets it serves, given that there is a differential between the remuneration levels of our New Zealand-based Pacific Blue aircraft crew and both our Australian-based Virgin Australia and V Australia aircraft crew, consistent with relevant laws and market conditions in both countries. Pacific Blue competes with carriers from the South West Pacific, Asia and the Middle East on trans-Tasman and Pacific Islands routes, many of whom operate from much lower cost bases, and/or in more favourable regulatory environments and some of whom are government-owned. Given the highly competitive nature of these routes, it is likely that Australian-based carriers would find current operations on these routes increasingly difficult to sustain and would look to consider options including network rationalisation and partnerships with foreign airlines. Over the long term, this would have consequences for consumers and the Australian and South West Pacific tourism industries.

It is important to note that the competitiveness of Australian carriers in international markets is intrinsically linked to that of their domestic operations. Given Australia's relatively small domestic market, the industry's long-term success is reliant on the ability to compete internationally. Equally, a strong domestic market is an important platform for the industry's competitiveness in international markets. The VA Group's strategy, as articulated above, reflects this interdependency.

As such, the proposed Bill has implications for the prospects for growth in air services, employment and associated industries in the Australian context.

### Polynesian Blue

Polynesian Blue, a Samoan designated airline, operates through a company registered in Samoa (Polynesian Blue Ltd) which is jointly owned by VBH (49 per cent), the Samoan Government (49 per cent) and the Aggie Greys Hotel (two per cent). Polynesian Blue holds an IAL issued by the Australian Department of Infrastructure and Transport, which authorises Polynesian Blue to provide international air services by means of a wet or damp-lease arrangement in accordance with the Australia-Samoa air services arrangements. Polynesian Blue offers services between Australia and Samoa which are operated by PBNZ under a wet-lease arrangement. Polynesian Blue does not operate any services with its own aircraft,



and is therefore not required to hold an AOC. Polynesian Blue commenced services in October 2005.

As Polynesian Blue is an associated entity (within the meaning of the *Corporations Act 2001*) of PBA, Virgin Australia and V Australia, the impacts the enactment of the Bill would have on Pacific Blue apply equally to Polynesian Blue, in relation to the proposed amendments to the *Air Navigation Act 1920*.

### Virgin Australia

All of the VA Group's domestic services are operated by Virgin Australia. In addition, Virgin Australia operates services to Indonesia in its own right, as well as services under a wet-lease arrangement with PBA to Thailand and, from November 2011, the Solomon Islands. Virgin Australia holds an AOC issued by CASA and an IAL issued by the Australian Department of Infrastructure and Transport which authorises it to operate international air services to Indonesia in accordance with the Australia-Indonesia air services arrangements.

We do not expect that the proposed section 16A amendment to the *Air Navigation Act 1920* would have any bearing on the wages and conditions of employment the VA Group provides to its Virgin Australia aircraft crew, as these are provided under Australian collective agreements approved by Fair Work Australia<sup>5</sup>. Although such a construction would seem to be inconsistent with the heading of section 16B, we would note that the terms of this section may require the VA Group to provide the aircraft crew operating international services for Virgin Australia with the same wages and conditions provided to aircraft crew employed by V Australia, given that Virgin Australia is an associate of V Australia, which is itself an Australian airline. This would be problematic from the point of view that separate collective agreements have been negotiated, approved and implemented for Virgin Australia aircraft crew and V Australia aircraft crew<sup>6</sup> in recognition of the different operational requirements that exist for the short and medium-haul operations of Virgin Australia and the long-haul operations of V Australia.

It is also foreseeable that the Bill's proposal to insert a new section 28BJ into the *Civil Aviation Act 1988* may apply to our commercial arrangement with Skywest, under which Virgin Australia will wet-lease ATR72 turbo-prop aircraft and crew from Skywest to expand the services we operate to regional destinations. While the wages and conditions of employment of the aircraft crew that will operate the services under this arrangement are matters which will be determined between Skywest and its employees, the proposed section 28BJ would appear to make Virgin Australia's AOC conditional on Skywest aircraft crew receiving the same wages and conditions of employment as Virgin Australia aircraft crew. We would note that this interpretation of section 28BJ would seem inconsistent with the Bill's stated purpose of protecting the "workplace conditions of *foreign or overseas-based* flight or cabin crew who are working on Australian-owned airlines or their subsidiaries" (emphasis added).<sup>7</sup> The enactment of this Bill may require us to reconsider our commercial arrangement with Skywest and associated opportunities for expansion into additional regional markets. This would reduce the scope for growth in regional tourism and employment in Australia.

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<sup>5</sup> Virgin Blue Pilots Agreement 2007; Virgin Blue Cabin Crew Agreement 2009.

<sup>6</sup> Virgin Australia Long Haul International Pilots Agreement 2011; Virgin Australia Long Haul International Cabin Crew Agreement 2011.

<sup>7</sup> Explanatory Memorandum, Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011 (Cth) 1.



