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The Honourable Julia Gillard MP
Prime Minister of Australia
Parliament House
CANBERRA ACT 2600
Fax: 02-6273 4100

cc: Mr Terry Moran
Secretary of the Department of the Prime Minister and Cabinet
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Dear Prime Minister

AIR SAFETY AT LAUNCESTON AIRPORT

I am writing to you to highlight several matters of grave and urgent concern regarding air safety and the public interest. The concerns relate specifically to a serious safety incident at Launceston Airport on 1 May 2008 involving two commercial passenger aircraft carrying 222 people. The two aircraft were operating in pitch darkness and in cloud well below the altitude of the local mountains, and were prevented by the current Civil Aviation Safety Authority Regulations from using the excellent Air Traffic Control radar system that was operating at the aerodrome. This meant the air crews had to rely on a do-it-yourself system of radio calls to keep the aircraft from colliding. The details of that incident have only just come to public attention with the belated publication recently of a transport safety report by the Australian Transport Safety Bureau (“ATSB”). In brief, my concerns are as follows.

Uncontrolled Airspace at a Major Regional Airport Means Unacceptable Risk to Public Safety

First, the incident demonstrates the serious risks to public safety in circumstances where a major regional airport such as Launceston is classified as uncontrolled Class G airspace at the time the incident occurred. Class G airspace means that Air Traffic Control is not provided and separation of aircraft is the responsibility of the respective flight crews.

There is an overwhelming case for Launceston Airport to be upgraded to a minimum of Class E controlled airspace at all times. With Class E, which is controlled airspace for all aircraft operating in cloud, aircraft are actually controlled and separated by an Air Traffic Controller using a prescribed safety standard.

Under current airspace arrangements, Air Traffic Control services cease at Launceston Airport at 10.00pm. This current position is unacceptable and creates a major public safety risk, as this particular incident tellingly demonstrates. By luck, the aircraft broke out of cloud and the navigation lights were sighted. Public safety must not depend on such an amateurish system. Immediate steps need to be taken to upgrade the airspace at Launceston Airport, which supports over one million passenger movements per year, to a minimum of Class E controlled airspace.

ATSB Report into Launceston Incident Ignores Current Airspace Policy

Secondly, it is remarkable that the ATSB Report makes no mention at all that compliance with the Airspace Policy in force at the time of the incident would result in a minimum of Class E controlled airspace at Launceston.

This is part of the National Airspace System (“NAS”) which was approved by the Federal Cabinet of the last Government after unanimous recommendation by an expert group including the current Chief of Defence Force, Air Chief Marshal Angus Houston; the Chairman of Airservices Australia, Mr John Forsyth; the Chairman of the Civil Aviation Safety Authority, Ted Anson; the Secretary of the Department of Transport, Mr Ken Matthews and myself.

NAS Requires The Use of Radar and Class E Controlled Airspace

Important aspects of NAS are that the use of radar is to be maximised (surely just plain common sense!) and that lower level Class E controlled airspace be introduced at airports with radar coverage and airline traffic. The *Airspace Policy Statement* issued by Mark Vaile (then Minister for Transport and Regional Services) on 28 June 2007, specifically stated:

5.7 Airspace architecture design principles

- the maximisation of IFR/IFR** separation services and protection of IFR operations;
- the risk based maximisation of air traffic services in the critical stages of flight i.e. the terminal area where passenger transport operations are taking place;

Further, Part 6 of this *Airspace Policy Statement* stated:

6.2 NAS Characteristics – NAS Stage 3

23 – Class E Terminal Airspace: Class E terminal airspace to be introduced at specific locations.

***note: IFR (instrument flight rule) is the category that covers aircraft flying in cloud on instruments*

Government Has “Removed” Key NAS Definitive Safety Requirements from *Airspace Policy Statement*

Your Government has now removed these important and definitive safety requirements for the maximisation of IFR/IFR separation services where specific separation standards are published from its version of the *Australian Airspace Policy Statement* which was signed by your colleague Anthony Albanese, the Minister for Infrastructure, Transport, Regional Development and Local Government and dated 10 December 2009. This *Statement* also specifically removes any mention of Class E airspace and its requirement to be introduced at specific locations.

On a Professional Pilot’s website commenting on the Launceston incident, an airline pilot stated,

We are the only western country that I know of (I fly regularly around Europe, US, Asia, Middle East) that allows 2 high capacity RPT jets to operate at the same airport without a published separation standard...

If you don't learn from other's mistakes, you are doomed to eventually make the same ones.

US Air Transport rated pilot and leading flight trainer, Mr John King, after reading the Report, has stated the obvious,

It is simply inconceivable that anyone could devise a system in which two airliners in scheduled passenger service would be required to self-separate for an approach and missed approach when communications with a controller who was able to observe them on radar was available.

