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Development of a National Aviation Policy Statement

Dear Minister,

Thank you for the opportunity to contribute to this document. In the time available, I intend to confine my remarks to S.3 of the paper, as I am of the view that CASA has had, has and will continue to have a “make or break” influence on the whole aviation community.

I make my remarks from a position of having started my aviation career in the days of the Department of Civil Aviation, being confronted with a monolith of an organisation, DCA, that rejected any developments in the area in which I was involved, expansion of airfreight operations in Australia. The rejections were based, not on laws, but the “policy” of the Director General that there was “enough” air freight capacity.

The market you now see in “overnight freight” was the market the Director General said didn’t exist, and it didn’t, but we would have created it. Quite simply, as the then biggest overnight parcel express operator (trucks) we wanted to transfer inter-capital traffic to air, because the incentive was cost saving --- but a senior public servant with no expertise in the field decided otherwise.

The development of the sector was put back 15 or more years, because public servants were given commercial regulatory powers. Freight was *not* part of the “two-airline” policy of the then Government. Needless to say, the incumbent operators loudly supported this anti-competitive policy.

More recently, I have been intensively involved in all the attempts at aviation regulatory reform in the last twelve years, and I believe I have a thorough understanding of why we find ourselves in the present situation.

Herein lays the genesis of the CASA “core” belief, below senior management, that it is the “manager” of Australian aviation, because that is what it once was.

Overview

Before I address the nominated key issues, I believe an overview of “safety regulation” is required.

Most significantly, *the body of CASA, the “core culture”, does not understand the proper roles of the organisation as a regulator.*

In part because of the history of the organisation, and in part because the sustained “company culture” of the organisation, in practice CASA at the day to day working level, sees itself as:

- *The manager of the Australian aviation industry, and not:*
- *The air safety regulator, the auditor of compliance with appropriate air safety (not commercial) legislation.*

As a consequence of the above points, the current (except CASR 21-25) Act and Regulations are widely acknowledged as “complex, convoluted and contradictory” and give broad scope for CASA personnel, in the field, to:

- Dictate, to an extraordinary and very prescriptive level of detail, the day to day activities of aviation business.

The mechanism to the fore, in these exercises, is the use of an “Operations Manual”, that seeks to define, in fine and prescriptive detail, virtually everything done, day to day, in a flight operations or maintenance organisation.

- There is a particular safety problem in flight operations, as CASA personnel dictate changes to the FAA (or other NAA¹) certified procedures for operations (or maintenance of continuing airworthiness) of aircraft.²

Other than a general regulation that enables CASA to “impose a condition” (and this only for safety purposes, if properly applied) many of the provisions have no legal head of power, but come from supposed “policies”, or the personal whims of the particular inspector.

The clear result of this is that, without any safety dividend, and a strong case for a resulting increased risk in operation, as a result of divergence from NAA certified procedures:

- The cost of “aviation safety regulation” in Australia is crippling high, rendering segments of the industry un-competitive.

¹ NAA: National Aviation Authority.

² Despite a public commitment by Bruce Byron that such practices should cease, such is the attitude in the field, that the practice is as strong as ever. This results in *identical aircraft* being operated under highly divergent procedures with different operators, as well as not conforming to the manufacturers certified standards.

- Contrary to “preceived wisdom”, Australia labor costs are not the major factor driving significant sections of the local industry off-shore or;
- Rendering those who cannot move off-shore uncompetitive in the international market.

The Australian Air Safe Record

A careful study of the aviation safety record of Australia is revealing. It is true that the heavy air transport sector has a good safety record, but so do all our equivalent nations.

The benchmark for aviation safety, across all sectors, is not Australia, but the USA,

and given the relatively tiny size of the Australian airline industry, and the relatively benign flying conditions enjoyed by domestic airlines, Australia should have a good record.

The safety record of Qantas is frequently cited, but Qantas is not the industry.

In my opinion, there is a measure of complacency about air safety in Australia, and examination of the *current incident* (as well as accident) record shows there is *absolutely no grounds for any such complacency.*

It should be acknowledged that, since 2003, and the removal of most of the previous senior management (1999-2003) of CASA, the current Director of Aviation Safety and CEO, Mr. Bruce Byron, *has made significant change in CASA in;*

- Completely revamping senior management and;
- Making a start in introducing a modern risk management approach to the operation of the organisation, and;
- Promoting the expansion of Safety Management Systems across the sector.³

The “CASA Culture” is extraordinarily resistant to change, as has been seen in so many inquiries into CASA over the years, and remains so to this day.

However, Mr. Byron or any future Director must have much more robust and overt Ministerial backing, to achieve the end state reforms that we must have.

Thus, addressing item 2 of the key points, CASA must have, but does not have, a robust and all encompassing system of corporate governance, to which ALL employees conform, or are dismissed the organisation.

A previous Director, Leroy Keith, remarked that “CASA was a principality with 700 Princes”, whilst the management under Bruce Byron has made inroads, the culture is still very much in evidence.

³ The aviation sector in Australia is NOT a leader in the field, but is playing catch-up in this area.

The present Civil Aviation Act 1988 supports the fundamentalist “we are the managers of the aviation industry” approach of the “CASA culture”, and the Civil Aviation Act 1988 must be re-written⁴ to more properly allow modern approaches to risk management and performance (outcome) based regulation to be introduced without legal challenge from the terms of the Act.

Whilst ever the Act remains in its present form, a “*zero accidents regardless of cost*” mentality will always have support, and the form of the Act will encourage legal action against CASA in the event of any loss.

Rejected by the “CASA Culture”, but critical in achieving the best risk reduction results, is the proper application of modern risk management/performance based regulation. It is axiomatic that failure to apply proper risk management techniques can only result in misallocation of resources, and less than the best air safety outcomes.

At the field level, the audit concentration on the trivial is par for the course.

Specific Questions

- Are there ways in which the approach to Safety Management Systems could be enhanced?

