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By Electronic Transmission

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Dear Jason,

**AIPA COMMENTS ON THE RECOMMENDATIONS IN THE FINAL REPORT
OF THE INDEPENDENT REVIEW OF AVIATION FATIGUE RULES FOR
OPERATORS AND PILOTS**

AIPA welcomes CASA's invitation to comment on the recommendations made by Dédale Asia Pacific team in the Final Report of the Independent Review of Aviation Fatigue Rules for Operators and Pilots dated 20 March 2018.

As we have made clear to CASA previously, AIPA is frustrated by CASA's woeful performance in implementing significant reform in the fatigue management space. We hope that the completion of this Independent Review finally marks the end of the CASA Board's apparent preference for vested commercial interests over safety outcomes and its further creation of roadblocks to this much-needed reform.

AIPA is well aware of the current politics surrounding regional aviation, including the Senate Inquiry into the operation, regulation and funding of air route service delivery to rural, regional and remote communities. We are far from unsympathetic about the stark differences between the economics of regional aviation and high capacity mainline operations; however, we are strongly opposed to the commercial pressures facing one aviation sector being used to hold the rest of the industry hostage. Prolonging existing fatigue traps or creating new ones in order to protect the profits of aviation operators and their shareholders is not an appropriate economic response – it is clearly not a safe response and CASA needs to clearly remember its *raison d'être*.

While we hold the Reviewers in high regard and welcome many of their recommendations, we are nonetheless disappointed that other areas reflect political outcomes and compromises that, while undoubtedly well-meant, will have significant consequences for how fatigue risk will be managed in reality, rather than in CASA's more fanciful and detached view of Australian aviation's operational environment. In particular, AIPA holds the strong view that the most undesirable of these consequences will surface in Ultra-long Range (ULR) operations and in Fatigue Risk Management Systems (FRMS), both areas that CASA has demonstrated either complete disinterest or a studied lack of consistency and regulatory courage, or both.

SPECIFIC COMMENTS

Recommendation 1

Finding and Recommendation

AIPA concurs with the Review's findings and **agrees** with Recommendation 1.

Comment

AIPA notes that the reporting of fatigue-related incidents, regardless of any agreed definition, will continue to be seriously under-reported simply as a consequence of the lack of employment protections for reporters and the general lack of power balance in the employment relationship. While AIPA supports this recommendation, it should also be borne in mind that not every organisation enjoys a strong reporting culture, in part for the reasons mentioned above. This means that the absence of reports should never be considered as definitive proof of the lack of an issue or concern about that issue.

Recommendation 2

Finding

While AIPA accepts that the Appendices represent a very broad 'cookie-cutter' approach to Australian aviation operations and we note the Review's concerns about FRMS scalability, we are far from convinced that a workable FRMS cannot be developed that is both scaled and appropriate for smaller operations. We are aware of some small operators who have conducted their operations successfully under previous iterations of FRMS for a number of years. These operators chose to operate this way because the increased costs were not excessive and were far outweighed by the benefits to both the business and the pilot employees.

Part of the solution may be to allow a specialist FRMS organisation to provide contract services, thus creating a broader amortisation base for the less-scalable features of an effective FRMS.

In any event, the Special Operations example is not convincing – fatigue affects the pilots regardless of the criticality of public safety emergencies and the consequences can be catastrophic, as demonstrated by the loss of Special Operations personnel in the Townsville Blackhawk disaster. AIPA is sympathetic to the need to cater for unforeseen mission demands, but the managers of those organisations need to plan for contingencies in ways that do not rely on taking pilots into fatigue unknowns.

Despite the Review using conditional language such as "cautious flexibility", "flexibility with respect to compliance with the rules" and "standardised application and approval process", AIPA views this additional approach as potentially creating another loophole to be exploited by entrepreneurial operators with little prospect of adequate scrutiny by a demonstrably reluctant regulator.

Recommendation

AIPA **does not agree** with Recommendation 2 in the absence of evidence that an appropriate FRMS cannot be developed and in the absence of the full details of the "standardised application and approval process".

Recommendation 3

Finding

AIPA conducted its own FTL scheme comparisons in 2013 with the intention of trying to identify the rationale for the differences. In our view, merely averaging other jurisdictions' limits papers over the differences in the balance between science (if any) and politics. It takes little examination of the US and European outcomes to identify where "operational experience" or simple commercial pressure was applied to modify or even set aside the science. Those same influences were identified in the development of the Australian rules, but most importantly, not with the same outcomes.

AIPA is concerned that the Review, in adopting such a simplistic approach, imputes a level of research and development consistency across the jurisdictions that we do not believe is correct or appropriate.

In regard to the influence of public risk considerations, AIPA finds the discussion somewhat disingenuous. The public's exposure to risk from aviation operations has always underpinned the classification of operations – if it didn't, then there would be no separate Appendices!