Executing an approach to minimums and then executing a missed approach is a very high-workload operation. It is simply asking for trouble to ask the pilots to take on the additional workload of self-separation.

This airspace design may be an accident of history, but it is one that ought to be changed.

Prime Minister, on the night of the incident at Launceston there were 222 people on board. The pilots were required to fly at low altitudes down to 200 feet above ground level in an area of high hills and mountains, in cloud, complete darkness, and with no visibility, following instrument approach requirements consistent with such low level flying, and relying on archaic, 1920s-style radio calls to avoid collision. Even though the aircraft were under full radar coverage, the Controller in Melbourne had no responsibility, nor any training, to actually offer or provide a separation service in the terminal area.

ATSB Safety Report into Launceston issued June 2010 – Deficiencies and Deception

Prime Minister, in the case of the *ATSB Transport Safety Report, Aviation Occurrence Investigation – AO-2008-030 - Final Report into the Launceston Incident (May 2008)* which has just been published, it would appear to me that the three Government instrumentalities, viz Airservices Australia, CASA and the ATSB have concealed the facts in relation to this serious incident – that the airspace has not been upgraded as per the previous Government’s policy.

It is unacceptable to have airline aircraft flying virtually “blindfolded” below the level of nearby mountains in pitch darkness and in cloud whilst within radar coverage but not under any form of Air Traffic Control. This is particularly applicable because the most common form of accident involving professional pilots, both in Australia and around the world, is a controlled flight into terrain (“CFIT”). Flight Safety International states that the use of radar and Air Traffic Control is the best safety measure to avoid CFIT accidents.

The ATSB Report is so deficient that I am not sure where to begin.

Firstly, the ATSB have a responsibility to address all safety issues. They know full well that the NAS agenda has been an issue for nearly a decade and a decision was made by the previous Government to upgrade uncontrolled Class G airspace to a minimum of Class E wherever this improved safety in a cost-effective way. This would follow the system of other leading aviation countries. Yet, in each ATSB Report that covers incidents in this deficient Class G uncontrolled airspace, they consistently delete any reference to Class E and updating the airspace as per the previous Government’s policy.

This *cannot* be by accident or incompetence; it can only be by *intention*.

Delay and No Recommendations

Prime Minister, why has there been a two-year delay for the ATSB to investigate and publish a Report in relation to this quite simple but serious safety incident? It is simply unacceptable and contrary to the public interest for such a long time to be taken before the public is provided with such an important Report.

How could the ATSB spend two years in writing this Report without acknowledging the fact that all other modern aviation countries do it differently? Or could it be that they had to spend two years in working out a way of concealing this fact?

It is also inexplicable that the ATSB makes no recommendations that the airspace classification be urgently addressed and rectified, and that they fail to recommend to CASA that the CASA Office of Airspace Management put these recommendations into place.

Totally Inadequate Airspace Separation at Launceston

It is alarming that as matters stand at present, there remains a totally inadequate airspace separation arrangement at Launceston and at many other airports in Australia that are operated to by airline passenger aircraft.

Even when the tower is operating, pilots are forced to change from the Melbourne radar controllers' frequency when below 8,500 feet – where there is increased likelihood of colliding with a mountain or other traffic – and change to the tower frequency where the tower controllers are not radar rated, i.e. they are not trained or authorised to use the expensive radar system for separation purposes. This is extraordinary!

Why should the travelling public not have the protection of a full Air Traffic Control service for all commercial passenger flights at such a major regional airport, which has up to one million passengers per year? This incident clearly reveals that it is unsafe to rely on a do-it-yourself, calling in the blind attempt to separate aircraft.

The ATSB Report does not mention that Airservices Australia had recently commissioned a wide area multilateration “radar system” which gives even greater accuracy for Air Traffic Controllers to separate traffic and prevent controlled flights into terrain as long as the correct airspace is allocated.

Launceston Requires Approach Radar Control under Ministerial Direction, August 2004

Most importantly, I draw your attention to the Class C Radar Direction issued by the Minister for Transport and Regional Services, John Anderson on 31 August 2004. This stated that where Class C airspace was deemed necessary for safety, Airservices was to provide an approach radar control service in the low level Class C airspace.

Prime Minister, not only has Minister Anderson's Direction not been complied with, but the ATSB have specifically not mentioned this mandatory safety Direction in their Report.

Of course, the ATSB are fully aware of this important Direction, as it has been discussed many times, but again I assert that they have entered into some form of conspiracy of silence to not mention a Minister's Direction in relation to this and other incidents.

At my request, my Solicitor Mark O'Brien wrote to Minister Albanese on 22 April 2008, followed by another letter dated 23 May 2008, in relation to this important *Direction* from a previous Minister for Transport. Rather than answer any of my material questions in relation to air safety, the letter that my Solicitor received from the Minister dated 4 June 2008 simply said in a demeaning, bureaucratic manner: "*I have noted Mr Smith's position on this issue*"!