See the comments in the overview re. amendments to the Act, which does not adequately (or support at all) a “risk management” approach to regulation, or the long term effective changes to the whole approach to the role of CASA. This includes the proper implementation and operation of risk minimisation, of which a proper working SMS is a vital part.

As it stands at present, just about everything that might be discussed at a weekly company “Safety Meeting” would reveal “criminal offences”, the “offences” might be trivial, but the misuse of such records by CASA personnel is not unknown. Such is the complexity and prescriptive nature of the Regulations, that normal day to day human clerical errors, for example, become criminal offences.

Indeed, the threat from intervention by State police is markedly increasing.

In my opinion, some of the directions flagged in the “Miller” report, if adopted, would further militate against the effective (as opposed to pro forma) use of SMS, and the voluntary reporting of error will again be lost.

- Should the governance arrangements for CASA be strengthened to better support the role of the safety regulator?

The governance arrangement must be greatly strengthened *and enforced to the lowest level in the organisation*. This is a vital component in eliminating the long

⁴ A number of reports have acknowledged the shortcomings of the Act, including the final report of the Program Advisory Panel of the CASA Review in 1998

standing “CASA Culture” that has done so much damage to the aviation industry in Australia, and seriously reduce the effectiveness of safety management.

CASA is expected to be a “model litigator”, there is a comprehensive record to show otherwise. Bruce Byron’s appointment to head the Legal Service Branch has made strides in redressing this issue, but there is no shortage of “suspects” on the CASA payroll who would reverse that, given the slightest chance.⁵

Despite the acknowledged results since 2003, much remains to be accomplished.

- How can CASA strengthen the way it relates to industry while meeting the community expectations of a firm regulator?

In my view, it is instructive that the question is even asked in this way, implying it is an either/or choice.

Although less evident in recent years, CASA has a long history of beating up minor issues in the media, to show “how tough” it is, and to this day, CASA media spokesmen continue to promulgate sensationalised statements. An examination of the style of press released from a Mr. Peter Gibson, as CASA media spokesman, is instructive. They are available on the CASA web site.

- How can the Australian Government and industry ensure CASA completes its long running regulatory reform process as soon as possible, to give clarity to industry and to clear the way for new approaches to meeting the regulatory challenge?

The “long running regulatory reform program” has only been “long running” because of the resistance of the “CASA Culture” to real change, and the continual diversion of any change back to a style of regulation that ensures that a complex and prescriptive regulatory structure is maintained to “enforce”.

In 1998, CASRs 21 to 25 went into place, after being delayed by those middle level CASA management who resolutely opposed any political or industry interference in their desired activities.

By 1998, a whole suite of regulations, covering the areas in most need of reform were in draft form. These included Part 91, General Operating and Flight Rules, a maintenance suite and a number of complimentary regulations.

These were dumped as soon as CASA then management thought they could get away with it, and they did get away with it.

A new suite of “Australian unique” maintenance regulations saw the light of day several years later, they were characterised by being the world’s most lengthy draft

⁵ From a web site called pprune: <http://www.pprune.org/forums/d-g-reporting-points/329724-senate-inquiry-into-casa.html>, and the following 7 pages, the substantive contributors being a former CASA lawyer/executive, and it is assumed, a current CASA lawyer.

regulations, with the projected *total of pages of disallowable documents* being in the order of 9000 pages.

I have taken the liberty of including, as an appendix, a 2001 document proposing a new approach to the establishment of aviation regulation. Whilst acknowledging the progress made by Bruce Byron and his new executive team, particularly in the last year, it is instructive to consider how many of the comments, made seven or eight years ago, still apply today.

In my view, the cost to the Australian economy of these delays, and the cost burden placed on the Australia aviation industry, including a severe loss of employment opportunities, compared to competitor countries, is incalculable.

The volume of airline heavy maintenance going/gone off-shore is only part of the loss, and as elsewhere asserted, Australian labour costs, per se, is not the primary cause.

As long as the “reform program” is conducted within CASA, and not separated,⁶ more important than the completion date will be the inadequacy of the results, because they will reflect what the “culture” wants, not Government policy to produce cost-effective performance based regulations for aviation safety.

- What changes could be made to improve how Australia’s aviation safety agencies work together?

To a large degree, the operation of legislation administered by the Department of Infrastructure, Transport, Regional Services and Local Government and CASA are mutually exclusive.

I am of the view, as is a large proportion of the professional Australian aviation community, that Australia should follow the example of many of the aviation countries, with which we compare ourselves, and separate ATSB entirely, and establish it as a body reporting direct to the Parliament.

Contrary to the views expressed by Miller, I am confident that the majority of aviation (safety) professions see a fundamental conflict of interest between the operation of CASA and the ATSB.

ATSB must be independent in fact.

Indeed, one interpretation of the Miller recommendations would see Australia having to notify a difference to ICAO Annex 13, as Australia (having been a pioneer in the field) would, unlike UK, US, NZ, Canada etc., no longer have an independent accident investigator.

This has been covered in responses to the Miller report.

⁶ The first NZ attempt at a complete rules overhaul was a failure, because it was conducted “in house”. The process cannot be dominated by those with a vested interest in maintain the “effective” status quo.

- What steps can the aviation industry as a whole take to ensure it maintains safety standards as it grows and diversifies?

This, alone, is a complex subject, and the answers are far from simple.

In the initiative of Bruce Byron in the training standards field, there is recognition of the very serious problem that has developed in demonstrated low levels of pilot competency standards.

A major issue to be addressed is the “real” industry attitude, in recognising the problem.

In my activities as a consultant I continually hear the claim that the “*drop in standards*” apply to “*the bloke down the road, my company works to such high standards that CASA us me as an example of excellence*”, self delusion at work, sadly in many cases a matter of “*you don’t know what you don’t know*”.

A pilot who has never experienced high standards of competence has no benchmark, human nature being what it is, all pilots believe they are “the best”.

- What steps should be taken to ensure Australia maintains a high standard of aviation.