Recommendation

AIPA **reserves its position** on Recommendation 3. We are most concerned that a timid CASA will merely take the opportunity to take the most liberal limits identified in an attempt to appease its critics. We are also most concerned that the process will delay implementation even further while CASA seeks to avoid both further consultation and Parliamentary scrutiny of the changes.

Recommendation 4

Finding

AIPA is a little surprised by the Review's discussion of ICAO SARPS and supporting documents, in particular ICAO Doc 9966 *Manual for the Oversight of Fatigue Management Approaches* as it relates to Australian domestic GA operations. ICAO by convention is constrained to deal only with international operations, including both scheduled and non-scheduled operations, which are necessarily conducted in aircraft rarely seen in the types of domestic GA operations mentioned. Nonetheless, ICAO recognises the need for a different approach to fatigue management between scheduled and non-scheduled operations, including an intention to publish a separate *Fatigue Management Manual for General Aviation* (Doc 10033).

As mentioned previously, AIPA is not convinced that the accepted international FRMS principles preclude scalability as a function of operational complexity, but quite the opposite. Even the Review team later acknowledges that ICAO endorses scalability.

Clearly, the problem is how CASA establishes and maintains FRMS standards and expectations. Our experience at the most complex end of the operational spectrum is far from confidence-building, with CASA apparently adopting a largely *laissez-faire* minimal involvement /interference approach, so it would be entirely inconsistent and unacceptable for CASA to apply the opposite and more demanding approach to less-complex operations.

Recommendation

AIPA **conditionally agrees** with Recommendation 4. While two or more tiers of FRMS requirements is one solution, the Review has criticised "cookie-cutter" approaches

elsewhere. Our strong preference would be for CASA to accept that scalability is essential and to amend its internal training (if any!) to emphasise matching the FRMS solution to the operational complexity. FRMS effectiveness is the desired outcome, not bureaucratic nightmares.

Recommendation 5

Finding and Recommendation

AIPA notes the Review's findings and **agrees in principle** with Recommendation 5.

Comment

Expressing concern that prescriptive regulations are too prescriptive seems a little precious, given the intended relationship between prescriptive rules and FRMS.

AIPA is also concerned that the widely held belief that large and supposedly "mature" operators actually manage fatigue risk at some superior level is seriously misplaced – there is no evidence that commercial pressures are any less or that individual managers' behaviour is any more altruistic in larger operations. In our experience, CASA is most reluctant to investigate non-compliances, particularly regarding fatigue management, in the larger operations.

Recommendation 6

Finding and Recommendation

AIPA concurs with the Review's findings and **agrees** with Recommendation 6.

Comment

AIPA **does not agree** with much of the discussion on verifiable requirements that precedes the finding and recommendation, each of which could stand on its own.

For example, the Review team seem to have conflated "sleep opportunity" with actual "sleep". In our view, "sleep opportunity" is a well-defined sub-type of an off-duty period, both of which can be recorded and verified. The Fatigue Management Working Group that participated in the consultative development of CAO 48.1 Instrument 2013 were well aware that the gaining of actual sleep could not be regulated – the best outcome was to provide an opportunity that the pilot was expected to make all reasonable efforts to achieve sleep and for which the operator was constrained from interrupting or otherwise preventing those efforts from being effective. AIPA considered this to be one of the significant positives in the 2013 Instrument and we see any removal as a significant lost opportunity for fatigue management reform.

Similarly, the requirements for "suitable sleeping accommodation" (which has been around since 1990 without any great dissent previously), while subjective, are a reasonable attempt to regulate for a systemic failure – the past failure of operators to meet their obligation to make all reasonable efforts to allow their pilots to achieve sleep.

AIPA strongly believes that these are examples of appropriate requirements and the Review team would have done well to reflect on the complete lack of bargaining power or employment protection available to pilots in many of Australian aviation workplaces. Australia's fatigue risk management regulations must provide protection to all pilots, especially the most vulnerable to operator mismanagement.

We would further suggest that the almost complete absence of CASA as a regulator in the fatigue management space has nothing to do with issues of verification or subjectivity, but it is entirely due to a lack of capacity or desire to enforce the related safety outcomes.

ULR operations

AIPA welcomes the commentary on ULR operations, an area where CASA has consistently but inexplicably refused to regulate despite international recognition of the potential problems. We are particularly disappointed that the Review team did not choose to formalise their advice by way of a firm recommendation.

The Flight Safety Foundation (FSF) was sufficiently concerned about the unknown form of ULR fatigue risk that it co-chaired with Boeing and Airbus two years of international conferences culminating in a report in June 2003. In September 2005, FSF devoted an entire issue of the Flight Safety Digest to *Lessons From the Dawn of Ultra-long-range Flight*, which reiterated the guidelines from 2003. Appendix B to that Digest lists the participants – it is a veritable Who's Who of international fatigue risk management experts – and nowhere does it conclude or even suggest that the years of extensive and intensive investigation and collaboration were unnecessary or that existing risk management was sufficient for ULR operations.

