



**AUSTRALIAN FEDERATION
OF AIR PILOTS**

**THE AUSTRALIAN FEDERATION OF AIR PILOTS (AFAP)
SUBMISSION TO THE SELECT COMMITTEE ON COVID-19
OF THE
AUSTRALIAN SENATE
INQUIRY INTO THE AUSTRALIAN GOVERNMENT'S RESPONSE
TO THE COVID-19 PANDEMIC**

JUNE 2020

Sent via email: covid.sen@aph.gov.au

Wednesday, 3 June 2020

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Introduction

1. The Australian Federation of Air Pilots (AFAP) is the largest industrial and professional association for professional pilots in Australia and represents approximately 5500 members. The AFAP's membership includes pilots employed by Virgin Australia, Qantas and Qantas-owned subsidiaries (such as QantasLink and Jetstar), regional airline pilots, Australian pilots flying for overseas operators, general aviation pilots, flight instruction pilots, aero-medical pilots, corporate jet pilots, helicopter pilots and aerial agricultural pilots.
2. The AFAP represents and promotes the interests of Australian professional flight crew and champions the highest possible standards of aviation safety. As an industrial organisation, the AFAP protects and improves working conditions for pilot members, including through industrial representation, pilot welfare programs and promoting employment opportunities. As a professional association, the AFAP engages in reforms through its active safety and technical committee, which is a major contributor to the development of Australian and international aviation safety standards. The AFAP is also a foundation member of the International Federation of Airline Pilots' Associations (IFALPA), the global body representing professional pilots worldwide, through which the AFAP contributes to international aviation standards within the International Civil Aviation Organisation (ICAO).
3. As a key stakeholder in the aviation industry, the AFAP welcomes the opportunity to make submissions to the Senate Select Committee Inquiry into the Commonwealth Government's response to the COVID-19 pandemic.
4. To date, the COVID-19 pandemic has been a driver of particularly rapid change in the Australian and global aviation industry. Indeed, as put by the International Air Transport Association (IATA), infectious diseases and pandemics cause "greater than average impact and uncertainty"¹ in the aviation sector.
5. With measures aimed at curbing the spread of the COVID-19 virus, including flight cancellations and travel restrictions, pilots and other aviation workers have suffered significant adverse effects on their employment and working conditions across Australia. The AFAP regards these adverse effects as being largely a consequence of the aviation industry not otherwise operating on a financially or socially sustainable basis for many decades, characterised by deregulation, destructive competitive practices, and a veritable race to the bottom. The COVID-19 crisis has laid bare the true state of a fragile and unstable industry susceptible to the excesses of poor corporate practices and insufficient government-based protections.

¹ International Air Transport Association (IATA) (2018). Future of the airline industry 2035, p.7.

6. During times like these, however, we are reminded of the importance of a well-functioning aviation system as a critical part of Australia's national infrastructure and global connectivity, particularly in terms of Australia's readiness to recover from the economic impacts of the COVID-19 pandemic.
7. As a vast and decentralised country, economic recovery cannot occur in Australia without a robust and viable aviation industry. The COVID-19 crisis therefore presents an imperative for stakeholders, including the Commonwealth Government, to reshape the aviation industry on a more financial and socially sustainable footing, thereby softening the boom and bust cycle that has marked the industry for decades.

COVID-19 Impacts on AFAP members

8. In response to government-mandated travel restrictions and significant falls in travel demand, some airline operators have implemented severe reductions in the domestic and international flying schedules since March 2020.
9. Whilst the AFAP has encouraged airline operators to work together with pilots to find appropriate solutions to the pandemic's impact on airlines and pilots, levels of cooperation from operators have varied. Some of the more widespread actions taken by different airlines and operators have included:
 - Requesting pilots to take any accrued annual or long service leave;
 - Standing pilots down with or without pay;
 - Reducing workloads from full-time to part-time;
 - Reducing pay and conditions;
 - Voluntary and involuntary redundancies; and
 - Suspending enterprise bargaining.
10. Further, some of these actions have been marked with levels of disregard for industrial laws and instruments or have been implemented in such a way that injustices of those laws and instruments have become starkly apparent, including:
 - a. Standing pilots down without pay when they have been on paid personal leave;
 - b. Standing pilots down without pay even though there may be no entitlement for the employer to do so under section 524(1)(c) of the Fair Work Act; and
 - c. Offsetting Jobkeeper payments against accrued entitlements such as annual leave.

