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

Dear Ms Radcliffe

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

I refer to your letter of 30 January 2012 advising of draft amendments to the Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011 (the Bill) put forward by Senator Xenophon to be considered as part of the above Inquiry. The Virgin Australia group of airlines (Virgin Australia) welcomes the opportunity to comment on these amendments, which replace all substantive provisions of the original Bill.

As outlined in our initial submission, the original Bill had the potential to substantially adversely impact Virgin Australia's operations and strategy, as well as the broader Australian aviation and tourism industries. While the amendments serve to address our primary concerns in this regard, Virgin Australia considers that aspects of the amended Bill remain problematic.

Schedule 1 – Amendment of the *Fair Work Act 2009*

Virgin Australia is pleased to note that the amendments to Schedule 1 of the Bill reflect the views expressed in our initial submission that any proposal to modify the terms and conditions of Australian aircraft crew ought to be effected through amendments to relevant industrial relations laws.

Given that all services in Virgin Australia's domestic network are operated by flight and cabin crew employed under Australian terms and conditions, whether employed directly by Virgin Australia or by an Australian company which provides us with wet-leased aircraft capacity (such as Skywest Airlines), this proposed amendment would have little effect on our business. This is consistent with our philosophy of creating and maintaining employment opportunities for Australians, as outlined in our initial submission.

Although Virgin Australia has no plans to deploy overseas-based crew on domestic services on a regular basis in the future, we would prefer to retain the flexibility to utilise such crew in extraordinary circumstances, without the need to address the additional specific employment law requirements that these amendments would necessitate. Such circumstances could include, but would not be limited to, disaster recovery situations and the grounding of other domestic or regional operators for commercial or safety reasons, which has occurred a number of times over the past decade in the Australian market. Such services would only

occur after consultation with relevant stakeholders, subject to the receipt of any necessary regulatory approvals and in compliance with applicable laws.

Aside from its potential impacts on operational flexibility, we would query how the amendments could be implemented from a practical perspective considering the challenges that would be encountered in attempting to reconcile not only an employee's base salary, but all other elements of two entirely separate employment law systems (for example, overtime arrangements, rest periods, superannuation and taxation). If overseas-based crew were performing a combination of international and Australian domestic sectors (even on a temporary basis), an obligation to apply different employment laws depending on the sector performed would subject Australian airlines to a significant and complex administrative burden. Virgin Australia would also question the appropriateness of enacting laws which are unique to Australian domestic aviation, essentially placing the industry at a competitive disadvantage vis-à-vis all other Australian domestic industries.

In addition to the potential practical implications, Virgin Australia is of the opinion that these amendments would be unenforceable based on ordinary principles of legal jurisdiction. In the absence of a complementary law in the relevant country which provides that its employment laws, and terms and conditions of contracts effected in accordance with such laws, have no application when persons based in that country perform duties as crew of Australian domestic flights, difficulties in relation to enforceability are readily apparent.

In our view, it would be appropriate to consider amendments of this kind as part of a broader assessment of the *Fair Work Act 2009*, whether under the current Fair Work Act Review, or a future review.

Schedule 2 – Amendment of the *Civil Aviation Act 1988*

As outlined in our initial submission, Virgin Australia's Safety Management System incorporates Fatigue Risk Management Systems (FRMSs) to monitor and manage fatigue-related safety risks for both flight and cabin crew for each of our airlines. Our FRMS for Virgin Australia Airlines Pty Ltd/Virgin Australia International Airlines Pty Ltd, as holders of an Australian Air Operator's Certificate, has been approved by the Civil Aviation Safety Authority (CASA). Accordingly, Virgin Australia is already compliant with subsections (1) – (3) of the proposed section 28BJ.

While Virgin Australia's FRMSs are also applicable to flight operations managers, as these employees are recognised as active flight crew, we do not have FRMSs in place for other "operational support staff" as required by subsection (4). Our FRMSs do, however, require that certain staff (including schedulers and dispatchers) receive training in relation to duties they perform which support the effective operation of the FRMSs for flight and cabin crew.

If the intention of subsection (4) is to require the implementation of a separate FRMS for all "operational support staff", we would expect that the particular roles encompassed by this description would be clearly defined. Interpreted broadly, "operational support staff" could potentially include a significant number of operational and administrative support employees across our business for whom an FRMS would have limited practical application.

Notwithstanding our comments above, Virgin Australia considers that amendments of this nature ought to be promulgated by CASA. In this regard, we note that CASA and relevant



industry participants are currently engaged in an FRMS project focussed on aligning Australian legal requirements in this area with the applicable standards of the International Civil Aviation Organization (ICAO).

We would be pleased to provide the Committee with further information in relation to our comments above if required.

Yours sincerely

Jane McKeon
Group Executive
Government Relations