Prime Minister, an approach radar control service at Launceston as per the Minister's *Direction* would have prevented the incident at Launceston in May 2008 from occurring.

Extraordinarily, the now Chief Commissioner of the Australian Transport Safety Board, Mr Martin Dolan, was the first Assistant Secretary in the Department of Transport at around the time the decision was made by the Federal Government to go ahead with the US NAS. Mr Dolan was heavily involved in the proposed introduction of this system which he would know full well would upgrade the airspace at a place like Launceston to a minimum of Class E for all hours. Just why Mr Dolan would allow this recent ATSB Report to be released without a mention of the many years of work that he had undertaken to try and introduce the proven, safer NAS is beyond comprehension.

Labor Policy Was to Reverse This Important Radar Ministerial Direction

Strangely enough, when your Government was in Opposition just prior to the last election, Martin Ferguson, the then Shadow Minister, issued a Policy Statement on 23 November 2007 which stated:

"Labor will withdraw the Howard Government's unnecessary radar direction. That Direction, issued to Airservices, would impose unjustifiable costs on industry and had no safety or business case rationale."

The Shadow Minister's policy came about after lobbying by the major airlines that were clearly putting profits ahead of safety. While the current Minister has to date ignored this irresponsible policy, there appears to be no pressure on Airservices Australia to comply with the *Direction*. This is inexplicable.

ATSB and Orange, 2006 – More of the Same

Prime Minister, the ATSB has form on this. In relation to the serious incident at Orange, NSW on 23 June 2006 where an airline aircraft and a smaller plane operated by a commercial pilot could have collided in cloud when under full radar coverage but where the radar was not being utilised for Air Traffic Control purposes and the pilots were using a similar "do-it-yourself" collision prevention service. The published ATSB Report [Number 200604222 dated 29 May 2007] was blatantly misleading by stating in several locations that the airspace was the NAS. The ATSB knew full well that "NAS" means the "National Airspace System" of the United States to which it was the decision by the last Government to move. This would have required the Orange airspace to be a minimum of Class E, and as it was – and is still – uncontrolled Class G, it quite clearly is *not* NAS.

And once again, no safety recommendations were made by the ATSB to upgrade the airspace. This is also inexplicable.

ATSB Misleading the Public re. Canberra Incident – Near Collision

Of course, the situation in Canberra was also similar to the Launceston incident, in that the ATSB also provided misleading and erroneous reports on the serious incident at Canberra on 24 July 2004, where a Qantas 737 aircraft nearly flew into Tinderry Mountain because an Air Traffic Control Service was not provided after hours – just like Launceston. Of course, the situation was similar to Launceston in that there were full twenty-four hour Air Traffic Control in the Melbourne centre that could have prevented the Canberra incident, however the pilots were on the “calling in the blind, do-it-yourself” frequency and thus were receiving no radar service. This was not mentioned by the ATSB in their Report and no recommendation was made to upgrade the airspace.

ATSB Report on Six Dead at Benalla Hides the Facts

Another clear example of the ATSB not covering the real safety issue is the Benalla on 28 July 2004, where six people lost their lives. This accident would most likely not have occurred if the airspace had been upgraded to Class E controlled airspace. The ATSB Report completely neglected to mention this. This was despite the fact that I had written to the ATSB shortly after the Benalla accident explaining that if the NAS had been introduced as per Government policy, that the aircraft would have been in controlled airspace and therefore the responsibility of the Air Traffic Controller in the Melbourne centre.

How Many More “Near Misses” Before Deaths Result?

I regret having to burden you with these matters at this time and so soon after you have taken up office but the issues are so pressing and significant that they warrant attention by both you and the relevant Minister (to whom I will also copy this letter). The issues covered in this letter in relation to airspace are fundamentally the same as the issues I covered in my publication *Unsafe Skies*, which was sent to you and to all other Federal and State Politicians in December 2005.

Prime Minister, you know that I have a deep-rooted and fervent interest in matters of air safety, to a point where I have had to resort to bringing legal action in my own name to protect the public interest (see the Federal Court’s 2005 decision in *Smith v Airservices Australia*). I sincerely hope that it will not be necessary for me to involve the courts in enforcing the relevant legislative requirements aimed at securing the public safety of air navigation at Launceston Airport and protecting the lives of both passengers and crew. Could you please immediately initiate action to resolve a situation which poses a continuing, significant and totally avoidable risk to the public.

I just wonder how many more near accidents and serious incidents will be tolerated before we face an accident that results in the deaths of hundreds of people.

Yours sincerely,

Dick Smith

c.c. The Honourable Anthony Albanese, MP
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