A more financially and socially sustainable aviation industry

11. For the last few decades, governments have allowed the market to find its own balance through deregulation and a focus on growth, low fares, and increased connectivity. When this works, it can work well however, down cycles can also have extreme effects culminating in circumstances including airline bankruptcies, demonstrated by examples in Australia such as Ansett in 2001 and the recent voluntary administration of Virgin Australia. Just prior to the COVID-19 crisis, most airlines were not making enough money to cover the cost of capital. Thus, it must be noted that the balancing act is too fragile and the boom/bust cycle has been entrenched to the detriment of all stakeholders, including the general public. The post-COVID-19 recovery must differ from past industry recoveries which have sometimes led to further deregulation, increasingly precarious work, and increased social costs. Those costs include the obvious costs of lost jobs, maintaining social protections, and income disparity. This is not a story solely limited to the aviation industry either and nor is it a sustainable post pandemic remedy.
12. Liberalisation in aviation in Australia has created a skewed system in which airlines are no longer required to take financial or social responsibility for the markets to which they enjoy access, because they are not supported to do so. Aviation should be an engine of improvement; not a scheme to extract value and dump its social costs in return. Without social sustainability, there will be no economic sustainability. A socially sustainable industry will create valuable employment; not degrade and destroy it.
13. The response to this crisis cannot be to weaken the very employment standards without which there can be no economic recovery. Australia does not need more dirt-cheap airfares or airlines creating and demanding unreasonable competition. Australia needs a sustainable aviation industry built according to the fair and equitable treatment of the people who keep it running.
14. Equally, the response to this crisis cannot be cuts to vital public services on which workers rely as part of their social safety net. Necessarily though, the capital invested in the industry must also gain an adequate measure of stability and sustainability to ensure that the cycle of service (people serving the economy so that the economy serves the people) can continue with the least interruption. A sustainable aviation industry is one that will ensure that social responsibility becomes a condition of serving both the Australian market and community.

Responses to the COVID-19 pandemic

Stand Down Issues

1. Under section 524(1)(c) of the Fair Work Act (FW Act), an employer may stand an employee down without pay during a period in which the employee cannot be usefully employed, but only in a circumstance where there is a stoppage of work for any cause for which the employer cannot reasonably be held responsible.
2. Whilst this provision may enable many airlines and operators to stand its employees down without pay because they have met all of the requirements under section 524(1)(c) of the FW Act, the AFAP has become aware of some operators standing pilots and other employees down where those requirements have not been fully met. For example, the AFAP is aware of at least one operator that has stood a number of its employees down in circumstances where, rather than there being any stoppage of work, there has just been a temporary downturn in work. In those circumstances, the operator has not sought to make pilots redundant because it has forecast that demand is likely to pick up.
3. In such circumstances, whilst it is desirable to avoid redundancy situations, where an employer wishes to retain skilled workers for when demand normalises, this is a business decision for which it can be held responsible and accordingly, employees should continue to be paid under their contracts of employment.

Case Study: Airline "A"

Airline "A" is a regional airline ordinarily operating on routes to regional and remote destinations across Australia for business and leisure travel, as well as for regular public transport services. Some of its principal clients are State/Territory and Federal Government departments. Whilst Airline "A" has suffered a significant decline in demand overall as a consequence of the pandemic, it does continue to fly a number of intra-and inter-State flights, including of medical personnel. Furthermore, management have decided to retain personnel in view of expanding the business post-COVID-19 as its competitors suffer heavier losses. Airline "A" has, in any event, stood its workforce down to an average 30% workload in order to generate sufficient cash reserves for potential expansion.

Recommendations:

1. That the Federal Government should review any compliance activity of the Fair Work Ombudsman in relation to the use and misuse of existing stand down provisions under section 524 of *Fair Work Act 2009* where employees have been stood down without pay.
2. As a major client of airlines, the Federal Government should use its purchasing power to fairly share Commonwealth expenditure and to promote best practice industrial relations to ensure that industries such as the aviation industry operate in a socially responsible manner.

