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Director, Aviation White Paper Project Office
Aviation White Paper - Department of Infrastructure, Transport, Regional Development,
Communications and the Arts
GPO Box 594
CANBERRA ACT 2601

By email: aviationgreenpaper@infrastructure.gov.au

Response to Aviation Green Paper

QBE Insurance (Australia) Ltd (**QBE**) welcomes the invitation to provide a submission on the *Aviation Green Paper (Green Paper)*, provided by email dated 7 September 2023.

We note submissions on the Green Paper will help inform the development of the *Aviation White Paper*, to be released in mid-2024. The Aviation White Paper is expected to “clearly articulate the Commonwealth Government’s policies on desired aviation outcomes in relation to efficiency, safety, sustainability and competitiveness to ensure the sector is appropriately positioned to deliver aviation services for the Australian public and international visitors out to 2050.”

QBE is a major national provider of aviation insurance. QBE has a strong depth of knowledge and understanding of the needs of the aviation industry and is a keen advocate of risk management and accident prevention.

While QBE has an interest across several of the subject matter areas addressed in the Green Paper, our response focuses on Chapter 3 “*Airlines, airports and passengers – competition, consumer protection and disability access settings*” and in particular section 3.2 *Consumer Protections* which addresses liability and insurance laws¹.

Aviation insurance and liability framework – Civil Aviation (Carriers’ Liability) Act 1959

The Green Paper notes the Government’s intention to improve complaint handling processes and strengthen consumer protections in the airline sector. QBE is strongly of the view that the *Civil Aviation (Carriers’ Liability) Act 1959 (CACLA)* is not the appropriate legislative framework within which to achieve these outcomes. As such, QBE believes amendments to the CACLA framework are not needed.

The CACLA gives the force of law in Australia to several international passenger liability frameworks, including those arising under the Warsaw System, the Montreal Convention, and establishes a separate system of liability for domestic travel. Dedicated passenger liability arrangements are in place in many countries in recognition of the unique risks associated with

¹ Refer to pages 49 – 52.



civil aviation, the desirability of a standardised approach to this issue and the complex task of awarding damages to passengers using domestic civil liability frameworks².

As indicated in the Green Paper, the CACLA and its regulations were reviewed in 2018³, resulting in a range of amendments designed to enhance the operation of Australia's civil aviation carriers' liability and insurance framework. We note the Green Paper does not identify any issues of concern or stakeholder feedback in relation to the effectiveness of the operation of CACLA.

Consumer protections

The consumer protection issues, and stakeholder feedback outlined in the Green Paper appear to be focused on the commercial airline sector (domestic and international). We are concerned that any attempt to use the CACLA to improve complaint handling processes and strengthen consumer protections in this sector would be inconsistent with the purpose of the CACLA (as outlined above) and may also have wider unintended consequences for operators outside of the airline sector.

In particular, the CACLA applies not only to commercial airline operations, but also operators who hold an airline or charter licence and who are carrying passengers for hire or reward. In practice this includes (but is not limited to) Australian commercial general aviation and charter (fixed wing and rotary) operations. Based on the issues raised in the Green Paper, any potential extension of complaints processes and consumer protection to other operators do not appear to be relevant and would potentially require unnecessary processes to be established and costs to be incurred for these operators. Increased operating costs are likely to be passed onto aviation customers through increased ticketing costs, charter and hire rates etc.

Surface damage

The Green Paper also suggests consideration is to be given to a potential scheme to make insurance compulsory for third party (surface damage) risks. QBE does not support this.

With many years of involvement in the aviation insurance industry in Australia, New Zealand and the Pacific, QBE has unique insight into this issue. Based on our underwriting and claims experience we:

- are of the view that the *Damage by Aircraft Act* 1999 (Cth) is an effective strict liability system for the management of aircraft accidents causing surface damage to persons and property on the ground; and
- are not aware of any evidence to suggest this is an issue that warrants further legislative intervention.

QBE considers a compulsory liability scheme for third party (surface damage) is also likely to introduce an unnecessary financial burden on operators across Australia. As noted in respect of consumer protections above, increased operating costs are likely to be passed onto aviation customers through increased ticketing costs, charter and hire rates etc.

QBE looks forward to the next steps in the Australian Government's delivery of a policy designed to take the Australian aviation sector productively towards 2050.

² Aviation Legislation Amendment (Liability and Insurance) Bill 2020, Bills Digest No. 107, 2019–20.

³ QBE contributed to the Australian Aviation Insurance Forum (**AAIF**) submission (dated 1 August 2019) in response to the review.



We would be happy to provide any further information to support this response. Should you have any questions or require further clarification or information, please do not hesitate to contact Michael McNamara, Head of Underwriting – Aviation (m. +61 408 134 083), or me.

Yours sincerely,

A handwritten signature in black ink that reads "S O'Hara".

Shannon O'Hara
Senior Legal Counsel, Aviation & Marine