The first step will be to recognise that, in the real world, we don’t have a particularly high standard, rose coloured glasses are no help in solving the problems we have, particularly with pilot operating standards.

The first step in solving a problem is recognising there is a problem, Bruce Byron has taken that first step, but in reality, many sections of the industry have not, it is always “somebody else” who has the problem.

The US FAA approach to this, starting some 20 years ago, has paid great dividends, in that (with the exception of Australian’s self administering sector) the US has the best long running air safety outcomes in every ICAO category.

- What issues should a 21st century aviation regulator be focussed on?

Bringing all pilots up to the standard achieved by the very practical approach adopted by the FAA, many years ago. This is the most critical issue.

- Is self-administration a key factor in the growth of recreational aviation?

It is beyond doubt that the success (world leading) in recreational aviation in Australia is because of the framework of self administration, with a history going back 50 years.

Not only is self administration a key to the growth, far more importantly in this context, ***self administration in Australia has lead to documented world leading air safety outcomes.***

The comparison of the Gliding Federation of Australia excellence v. FAA results are beyond argument, the record of Hang Gliding, the HGFA and Sports Parachuting, APF are similar.

For “Ultralights”, aircraft administered by Recreational Aviation Australia, now that accident/incident are becoming statistically valid, indicative figures suggest that they are producing better air safety outcomes than CASA administered Private GA.

- Is there more scope for some parts of the industry to self-administer?

The aerial application sector is a prime candidate for self administration, but CASA wants to “double dip”.

The sector pays some \$750,000 pa in fuel levies to CASA, and have bluntly told CASA they are not going to pay twice, to continue to pay the levies, then pay again to do the job CASA now does.

Self Administration is not a “cheap and easy” option, far from it, despite those in CASA who claim that is the motivation of the supporters of self administration.

Quite simply, if CASA was the hands-on administrator of the Sports and Recreational aviation, it would not exist in anything like its present vibrant and growing form. If the US is any guide, and it is, Sports and Recreational aviation would have a substantially worse risk profile, that is, worse air safety outcomes, if administered by CASA.

- What are the opportunities and risks for the industry, regulators and the community in greater ‘self-administration’?

Opportunities: With the exception of the Aerial Application sector, Airborne Law Enforcement and SAR/EMS operations, I see little scope for further expansion.

Some moves have been made to establish a “Private General Aviation” self administrative body, but the sector is so spread out, with so little common ground, that making a business case is very difficult.

Risks: For industry, the cost, for the regulator the loss of jobs, but there is no “regulatory risk”, and *for the non-aviation community the likelihood, not of increased risk, but a reduction in community risk.*

June 27, 2008

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Appendix 1

This document was prepared in 2001, and quite naturally sections are dated, and as forecast, Ansett has long since ceased to exist.

However, notwithstanding the progress made by the current management of CASA, the fundamental problems still exist, and will continue to exist, until they are effectively addressed and dealt with.

In reviewing this document, and considering whether to include it in this submission, I was struck by how many of the carefully considered comments apply, to this day, despite the progress made by Bruce Byron and his current management team.

The writer has worked closely with the senior management of CASA on a number of issues in the last two years, and can testify that the underlying “CASA Culture” is alive and well, despite efforts of senior management.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'W.J.R. Hamilton', with a stylized flourish at the end.

W.J.R.Hamilton, FNAM, MAIAA.

AUSTRALIAN AVIATION COUNCIL

Minimalist Solutions: Taking the existing CASA structure back into a Department of State will not provide any solution to the underlying structural problem, the lack of a satisfactory separation of powers. There is nothing new about the current acute problems.

The objective of the *Australian Aviation Council* is to provide a permanent Government / Industry body to implement Government policy, and develop law.