Jobkeeper Package

4. The AFAP welcomes job subsidies that keep pilots employed throughout the pandemic. The current indication from the Morrison Government, however, is that it will not be extending the Jobkeeper subsidy beyond September 2020. This is problematic in the aviation industry, which has had to sustain severe travel restrictions in order to contain the spread of the virus and will likely continue to suffer from international restrictions for some time. In many ways, the aviation industry is one of the hardest hit industries. According to the International Air Transport Association (IATA), in the Asia-Pacific region, revenue passenger kilometres (RPKs) have declined by 50% on a year-on-year basis in 2020 with passenger revenues falling some USD 113 billion. Currently, the outlook remains extremely uncertain, and will depend on the duration of the pandemic, including any second wave and severity levels, the depth of the global economic recession, the timing of easing of lockdowns and travel restrictions, the return of consumer confidence in air travel and – crucially – the airline industry’s ability to withstand financial challenges. With all of these factors considered, it is extremely likely that many Australian airline pilots will not to be working and will require support beyond the end of September in order to survive financially. The risks here are two fold. Pilots that become untethered to their jobs may also become untethered to the aviation industry as their personal circumstances drive them to seek relief elsewhere. This will in turn impact upon the future ability of the aviation industry to provide service to the community and economy.

Recommendation:

The AFAP calls upon the Committee to recommend that the Government considers extending the Jobkeeper program beyond September 2020 in recognition of the magnitude of the crisis that industries, such as aviation, face as a consequence of the pandemic.

Jobkeeper Enabling Directions

5. A further key element of the Jobkeeper package is the introduction of “Jobkeeper Enabling Directions”, whereby employers are able to direct employees to be subject to a Jobkeeper enabling stand-down, or direct employees to change their duties, or direct employees to change their location of work. With regard to the Jobkeeper enabling stand-down, an employee can be part stood down (that is, a reduction in the work performed), or totally stood down (that is, a reduction to zero work). An employer can only make this direction if it is eligible for the Jobkeeper subsidy, and the stand down will not be made under the usual provisions of the *Fair Work Act 2009*, but under a new provision, section 789GDC of the *Fair Work Act 2009*.
6. Under section 789GDC, an eligible employer may be authorised to stand employees down in circumstances where “the employee cannot be usefully employed for the employee’s normal days or hours during the Jobkeeper enabling stand down period because of changes to the business attributable to (i) the COVID-19 pandemic or (ii) government initiatives to slow the transmission of COVID-19...”: (paragraph (c)).
7. It is clear from this section that in order to make a Jobkeeper enabling stand down direction, there are not the traditional requirements of there being a stoppage of work “for any cause for which the employer cannot reasonably be held responsible” as is the case under section 524(1)(c) of the *Fair Work Act 2009*, even where the effect of the stand-down is that the employee receives a substantially decreased wage.
8. Rather, under section 789GDC, the requirement is that the employee cannot be usefully employed during the employee’s normal hours or days in a manner that is generally attributable to the COVID-19 pandemic, without any stricter requirements. The AFAP sees the loosening up of the stand down provisions of the Fair Work Act under s 789GDC as potentially problematic in a number of ways. One example might be where, as a consequence of inadequate safety measures adopted by the employer to limit the risk of transmission, an employee refuses to perform work on the basis of there being a reasonable concern about a risk to his or her health and safety. Ordinarily, if a worker refuses to perform work on the basis of there being such a risk, and the contract of employment remains afoot, the employer must otherwise continue to pay the employee for their normal hours (health and safety being a matter that is within the employer’s responsibility). Conversely, section 789GDC appears to enable employers to stand employees down where they refuse to perform unsafe work on account of a risk of transmission of COVID-19.

9. It follows that a potential danger of section 789GDC is that it may force some employees to choose between working in unsafe conditions and maintaining their income or being stood down on what might be significantly less pay.
10. Work health and safety should not have price implications for workers.

Recommendation:

The AFAP recommends that with any extension of the Jobkeeper payments, Jobkeeper enabling directions to stand employees down should have requirements that are consistent with traditional stand down provisions of the Fair Work Act.