Despite this best practice advice, CASA is well aware that ULR operations are currently being conducted outside of an approved FRMS and with the operator refusing to make any special considerations or facilities for flight crew. AIPA views CASA's studied disengagement with ULR regulation to be a complete abrogation of its regulatory responsibilities. We urgently require a rule set that clearly defines ULR operations and requires specific consideration of appropriate rest facilities, crew composition, pre-flight, on-board and post-flight rest requirements.

Recommendation 7

Finding

AIPA has some difficulty following the logic of the Finding in comparison with the Recommendation.

Providing the option to switch between Appendices is a hangover from the SIEs. It is not well known the extent to which switching occurs and it is even less well known if there is reasonable justification to switch. AIPA considers that some insight into both outcomes would have been helpful in furthering the switching debate, especially as it seems to be linked to the Review team's "flexible compliance" approach to avoiding a simplified FRMS.

Recommendation

AIPA unconditionally **agrees** with Recommendation 7.

Recommendation 8

Finding and Recommendation

AIPA concurs with the Review's findings and **agrees** with Recommendation 8.

Comment

AIPA notes the Review team's emphasis on the public risk aspects, but cautions against leaving the affected pilots without appropriate fatigue mitigation where they have little or no bargaining power or employment protection.

Recommendation 9

Finding

AIPA **does not accept** the Review team's interpretation of this issue. We consider these provisions to cater for exceptional circumstances rather than the normal working arrangements and we further believe that these provisions relate to the shared responsibility between operators and pilots to manage fatigue. Nothing in the CAAP requires the operator to do anything other than assess the hazard inherent in any abnormal circumstances reported to them by the pilot. The consideration of locational issues and private flying form part of most operators' contractual requirements for their pilots and dealing with such issues is normal good management practice.

None of the provisions "hold operators accountable for crew lifestyle factors and circumstances outside of their control and on which they are unable to collect or monitor any data" – AIPA considers this to be an unfortunate exaggeration.

AIPA also believes that the Review team is either naïve or disingenuous in regard to their emphasis on the pilot fitness requirement: first, it de-emphasises the shared responsibility model; and second, it ignores the real world commercial pressures that are placed on pilot by operators to work when their fitness is already in doubt or is likely to become so.

Recommendation

AIPA **does not agree** with Recommendation 9.

Recommendation 10

Finding and Recommendation

AIPA concurs with the Review's findings and **agrees** with Recommendation 10.

Recommendation 11

Finding

AIPA rejects the Review team's finding that the recommended (rather than required) 14 day minimum period between publishing of rosters and roster commencement provided in CAAP 48-1 is unrealistic for real world airline and non-airline operations. Most "real world" airlines have satisfied this recommended lead time for many years.

The CAAP 48-1 recommended lead time relates to duties that have well-known fatigue-inducing characteristics or involve abnormal recovery aspects. The provision of limited certainty for pilots to plan fatigue mitigation and recovery is critical in the avoidance of chronic fatigue. While there may be isolated cases where a responsible operator could justify different lead times for unusual niche operations, AIPA rejects the view that there is a large or widespread enough issue to modify or remove the guidance.

Recommendation

AIPA **rejects** Recommendation 11. The existing guidance is not unrealistic and its amendment will result in operators making no attempt to producing rosters with greater notice than the guidance.

AIPA is particularly disappointed that the Review team sought to bolster their recommendation by referencing “current industrial agreements”. Importantly, industrial agreements that seek to rectify deficiencies in prescriptive fatigue management rules are not available to all pilots and have no part in the making of safety-related legislation or guidance material. Despite the belief of senior CASA managers that fatigue management is an industrial issue, the stark reality is that any industrial activity related to the fatigue management rules is evidence of the failure of CASA to properly regulate for safety in the first instance.

Recommendation 12

Finding and Recommendation

AIPA concurs with the Review's findings and **agrees** with Recommendation 12.

Comment

AIPA cautions against looking at only this one issue in regard to disrupted duties. It is unfortunate that the Review team appears to have predominantly considered only operators' concerns where duty times are restricted, yet there is no evidence that they considered all of the disrupted duty provisions in any holistic way, if at all.

Recommendation 13

Finding and Recommendation

AIPA notes the Review's findings and **agrees in principle** with Recommendation 13.

Comment

It is unfortunate that the discussion fails to identify that the industry provided little feedback in the first few years after the 2013 Instrument was made. AIPA believes that CASA failed to ensure that the industry was moving toward the legislated implementation schedule and that the significant pushback from industry in 2016 came from the dawning realisation that most operators were completely underprepared as much as it came from identifying the compliance implications.