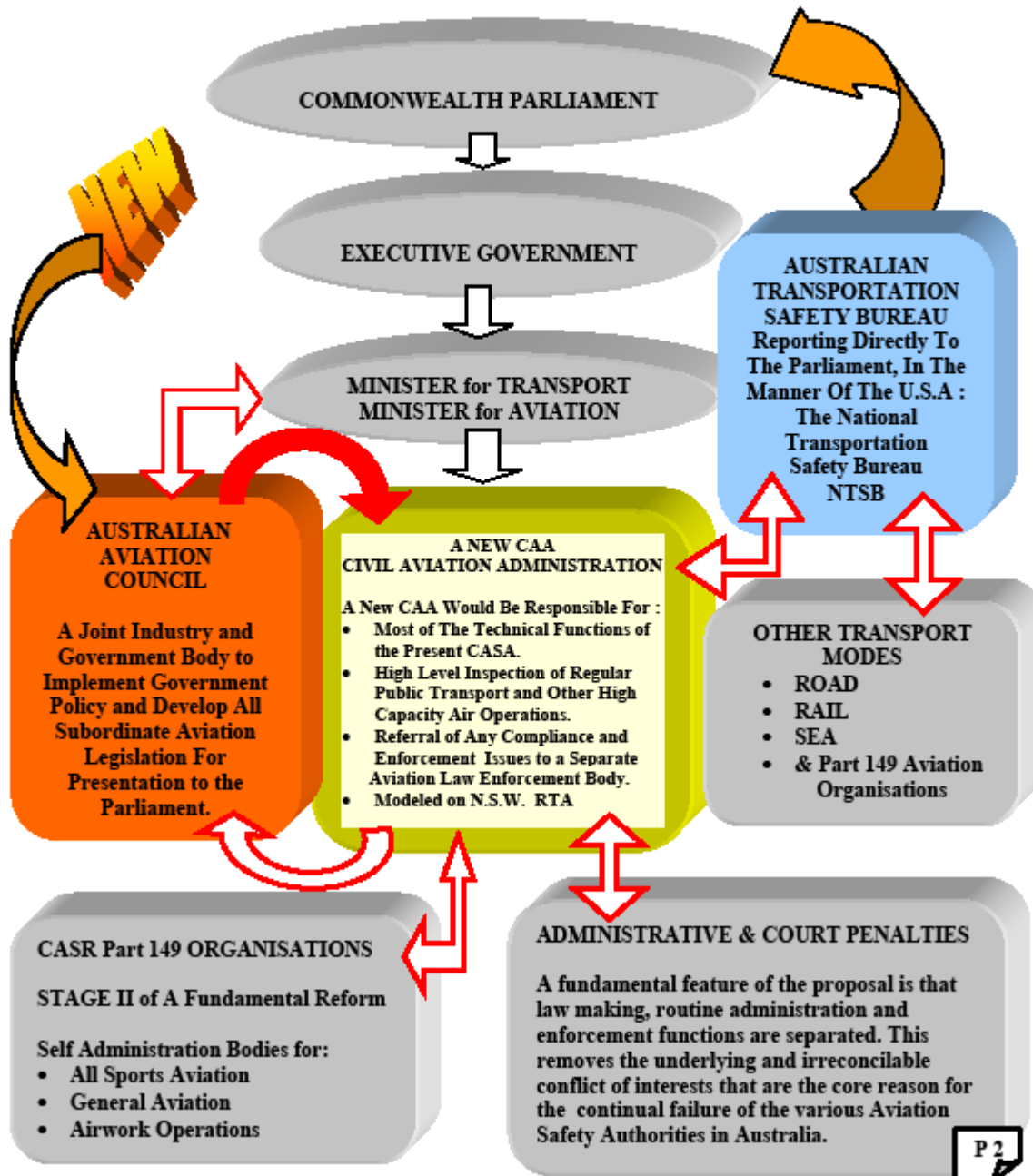


W.J.R.Hamilton 6 May 2001



AVIATION SAFETY ADMINISTRATION

A Twenty First Century Solution For Twenty First Century Australia.
World's Best Practice Air Safety Outcomes Cannot Be Achieved With Nineteenth Century Administrative Structures That Have Constantly Failed Australia.



THE AUSTRALIAN AVIATION COUNCIL

A NEW APPROACH TO AVIATION SAFETY

EXECUTIVE SUMMARY

A new way to discharge aviation safety administration responsibilities.

This is a proposal to permanently solve the perennial problem of aviation safety administration in Australia. After so many inquiries with so little lasting resolution to long running problems, it is time for a new approach.

This may be a new approach in aviation, but it is a normal framework for much of Australian industry, it is the aviation industry out of step

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THE AUSTRALIAN AVIATION COUNCIL

THE OBJECT OF THE AUSTRALIAN AVIATION COUNCIL:

- *To assume responsibility for the preparation of Aviation Safety Legislation*
- *To accomplish the detailed development of legislation to implement Policy.*
- *To ensure that aviation legislation meets the objectives of overall Government Policy, as may be referred by Government.*
- *To coordinate the input of all aviation stakeholders in developing aviation legislation, and advising Government on aviation matters generally.*
- *To insure that, within the constraints of Government Aviation Policy, and Policy generally, all legitimate aspirations of the stakeholders in the aviation community, and the community at large are taken into account, and reasonably satisfied.*
- *To assist in maximizing the benefits of aviation to the Australian national interest, Australian air commerce, the Australian aviation community and the economy.*
- *To maximise the job, educational and training opportunities available within the aviation industry, recognising that aviation industry is high value added, high skilled and labor intensive, and with limited opportunities to substitute labor, and thus, potentially a major jobs and income generator.*
- *To maximise the export opportunities of the Australian aviation industry by eliminating artificial barriers, such as the current lack of bilateral airworthiness agreements, and other Australian aviation regulatory barriers limiting the potential of Australian aviation industry.*

Notes:

(1) Throughout the following document I have referred to a new organisation, for the sake of simplicity and clarity, as CAA, the **Civil Aviation Administration**.

(2) The Civil Aviation Administration would quite naturally be a major stakeholder in the Council, and it is anticipated that a number of current staff of CASA would transfer to the permanent staff of the Council Secretariat.

(3) It is a moot point whether aviation safety policy can be essentially bi partisan, allowing for the possibility of the Board of the Council reporting to Parliament. This assumes a mechanism for the specific policies of the Government of the day constituting guidelines/directions. Alternatively whether the Council reports to a Minister responsible for aviation.

POLITICAL ADVANTAGES

The author believes there are very substantial political advantages for a Minister for Transport/Aviation in having a Council responsible for aviation safety being a creature of the Parliament.

(4) Regardless of the decision on the final form of arrangements, it is imperative that the CASA (CAA) no longer be able to dominate a rule making process.

There are always serious political costs associated with serious aviation incidents and accidents. The proposal would very greatly reduce these political costs, at the same time going a long way to ensuring optimum handling of air safety issues in a way most likely to minimise the probability of adverse air safety outcomes

ACCIDENT INVESTIGATION

The Australian Transport Safety Board-ATSB

- **Directly related to the maintenance of aviation safety, indeed all transport safety, is the need for a truly independent Australian Transportation Safety Board, ATSB.**

The author strongly recommends that the precedent of the US National Transportation Safety Board, NTSB, a body appointed by and answerable to Congress, should be followed. ATSB should be a body directly established by the Parliament. As well as the benefits in transparency and accountability that should flow from such an arrangement, there are political benefits for a Minister for Aviation/Transport.

The recent events blocking the ATSB investigation of the CASA role in Ansett is a graphic example of how an investigation can be hobbled. Such is the present profile of air transport safety, the budget cuts to ATSB have been widely remarked.

- **It has become apparent to the author that the political significance of the cuts to ATSB budget has not been lost on people who would normally have little or no interest in such detail of air safety.**
- **The ATSB is clearly seen as not being independent, and being subject to disciplinary measure, budget cuts, as a result of its "intrusion" into the CASA/ANSETT affair.**

CONFIDENCE IN AVIATION SAFETY.

WHAT ARE THE FACTS ??--- A SELECT COMMITTEE

Public confidence in air safety is vital, and that confidence has been severely eroded in recent times, confidence must be re-established.