Access to personal and maternity leave during stand down periods

11. Another area in which problems have arisen is the interaction between stand downs and other forms of leave under the National Employment Standards (NES) and industrial instruments – in particular, personal, carer’s and parental leave. Major operators have denied their employees access to such leave during periods of stand downs, asserting that there is no work for the employee to be absent from, including those who have been on personal leave for extensive periods of time and whose accrued entitlements precede the stand down period.
12. This is clearly unsatisfactory and has left many long-term sick or injured workers without their ordinary pay when they have worked for their employer and have accrued paid personal leave entitlements, usually over long periods of time. These workers, along with workers who are absent on other forms of leave such as maternity leave, cannot simply seek other work during the stand down period to make up for shortfalls in their pay. With regard to maternity leave in particular, this is particularly concerning when there are already significant hurdles for women entering and remaining in the profession.
13. The matter of sick leave was recently considered by the Federal Court in *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia & Ors v Qantas Airways Limited* [2020] FCA 656, and the Court upheld the position of Qantas that because there was no work for the stood down employees to perform, it did not need to keep paying personal (sick) leave, carer’s leave or compassionate leave to those who had been receiving it.
14. Whilst the decision may be the subject of an appeal, it is the view of the AFAP that the decision was unfair on workers who have now had to contend with no or reduced income in addition to being sick or injured, or having critical parental responsibilities. This is particularly so during a pandemic. The question of whether there is any work to perform at all simply should not arise when a worker is not able to perform work due to illness, injury, or taking care of family members.

RECOMMENDATIONS:

1. The Federal Government should initiate a transition to portable personal leave entitlements under the National Employment Standards for all national system employees.
2. The Federal Government should review aspects of the Fair Work Act that are permissive of standing down employees to avoid or subvert personal, compassionate, and parental leave obligations to ensure those entitlements remain payable.

Skills retention and training

15. Skills retention and training is a particularly expensive exercise in the aviation industry. Whilst there are some good employers who bear the cost of training pilots, it is not uncommon for employers to require pilots to enter training bonds or indeed to incur debts in order to undertake training. In many ways, this can lead to employers who do the right thing and cover training costs placing themselves at a competitive disadvantage against those who require their pilots to cover the costs associated with training. The AFAP submits that training and skills retention in the aviation industry needs to be considered as part of this review, particularly where maintaining skills and qualifications often depends on a pilot's ability to undertake flying hours, which have been significantly cut during the pandemic period.
16. Given the current predicament of there being significant cuts to flying opportunities, many qualified pilots and cadets face the risk that during the pandemic their skills and qualifications become stale. This is problematic not only for the pilot, but for the industry overall, which may as a consequence face potential skills shortfalls in the wake of the pandemic as many pilots will be left without having worked for extensive periods of time.
17. A healthy and robust skills base in the aviation industry is critical to Australia's economic recovery. Yet many pilots are already heavily indebted as a consequence of prior training, and the prospect of incurring further debts to make up for the pandemic period will only exacerbate the problem and lead to increased attrition from the profession.
18. Further, given the significant effects on jobs that the pandemic has had, the Federal Government should ensure that Australian citizens and residents are first able to re-enter employment and operators should not be able to bring in temporary foreign labour as a substitute for training and developing resident workers. With so many skilled and experienced Australian pilots currently unemployed or stood down, we cannot see the justification for leaving the various occupational categories of professional pilots on this list as the aviation sector picks up.
19. Australia's pilot licensing regulations are consistently referred to by aviation industry stakeholders as having created onerous compliance requirements unique to Australia. These licensing

regulations are where the recurrent safety related requirements exist for a pilot to exercise the privileges of their flight crew license. The pandemic and economic situation have exacerbated the pre-existing issues with the licensing ruleset and will no doubt have a further hindering effect upon the industry's ability to recover and upon any unemployed pilot's re employability.