## V Australia

As mentioned above, V Australia is the long-haul international airline of the VA Group. V Australia holds an AOC issued by CASA and an IAL issued by the Australian Department of Infrastructure and Transport, which authorises it to operate international own-aircraft and code share services to and from Australia in accordance with Australia's air services arrangements with the various countries under which V Australia has been designated. V Australia commenced services in February 2009. We do not expect that the Bill's proposed amendments would require any modification to the terms and conditions of employment of V Australia's aircraft crew, which are stipulated by Australian collective agreements.

Adopting a literal interpretation of the Bill, either the proposed section 16A amendment to the *Air Navigation Act 1920*, or the proposed section 28BJ amendment to the *Civil Aviation Act 1988* could apply to code share services offered by V Australia on international sectors operated by our alliance partners, jeopardising a core component of our strategy as outlined above, and accordingly, our long-term competitiveness and sustainability.

We would contend that such a construction, which effectively seeks to regulate employment and aviation safety matters of the countries in which our alliance partners are based, for example, New Zealand, United Arab Emirates and the US, would be both unworkable and unenforceable as these are matters for foreign governments. As noted in the previous section regarding Virgin Australia, it would also be inconsistent with the Bill's purpose of protecting "workplace conditions of foreign or overseas-based flight or cabin crew who are *working on* Australian-owned airlines or their subsidiaries" to extend the Bill's application to the aircraft crew of services operated by foreign airlines with which Australian airlines have a contractual arrangement concerning code share services (emphasis added)<sup>8</sup>.

It is also possible that code share services offered by V Australia under the VA designator code on services operated by Virgin Australia or Pacific Blue would fall within the ambit of the proposed sections 16A and 16B of the *Air Navigation Act 1920* and section 28BJ of the *Civil Aviation Act 1988*, with consequential implications for our competitiveness in line with our comments above.

## **Further analysis of the Bill**

In addition to the potential impact the Bill, if enacted, would have on the VA Group's competitiveness, and putting aside practical difficulties in relation to enforcement given its extraterritorial nature, the VA Group considers that the Bill is also problematic from the perspective that it appears to seek to achieve an industrial outcome through amendments to laws unrelated to industrial matters. In their current forms, and with the exception of relevant safety issues, neither the *Air Navigation Act 1920* nor the *Civil Aviation Act 1988* has any bearing on terms and conditions of employment, which in our view, is entirely appropriate. We would expect that any proposal to modify the terms and conditions of employment of aircraft crew would be effected through amendments to applicable industrial laws, which in the Australian context are the *Fair Work Act 2009* and the relevant Modern Awards (*Air Pilots Award 2010* and *Aircraft Cabin Crew Award 2010*). Of course, these laws are only relevant to aircraft crew employed under Australian law.

The terms and conditions of many aircraft crew in Australia are also regulated by collective agreements, negotiated through enterprise bargaining processes, and agreed and approved

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<sup>8</sup> Ibid.



in consideration of pay, employment and productivity outcomes which are relevant and unique to these employees and the particular work they perform (for example, long-haul or short/medium-haul services). As Fair Work Australia will only approve these collective agreements if they meet the "better off overall test" when compared to the applicable Modern Awards, it would seem inequitable if airlines, as employers, were required to extend the terms and conditions of employment contained within collective agreements to groups of employees which these collective agreements do not, and were never intended, to cover.

We would also note that the amendments proposed by the Bill are potentially counterproductive to the achievement of several of the White Paper's policy goals in relation to the Australian aviation industry's role as a key driver of broader economic prosperity. The Bill would potentially limit opportunities for Australian carriers to competitively access international markets, reducing competition and choice for Australian and foreign travellers and inhibiting trade and tourism opportunities for Australian industry. There are also strong interdependencies between domestic and international aviation. International feeder traffic makes a significant contribution to the major Australian airlines' domestic businesses and a strong domestic platform provides important support for viable international expansion.

It is therefore inevitable that the implications of the Bill would have some flow-on effects on the domestic aviation industry, with Australians living in remote and regional communities likely to be disproportionately affected.

Although the aviation industry, by virtue of its nature, will remain a highly regulated industry, (particularly in areas touching safety and security), the enactment of the Bill would also seem to be inconsistent with the Government's deregulation agenda, with its stated intention of making government regulation as efficient and responsive as possible in order to support increased productivity and international competitiveness.

## **Conclusion**

The VA Group is committed to providing its employees with equitable terms and conditions of employment, in accordance with prevailing labour market conditions in the country in which they are based and in compliance with relevant employment and aviation safety law of that particular country. In our view, it is not reasonable to expect that employees of a single corporate group that are based in different countries would necessarily receive equal wages and conditions of employment. The Bill fails to recognise the positive approach the VA Group adopts in relation to its industrial relations matters and its commitment to the highest standards of safety.

If enacted in its current form, the Bill would jeopardise the VA Group's ability to remain competitive in a number of key markets, limiting opportunities for profitable growth and therefore the creation of more Australian jobs. This is concerning in a broader sense, given that Australia's economic prosperity and social cohesion is heavily dependent on the existence of a vibrant and sustainable Australian aviation industry, in which the VA Group plays a pivotal role.

Yours sincerely

Jane McKeon  
Group Executive  
Government Relations