- *On the basis of many years experience of the tides of thought in aviation safety regulation, the author regards it as essential that those who will advise on the final form of a re-structured CASA should have personal, up to date and on the spot knowledge of the facts of similar developments in aviation significant countries.*

It is clear to the author that much of the "expert" advice given by CASA is incorrect, incomplete and tailored to a particular outcome, something that should surprise nobody.

- *Therefore it is essential that any Select Committee that is formed to make final recommendations make its own assessments of trends and developments.*
- *On-the-spot investigations should go beyond selected regulatory bodies such as FAA, Transport Canada and European, and take into account the views of other stakeholders in aviation, in aviation significant countries.*

A WIDE SPECTRUM AUDIT

- *In re-establishing public confidence in Australian aviation, a major independent audit should be carried out, far more comprehensive in nature than the recent ICAO and ANAO audits.*

The audit would have subjective and objective criteria, and be asked to answer the almost impossible question: **"Is Australian Aviation Safe?"** and **"How, in practical ways, can Australia improve air safety outcomes, in the short, medium and long terms"**.

At a minimum, such a team should include such world-renowned experts as Captain Dan Maurino of ICAO, and a team of Human Factors safety experts. Probably including some or all of Dr. Rob Lee, ex BASI, Tony Kern, USAF and James Reason, and human factor experts from Boeing and Airbus, and the US Flight Safety Foundation.

An audit team comprising persons drawn from the Maintenance, Repair and Overhaul sector should audit the shop floor and line practices of Australian small, medium and large operators. This team should be drawn from those with extensive experience in the field, including input from manufacturers, operator's who are equivalent to Australia's significant operators, Flight Safety foundation etc.

A team to consider General Aviation, to augment the above, could include AOPA (USA) Air Safety Foundation and/or similar organisations, and FAA persons involved in current general aviation Safety initiatives.

- *The above recommendations are heavily weighted to US representation because of the clear lead in air safety outcomes achieved by USA.*

THE SECRETARIAT OF THE AUSTRALIAN AVIATION COUNCIL

- *The Executive body of the Council, responsible for management and operation.*
- *A joint Government/Industry Board to oversee permanent staff.*
- *A Technically Expert core staff, with administrative support as required.*
- *In the initial reform program, a budget to co-opt and employ additional technical expertise, thereafter a small permanent technical and support staff.*
- *It is considered essential that the Secretariat and Council lines of accountability and reporting be given careful consideration.*

As the coordinating and management body of the council, the membership of the Secretariat will always be critical, and it should be made up of a suitable combination of Government and Industry members, with an industry Executive Chairman.

The Council should be made up of all legitimate stakeholders in the aviation community, including consumer and environmental advocates. It can be expected that, at least in the initial stages, the membership and actual attendance of the Council will be substantial.

Thus, it will be an imperative that the Executive Board of the Secretariat have a broad and in depth knowledge and experience of all facets of the Australian aviation community, and the linkages, to exercise control of the proceedings of the Council.

To ensure adequate management, and achievement of the Government policy time lines, the Executive Board of the Secretariat should be full time members, dropping back to part time members after major reforms are bedded down.

Adequate funding of this body, in the early stages, must be available, to achieve the aims and objects of a very major reform program, thereafter the budgets would be relatively modest, but no attempt will be made here quantify budgets.

The Secretariat and Council will be responsible for the establishment and maintenance of the Aeronautical Regulatory Advisory Committees, ARACs, the working technical committees to specialise in all relevant aviation technical subjects. In the initial stages, to ensure rapid progress, funding must be available to ensure adequate representation from a broad cross section of industry is available.

- *Management of this exercise will be critical to the rate of progress, but tight control will be required to ensure moneys worth.*

Government and semi government stakeholders will be members of the Council and represented on the Secretariat, but will not have veto authority, the maximum of voluntary consensus will be desired. Ultimate decision making will be vested in the Executive Board, as to the recommendations to Government in the form of draft legislation.

THE CIVIL AVIATION ADMINISTRATION

The Civil Aviation Administration would comprise a significant proportion of the present CASA, excluding rulemaking and enforcement.

In addition to administering an amended Civil Aviation Act, the CAA should administer the Air Navigation Act, and it may be considered convenient for CAA to administer several other Acts which are aviation related.

The duties of the CAA will be very similar to the NSW RTA, including most technical and licensing functions and high level inspection of air carrier operations.

[TO BE COMPLETED in a further expansion of the proposal, if this outline meets broad approval, in its outline form.]

TOWARD A REALISTIC AND EFFECTIVE AVIATION POLICY.

THE BACKGROUND

In all considerations of Aviation Safety Administration in Australia, we need to constantly remind ourselves of three facts:

- **AUSTRALIA IS NOT THE WORLD'S SAFEST AVIATION NATION**
- **SAFETY IS NOT PRICELESS.¹**
- **AVIATION SAFETY IS NOT AN EXCEPTION.**

The turmoil in Australian aviation regulation in the last two years has been disastrous for the aviation industry, but the recent events surrounding the ANSETT group have brought to public attention a very serious state of affairs within the Safety Regulator, CASA.

Previously, the underlying problems of aviation slipped from the conscious of the general public within weeks of the latest aircraft loss. Recent events have been so protracted, and so widely publicised, and the shortcomings of CASA have been on such public display, that public awareness of aviation problems has been heightened to a degree never before seen.

- *The amazing "Christmas" and "Easter" actions by CASA have finally convinced even the "man in the street" that this was all too coincidental to be credible.*
- *For the first time in many years, aviation policy is likely to be a significant election issue. CASA is not the only aviation issue in the public mind, but is a major factor*

A relevant and capable system of effective Aviation Safety Administration or Regulation is a cornerstone of an aviation policy. *Australia will not have a local aviation industry of any significance, if we continue down the present path.*

- *At the present time we do not have such a Regulator, and the results are clearly apparent. The CASA is clearly a dysfunctional and chaotic organisation.*
- *There is a major contraction in General Aviation, the biggest aviation employer, and there is a drift off shore by those who can make such a move.*

The ANSETT problems, and the performance of CASA in creating these problems, have highlighted CASA in the public mind as a dysfunctional organisation, a fact known to the Aviation Community since time immemorial.