The reference to “a view was expressed that selection of participants for this workshop may have been biased towards industrial organisations rather than all operators / peak bodies” is also disappointing. A simple glance at the attendance list for the workshops would have clearly showed the Review team that the comment had no merit or substance and therefore would add no value to the report.

Recommendation 14

Finding and Recommendation

AIPA concurs with the Review's findings and **agrees** with Recommendation 14.

Recommendation 15

Finding and Recommendation

AIPA concurs with the Review's findings and **agrees** with Recommendation 15.

Recommendation 16

Finding and Recommendation

AIPA consistently raised this issue and the inevitable consequences with CASA at every opportunity. We fully concur with the Review's findings and **strongly agree** with Recommendation 16.

Recommendation 17

Finding and Recommendation

AIPA concurs with the Review's findings and **agrees** with Recommendation 17.

Recommendation 18

Finding and Recommendation

AIPA notes the Review's findings and **agrees in principle** with Recommendation 18.

Recommendation 19

Finding and Recommendation

AIPA consistently raised the implementation debacle, specialist resourcing and the inevitable consequences with CASA at every opportunity. We fully concur with the Review's findings and **strongly agree** with Recommendation 19.

Recommendation 20

Finding and Recommendation

AIPA notes the Review's findings and **agrees in principle** with Recommendation 20.

Comment

AIPA cautions against the potential misuse of this recommendation to excessively delay further implementation. Critically, the Review Report does not identify extensive technical changes, whatever other private advice it may have provided to CASA and or the CASA Board. There is no mandate for large scale amendment or for the retention of the *status quo*. However, it most certainly is a mandate to replace the existing arrangements that lack science and, in the case of the SIEs, permit excessive fatigue risk.

Recommendation 21

Finding and Recommendation

AIPA notes the Review's findings and **agrees in principle** with Recommendation 21.

Recommendation 22

Finding and Recommendation

AIPA consistently raised specialist resourcing and the inevitable consequences with CASA at every opportunity. We fully concur with the Review's findings and **strongly agree** with Recommendation 22.

Recommendation 23

Finding and Recommendation

AIPA notes the Review's findings and **reserves its position** on Recommendation 23.

Comment

AIPA considers the confidence placed in some "mature" operators to be demonstrably misplaced. As we said in relation to Recommendation 5:

AIPA is also concerned that the widely held belief that large and supposedly "mature" operators actually manage fatigue risk at some superior level is seriously misplaced – there is no evidence that commercial pressures are any less or that individual managers' behaviour is any more altruistic in larger operations. In our experience, CASA is most reluctant to investigate non-compliances, particularly regarding fatigue management, in the larger operations.

AIPA has no confidence that all operators will place genuine fatigue risks ahead of commercial considerations. Allowing "operators sufficient autonomy to be able to manage their FRMS efficiently" is a further step toward self-regulation and is entirely contrary to the objectives of the new CAO 48.1. Whilst ever we have senior managers in both CASA and in aviation organisations who do not completely understand the complexities of fatigue management, "efficiency" will always be translated into "productivity" and lead to business cases that try to extract far more flight and duty time from pilots while ignoring the related hazards of human endurance.

AIPA also reminds CASA that it has elected not to apply the ICAO Doc 9966 recommendations of having pilot representatives as part of the decision process in Australian FRMS development and implementation. While pilots may be involved in groups such as a Fatigue Safety Action Group (FSAG), ICAO's clearly established intention was that pilot representatives meant pilot associations where they exist, rather than individual pilots.

Recommendation 24

Finding and Recommendation

AIPA fully concurs with the Review's findings and **strongly agrees** with Recommendation 24.

Concluding Comments

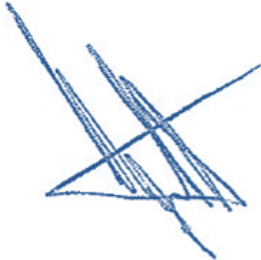
AIPA welcomes the fact that the Review team has agreed that Australia's fatigue management rules need updating. The fact that very little technical detail in the 2013 Instrument has been identified as requiring amendment reinforces our view that the Instrument represents a significant improvement over the unscientific legacy rules.

While noting the practical issues surrounding implementation, AIPA again urges CASA to recognise that a *laissez-faire* approach is not appropriate. The ICAO model

recognises the tripartite responsibility that the regulator, operator and pilots all share to minimise fatigue risk. The apparent CASA preference for commercial and economic considerations lacks the necessary balance that ICAO clearly recognised – CASA must revamp its corporate direction to re-establish that tripartite balance.

CASA must now get on with implementation as a matter of urgency.

Yours sincerely,



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