20. Employed pilots have safety and performance checks embedded in workplace practices and procedures. In contrast, pilots who are not employed face the possibility of needing to self-fund such recurrent check arrangements. Given that a significant number of Australia's professional pilots will be suffering fiscal stress and unemployment, the pre-existing recurrency cost arrangement is likely to exacerbate the cost impost upon the individual.
21. Whilst it is certainly the case that all pilots must pass such safety of flight checks, it is also true that pilots who have maintained a connection to actual work duties will have an advantage over those who will endure extended periods of stand down or those who have become completely untethered to their pilot employment.
22. The Civil Aviation Safety Authority (CASA) has recognised that such a fiscal burden does currently exist upon Australia's professional pilots and has initiated exemptions to expiry dates for a number of licencing authorisations including medical certificates, flight reviews and proficiency checks. The AFAP was one of a number of aviation industry stakeholders requesting such exemptions and agrees that this is a good short-term relief initiative. However, such an arrangement can only be an interim triage measure due to the need for the safety and medical related checks to return as a safety priority.
23. The AFAP is concerned for the many pilots and individuals that will certainly experience prolonged negative consequences. Also, we are concerned for the ability of aviation to return to providing service to Australian society and support the post pandemic economy. Aviation is a form of national infrastructure and the problems with the pilot licensing ruleset, and associated funding norms, will have a material effect on aviation's ability to recover from the economic trench that the pandemic has kicked it into.

RECOMMENDATIONS:

1. The Federal Government should institute a training levy on all airline operators according to the scale of their workforce to ensure that the skills of pilots and cadet pilots are properly maintained and advanced in readiness for the end of the pandemic, and that this should be an ongoing industry-wide arrangement to ensure that operators who do not contribute to the cost of training pilots and do not contribute to the skills-base, do not get a competitive advantage over operators that do.

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| <p>2. The Federal Government should remove all categories of professional pilots from the list of occupations eligible of temporary skills shortage visas (previously known as subclass 457 visas), however not in a retrospective manner.</p> |
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Federal Government financial assistance

24. In terms of financial support measures for the aviation industry, whilst the AFAP welcomes assistance for operators during the pandemic, we remain concerned at the disparity in how support measures are being allocated. In this respect, the AFAP holds concerns about media reports that the Morrison Government has handed more money to Regional Express Holdings (Rex) through pandemic support measures than it has for Qantas and Virgin Australia combined (*"Rex received more taxpayer cash than Qantas, Virgin combined"*, Australian Financial Review, 14 May 2020).
25. It has been reported that Rex drew more than \$67 million out of three packages: COVID-19 regional airline funding assistance, regional airline network support, and Australian airline financial relief, according to data available through the Government's grants portal. This is of concern to the AFAP in circumstances where the government has refused to support Virgin – which employs more than 10,000 employees – because of an asserted commitment to industry-wide assistance and because Virgin has a significant foreign-ownership structure. But, as is widely known, Rex is primarily owned by foreign interests and is reported to be considering expanding to services between capital cities to compete with Qantas and Virgin.
26. The AFAP is also concerned that assistance provided to regional airlines such as Rex has come in the form of no-strings-attached cashflow injections, rather than strategic assistance and/or investment that ensures better sustainability of services to regional Australia and best practices for workers employed by regional airlines.
27. Another concern held by the AFAP is that of small and General Aviation (GA) operators which are not receiving a fair share of the government financial assistance packages to assist them survive. These small operators serve a key role in connecting remote communities to essential services in the regions and the cities. These small GA operators are also a key facet in the pilot and aircraft maintenance personnel training pathway. If the GA sector of the industry is left to fail, the negative ramifications to GA businesses, small communities and the training pathway of aviation professionals could be significant for an extended period of time.
28. Whilst the AFAP welcomes financial support in the aviation sector to help sustain jobs and services, it does not support arbitrary business preferment with scant regard to the public interest

overall. The AFAP calls on the Federal Government to apply financial assistance consistently and with regard to the objective of supporting a healthily competitive aviation sector.

29. Major airlines based overseas have been the beneficiaries of significant governmental and supra-governmental assistance packages. For example, Air France-KLM has received EUR 7 billion in loans and guarantees from the French Government, Iberia has received EUR 750 million as a State-guaranteed loan from the Spanish Government, US Airlines has received approximately USD 25 billion in payroll support, grants and loans, Alitalia has been nationalised by the Italian Government, and the German government has injected approximately EUR 10 billion into Lufthansa in return for an equity stake.
30. Whilst every country has its own requirements with regard to support for the aviation industry, it has concerned the AFAP and its membership that where a major airline such as Virgin Australia has approached the government at least eight times with calls for loans before entering voluntary administration, that assistance has not been provided.

RECOMMENDATIONS:

1. The Select Committee should investigate differentials in financial support offered to different carriers in the aviation industry in view of supporting a healthy and competitive industry and ensuring the integrity of government grants systems.

Australian Federation of Air Pilots

June 2020