¹ Gleeson CJ [Jones v. Bartlett,[2000] HCA 56 at (23)] "Safety standards imposed by legislation or regulation recognise a need to balance safety with other factors, including cost, convenience, aesthetics and practicality"

The only difference between the ANSETT problems and the trials and tribulations of smaller aviation companies is the high public profile of ANSETT, and the sheer magnitude of the potential losses, which has precluded CASA arbitrarily withdrawing an AOC, despite CASA threats².

- *Any small (ie: all but the top ten or so companies) operator would have had the AOC pulled before the investigation, without regard to the financial penalties that automatically imposes, usually without reasonable justification.*
- *The financial and commercial damage done to ANSETT/Air New Zealand is such that the continued existence of the group is quite uncertain.*

*It is now being freely suggested that within five years there will be no Australian owned and substantially Australian based airline.*³ Of the many reasons that this could come about, the impossibility of dealing with an organisation like CASA, and remaining both safe and competitive, is a key factor.

If the institutional and regulatory cost of "aviation safety" in Australia becomes so high that Australian based carriers cannot compete, there are only two fundamental choices.

- *They go out of business, or cease to be Australian based carriers.*

Regardless of purported agreements between CASA and CAA New Zealand, the reality is that all current Australian airline operations could be mounted from New Zealand.

- *That is the reality of the Trans Tasman Mutual Recognition Treaty.*

This document is a brief summary of the solutions proposed. The document does not include all the research, in detail, to justify the conclusions. The reason is simply time and space and to do more at this time would involve a document of many hundreds of pages, which nobody would have the time to read.

- *Footnotes are included, for selected sources, and the author will be extending the coverage of the document in the coming months.*
- *Also included is a detailed summary of the background and experience of the author of the proposal, for information.*
- *It is considered vital that the basic proposition be considered without delay, therefore this should be regarded as Issue 1.00 of a proposal that will be expanded under the title "Toward a Realistic and Effective Aviation Policy"*
- *The colour graphic summarises the proposal.*

² When questioned about the CASA generated Ansett publicity, the Director is reported to have said: "We achieved a result without having to issue a Show Cause: Senate Hansard RRA&T 5 May,2001

³ Peter Harbison: Asia Pacific Center for Aviation Studies. Sunday Program, NCN9 12 May, 2001.

A PRACTICAL REFORM

The Australian Aviation Council.

A Reform of Aviation Safety Law Making, Administration & Enforcement

The proposal is practical. Quite simply, the proposal is based on practical experience and demonstrated models for successful reform of similar transport agencies.

Quite apart from examples drawn from other successful Public Service restructuring and reform programs, at both Federal and State level, we have the example of the CASA Review/ Program Advisory Panel, an example of effective Industry input to a Aviation Regulatory Reform program.

- *The completely ineffectual efforts of the last two years are in stark contrast, the last and current programs: A model of success and now: A model of failure.*⁴

The Australian Aviation Council is built on a base of practical experience of reforms that have achieved the cultural change that CASA has so far escaped, the cultural change that is vital, if long term reform of Australian aviation safety administration is to be achieved.

Under the heading "Son Of PAP", in 1998 the Industry/CASA Program Advisory Panel of the CASA Review had commenced consideration of a future body, which may well have been very similar to this proposal.

The CASA Review and Program Advisory Panel was disbanded before any conclusions were reached, as to the form, fit and function of ongoing "living reform" bodies for regulatory "maintenance and repair".

- *However, many have continued to give comprehensive and detailed consideration to alternative Aviation Safety Regulatory structures, to better serve the Australian national interest and the Australian aviation industry.*

⁴ The Aviation Safety Forum, ASF & the Standards Consultative Committee, SCC have achieved no measurable progress in two years. The ASF and SCC are a repeat of previous failed bodies.

THE CASA STRUCTURAL PROBLEM IS ENDEMIC

The political backwash of an unrestructured CASA will continue to haunt Governments and Ministers of the day.

With some fifteen significant (and many smaller) inquiries into part or all of Australian aviation safety regulation in less than twenty years, and the ongoing lurch from crisis to inquiry to a short armistice, to crisis to inquiry, to armistice, it is time to break the cycle.

The need for Regulatory Reform is only part of the problem. As will be shown, the structural problems of CASA are endemic, and must be addressed, if any reform is to have long term results.

- *If Aviation Safety Administration is not to continue as a political running sore for any incumbent Minister of Transport, structural reform is a first priority.*⁵
- *Without the proposed structural reform, any aviation regulatory reform or other aviation reform will be rendered ineffective.*
- *The political backwash of an unrestructured CASA will continue to haunt Governments and Ministers of the day.*
- *Until Aviation Safety Administration in Australia is reformed, the Australian aviation industry will continue as a political liability, a Ministerial graveyard.*
- *Aviation is too important to a 21st Century Australian economy to be held hostage by a 19th Century despotic aviation safety administration.*⁴

⁵ Aviation Law Association, Occasional Paper, Mr. Greg Poole, Barrister: *"Indeed, one is tempted to suggest that Lord Hewart (in "The New Despotism" pub.1929) had aviation law in mind when he described certain laws as "a persistent and well contrived system, intended to produce, and in practice producing a despotic power which at one and the same time places Government Departments above the sovereignty of Parliament and beyond the reaches of the Courts"* quoted in a submission to "No Port In A Storm" a report by the House of Representatives Standing Committee on Expenditure on the Darling Harbour Fiasco.

THE PROBLEM.

The Inevitability of the Present Problems Has Been Recognised For Many Years, They Will Continue Until Real Reform

- *The recent developments in CASA, under the present management, have resulted in a virtually total breakdown in relationships between CASA and the Australian aviation community at all levels.*

This was quite predictable, and in fact was predicted by the author,^{6/7} subsequent to the presentation of "SafeSkies For All, CASA In The New Millenium", by the CASA Director of Aviation Safety, Mr. Mick Toller.

