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Senator Barry O'Sullivan
Chairman
Senate Rural and Regional Affairs and Transport Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Email: rrat.sen@aph.gov.au

Our Ref: T40-00-86

Dear Senator O'Sullivan,

SUBMISSION TO THE SENATE REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE INQUIRY INTO THE AIRPORTS AMENDMENT BILL 2016

The Australian and International Pilots' Association (AIPA) is the largest Association of professional airline pilots in Australia. We represent nearly all Qantas pilots and a significant percentage of pilots flying for the Qantas subsidiaries (including Jetstar Airways Pty Ltd). AIPA represents over 2,100 professional airline transport category flight crew and we are a key member of the International Federation of Airline Pilot Associations (IFALPA) which represents over 100,000 pilots in 100 countries.

AIPA, through its Safety and Technical Sub-Committee, is committed to protecting and advancing aviation safety standards and operations. We are grateful for the opportunity to make a submission to the Senate Regional Affairs and Transport Legislation Committee Inquiry into the Airports Amendment Bill 2016.

The Airports Amendment Bill 2016

We consider this Bill an opportunity for the Committee to look beyond what are largely uncontroversial machinery amendments with a view to re-examining the operational risk management aspects of developments at airports regulated under the *Airports Act 1996*.

AIPA proposes that the Committee reject the Bill in its current form unless amendments are made to insert a new paragraph (1)(ma) into section 89 of the *Airports Act 1996* to specifically require proper consideration of developments likely to compromise the efficient operation of airports by creating operational risks. We suggest the following form:

- (ma) a development of a kind that is likely to have significant impact on operational risks to aircraft using the airport; or

What operational risks are we concerned about?

Buildings and structures near runways can create dangerous turbulent wakes in strong winds, generate or reflect distracting light sources or can interfere with in-flight visibility or critical navigation aids.¹

Why do we need an operational risk paragraph?

The existing legislative framework does not provide a uniform management scheme for these operational risks. The Airports Amendment Bill 2016 potentially makes the situation worse by excluding more projects on the basis of cost from being treated as “major” developments that require appropriate risk treatments.

The Existing Framework

Part 5 of the *Airports Act 1996* provides a framework for Land use, planning and building controls at the leased Commonwealth airports. Greenfield airport development is managed under a comprehensive airport plan that we are satisfied addresses the relevant risks. However, developments at existing airports are managed under either a Major Development Plan (MDP) as set out in Division 4 of Part 5 or generic building controls as set out in Division 5 of Part 5.

AIPA is already concerned about the adequacy of the treatment of operational risk management under the Division 4 MDP provisions and we are actively engaged both directly and as a member of the Australian Airline Pilots Association (AusALPA) with the Department of Infrastructure and Regional Development (DIRD) in that policy space.

On the other hand, we are most concerned about developments that do not come within the ambit of Division 4. For the most part, what we might call “minor” developments are picked up by the Division 5 generic building controls that are managed primarily by the Airports (Building Control) Regulations 1996. As best as we can determine, none of these regulations require any consideration of the operational impact of the completed “minor” development.²

Part 12 of the *Airports Act 1996* provides a framework for protection of certain prescribed airspace from a range of “controlled activities” which are not dependent upon development classification, but the details contained within the associated Airports (Building Control) Regulations 1996 reveal particularly narrow applications that fail to adequately control the full range of risks.

Tighter Regulations

While the existing regulations can and should be improved, AIPA believes that DIRD’s role as an economic regulator naturally positions it as a “soft” regulator in matters of safety. Despite our continuing respect for DIRD’s role and the individual officers therein, we have often felt it necessary to question the effectiveness of DIRD enforcement of subordinate legislation and a range of rather opaque discretionary rules.

¹ These risks are identified as “controlled activities” in subsection 182(1) of the *Airports Act 1996* but, in the case of turbulence, regulation 6A of the Airports (Protection of Airspace) Regulations 1996 clearly excludes consideration of building-induced turbulence from normal wind events.

² Subregulation 2.04(5) of the Airports (Building Control) Regulations 1996 is framed in the context of “the proposed building activity” rather than the impact of the finished product.

AIPA therefore offers the view that any improvement in the structure, drafting and ambit of the subordinate legislation under DIRD's control should flow from Parliamentary direction via the *Airports Act 1996* rather than from internal departmental motivation subject only to Disallowance proceedings. We most certainly do not believe that paragraph 89(1)(o)³ of the *Airports Act 1996* is a useful or appropriate pathway to resolve our concerns.

Public Consultation

One of the most important features of developments managed under Division 4 is that the MDP process provides to stakeholders transparency that otherwise would not exist. While AIPA acknowledges that public consultation is a double-edged sword in terms of planning efficiency and project timeline management, the creation of operational risk to aircraft using an airport should not be hidden, particularly as the consequences of poor planning may exist for the life of the development. Unidentified and unmitigated operational risks may well compromise the very objects of the *Airports Act 1996* by seeing national infrastructure that may on occasions be unsafe to use.

Accountability

The inclusion of an operational risk paragraph more appropriately sheets home the responsibility and accountability for proper risk analysis to the developer. At the moment, a great deal of work is done in government agencies attempting to verify that proposed developments do not create unidentified and/or unmitigated risks. If a developer wishes to ensure that an otherwise "minor" development is not elevated to MDP status on the basis of operational risk, that developer must conduct an appropriate analysis.

"Dollar cost" decision-making

AIPA recognises the advantages of creating regulatory divisors for planning approval processes using dollar costing as a proxy for project size and complexity. However, like all proxies, it has limitations. The most significant of those limitations is that environmental and operational risk consequences are not well correlated with project size and complexity.

AIPA has a particularly vested interest in operational risks to aircraft. One of our current significant concerns relates to hazardous wind disturbance of aircraft as a consequence of land use in the vicinity of airports. The triggering event for the seminal research into that area of concern was the unexpected and disproportionate turbulent wake from an engine run facility at Schiphol Airport in the Netherlands. The relevant facts are that the facility was neither large, complex nor expensive – it would never have been captured by the existing \$20m or proposed \$35m – but in winds of only around 22kts, its turbulent wake operationally compromised a busy runway at a major international airport.

Paragraphs 89(1)(m), (n) and (na) already recognise that there are impacts to be managed without regard to development dollar cost. AIPA believes that operational risk falls within the same policy consideration.

³ Paragraph 89(1)(o) provides a catch-all head of power in the form of:
"(o) a development of a kind specified in the regulations."

Our Recommendation

AIPA recommends that the Committee reject the Bill in its current form unless an amendment is to specifically require proper consideration of developments likely to compromise the efficient operation of airports by creating operational risks. We recommend that a new paragraph (1)(ma) be inserted into section 89 of the *Airports Act 1996* in the following form:

(ma) a development of a kind that is likely to have significant impact on operational risks to aircraft using the airport; or

AIPA considers such an amendment to be consistent with the objects of the *Airports Act 1996* and will serve to enhance flight safety.

Yours sincerely,

Captain Murray Butt
President