The CASA presentation was at the aviation safety conference, SafeSkies 99, in Canberra.

Also predicted by the author (and others) was the outcome of the "**More Regulations, More Enforcement, Higher Penalties**" policy announced as the core CASA policy for the "New Millennium".

- *That we would loose voluntary reporting of safety critical data and inhibit the achievement of improved air safety outcomes was forecast.*

That has happened as predicted. The inevitable longer tern deterioration of safety outcomes is equally predictable.

However, all that has happened in the last two years has merely exacerbated and highlighted the structural problem of CASA (and it's predecessors), structural problems which have been present for many years. The core problem that must be solved if the Australian aviation industry is to achieve even a fraction of its potential.

- *The inevitability of the present outcome has been recognised for many years.*

⁶ The Hon. John Anderson, MP, and Minister for Transport and Regional Services: Various correspondences from AOPA President to the Minister for Transport and Regional Services.

⁷ Editorials: AOPA, from the President, various available on request.

THE INEVITABLE OUTCOME

SAFETY STANDARDS ARE THREATENED.

- **AIR SAFETY OUTCOMES---SAFETY STANDARDS ARE THREATENED.**
- **Everything we have learnt about improving air safety outcomes runs contrary to the simplistic "law and order" agenda of the present CASA.^{8/9}**
- **The "Zero Tolerance Enforcement" program has failed, because it could not succeed.**
- Aviation Services are disappearing, particularly in country areas.¹⁰
- The employment dependent on those services is disappearing. The non-airline sector employs far more people than airlines. Now both sectors are threatened.
- Proposed new operating rule, *without any safety and cost/benefit justification*, threaten to ground most of our State Emergency Services, and seriously restrict many other services that Australia has previous enjoyed.¹¹
- Proposed new operating rules, *without any safety and cost/benefit justification*, will further threaten the availability of existing regular air services.
- Proposed new operating rules, *without any safety or cost/benefit justification*, threaten the viability of the major airline groups, to the benefit of foreign based operators, with the inevitable loss of Australian employment.
- Proposed new operating rules, *without any safety or cost/benefit justification*, which would be absolutely unique to Australia would devastate all the traditional uses of small aircraft in regional and remote Australia.¹²

⁸ James Reason, Dan Maurino, et al, various pubs., inc. CASA FLIGHT SAFETY, " The Brainy Bunch" issue of Feb 2001.

⁹ FAA, Recent changes to Enforcement Policy, reducing use of/reliance on enforcement proceedings/administrative fines. AOPA letter to Minister for Transport, H.Ray, 27 May,2001.

¹⁰ Fourteen NSW country centres have lost air services in the past eighteen months. CASA has played a major role in causing the withdrawal of these services. The author is informally advise that CASA "White Board" policy is to eliminate the use of piston engine aircraft from Regular Public Transport

¹¹ CASA Discussion Papers Parts 133 & 137

¹² Redefinition of most PRIVATE flying as PRIVATE AIRWORK, CASA Discussion Paper Part 137.

- Proposed new Maintenance Rules, *without safety or cost/benefit justification*, will seriously reduce Australian competitiveness by forcing costs up, costing jobs locally, and forcing major Australian operators towards offshore maintenance.

- As the Australian domestic aircraft fleet, particularly smaller aircraft age, the total climate of uncertainty created by CASA has made capital for fleet reinvestment impossible to obtain on normal business terms.¹³

- “Informal” (i.e: Totally without technical justification) airworthiness policies are severely limiting the use of available aircraft, without any viable replacements.

- The loss of critical personnel, particularly Licensed Aircraft Maintenance Engineers, is very serious. Few apprentices are entering the industry.

- CASA seriously inhibits new entrants to the industry at all levels.

- A very serious outcome is the general fall in the attainment standards of potential entrants to the aviation industry. Aviation is losing the competition for capable and motivated entrants to the industry. Other industries are the winners

- *In no other industry do licensed participants fear arbitrary and summary cancellation of their license and career, with so little realistic avenue of appeal.*

¹³ The problems of the economics of Cessna 208/Pilatus PC-12 compared to Cessna 400 series of Piper Chieftain were presented in a paper at the recent Regional Airlines Association Conference.

THE FUNDAMENTAL CAUSE.

- *The Civil Aviation Safety Authority, CASA, is an organisation with a basic structure that makes the present highly publicised problems inevitable.*

The present problems are acute, as a result of the nature of the present management of CASA, but all the current management has done is magnify the underlying flaws in the CASA structure.

- *The senior management of CASA (and predecessors) has changed regularly, but the same problems always erupt after a short honeymoon period accorded any new senior management.*
- *The underlying problems have been examined in whole or in part by many inquiries.*

There have been some fourteen major inquiries in eighteen years, but implementation of the changes needed to permanently resolve the recognised and ongoing problems of aviation safety administration have never been made.

Many of the inquiries have finally recommended minor changes, but the author would characterise the recommendations as "too little, too late".

- *The "Fear of Flying" & "The Mystique of Air Safety" will always weigh very heavily on the deliberations of any lay (in aviation terms) person conducting any inquiry into aviation safety or its administration.*

The irreconcilable internal CASA conflicts of interest have always been the central issue, but have never previously been satisfactorily identified, let alone addressed.

- *Such problems have always been alluded to, but successive inquiries have always stopped short of a critical analysis of the inherent conflicts of interests.*
- *In the view of the author, the most probable reason, even if subconscious, is the fear that, if great change is proposed, and there is a serious accident, change and the change agents will be blamed.*
- *In the short term, that is a genuine fear, but a fear that must be resolutely faced.*
- *We have now reached a stage where, in the event of a major accident, blame will be sheeted home to who ever is responsible for not bring about a real resolution to the very public problems of CASA.*

It is axiomatic that any bureaucratic body will always be resistant to external influence. Therefor acceptable working structures must recognised and minimise the consequences of such normal resistance to outside "interference".

- *It is axiomatic that any bureaucratic body will always be resistant to external influence. Therefor acceptable working structures must recognised and minimise the consequences such normal resistance to outside "interference".*
- The history of CASA amplifies the inevitable problems of the CASA structure, a structure that does not, in the opinion of the author, meet currently acceptable performance standards of public administration.
- The fundamental and irreconcilable conflicts of interest inherent in the present CASA structure dictate that the present structure cannot and will not produce an acceptable standard of conduct, so vital to attaining satisfactory air safety outcomes.¹⁴
- *The very skillful CASA use of the general public fear of flying and general public lack of understanding of aviation has allowed successive aviation bureaucracies to resist any effective "interference" in their activities.*
- The one major exception to the above was the CASA Regulatory Reform program, (in which the author participated) prior to the present management of CASA.
- A very fortunate "coincidence of circumstances" brought together a group of people, including His Honour, Mr. Justice Fisher, as CASA Board Chairman, Mr. Leroy Keith as Director of Aviation Safety, a veteran of the Morris Inquiry as Minister, and a number of others.
- The result was measured in significant progress in aviation safety administration reform, but the program was halted just as it was beginning to consider matters that would have inevitably reached the same conclusion as this proposal.
- **The Lane Report¹⁵ identified "The Mystique of Air Safety" as a very effective way for determined bureaucrats "frighten" politicians, the media, and the public generally, into accepting that they, CASA (and its predecessors) are "Air Safety Experts".**
- **CASA endeavor to convince the public that they, CASA and only CASA, are the only ones to whom the safety of the travelling public can be entrusted.**

¹⁴ Senate Estimates hearings: May30, 2001. Peter Boys, CASA and special treatment for CASA Director, prosecution file not forwarded to DPP. A clear example internal conflict of interest. The more usual example is the use of "administrative action" to achieve a penalty, and denying due process.

¹⁵ The Legal Framework of Air Safety Regulation, the first report of the Air Safety Regulation Review, December 1988. Bidmeade, McNamara and Watt The second report, brought down in 1990, included Captain A.F.Lane as Chairman. The two reports are generically referred to as " The Lane Report". Then Minister, The Hon. Robert Collins, MHR received the second report on 1 May,1990.

THE CREATION OF CASA

The split of the old Civil Aviation Authority, CAA, into CASA and Airservices Australia was an attempt to solve some of the problems of the day, but unfortunately the underlying central issue has been magnified by the split, not eliminated, as outlined herein.

The split of the Civil Aviation Authority into CASA and Airservices was a proper attempt to separate a "service provision", provision of CNS/ATM services, from Air Safety Administration.

- *The split was a proper attempt to separate fee for service operations from the regulation of those services, a serious conflict of interest.*
- *The circumstances of the time precluded taking the next necessary step in addressing what are now very public and politically damaging CASA issues.*

Had the Morris inquiry not been overtaken by the political tide of the time, the author feels that a further volume of the Plane Safe Report, based on the mass of evidence from more than 300 days of sittings, would have come to similar conclusions to the author.¹⁶

- *The author's view has been heavily influenced by the Morris transcripts, and believes it is regrettable that the full value of this massive inquiry has not yet been realised.*
- *The CAA split did not address the inherent problems of Air Safety Administration, the problems of what was the Safety Regulatory Group in CAA, the division of the old CAA that became the CASA.*

¹⁶ The author has relied, in part, on the transcripts of evidence of all major and many minor inquiries and investigations into CASA and its predecessors in formulating this paper, and consequent recommendations.

THE QUESTION & THE ANSWER.

HAS CASA ESCAPED ESSENTIAL REFORM ?

The fundamental underlying problems of CASA are little different to many other older style bureaucracies in Australia, at both State and Commonwealth level, prior to the many public service reforms of recent years.

- *Reforms that CASA has so far escaped.*
- *Necessary reforms that have been carried out by Labor and Coalition Governments.*

AN APPEAL TO NATIONAL PREJUDICE

At this point, it is necessary for the author to make it very clear that he is not advocating wholesale adoption on the American system, far from it.

- *Such accusations made against the author's well know views have been used by various CASA persons, as a well-worn method of appealing to national prejudice¹⁷.*

This is always a convenient way of avoiding the real issues of air safety in the Australian context. See Appendix 1, US Federal Aviation Administration.

- *Quite simply the myth of the Australian air safety record is just that, a myth. Australia has never had the best air safety record. Qantas Airways has a world-renowned record, but Qantas is not the total of Australian aviation.*

The US has produced outstanding and steadily improving air safety outcomes.

Australia has not achieved such improvements in air safety outcomes, we have seen little real (as opposed to erroneously claimed) improvements in the last fifteen years

- *It is appropriate to restate the fact that the US does produce the world's best air safety outcomes, in all categories. The results are without challenge.*
- *Recent CASA propaganda to the contrary is completely misleading.¹⁸*
- *We should be doing everything in our power to learn from the US experience, and achieving as good, if not better air safety outcomes.*

¹⁷ CASA Spokesperson Peter Gibson, ABC Rural Radio, various, the CASR Part 133/137 issue. CASA Director, Mick Toller, Statement published in various newspapers at the height of the CASA generated Ansett debacle, Easter 2001,

¹⁸ AOPA Air Safety Study, Jon A. Bruner & AOPA President, 22 Feb 2001.

The EUROPEAN CIVIL AVIATION CONFERENCE - ECAC JAA

We should NOT be blindly following the European route, a system of indifferent air safety outcomes, a path the present CASA management is trying to impose, against the wishes of every significant sector of the Australian aviation community.¹⁹

The JAA framework of aviation regulations is so far very limited, and is a bureaucratic consensus result, often unrelated to aviation safety, with little evidence of acceptance of industry input. It is a practical nightmare in service.

At least in the JAA case, it could be said that enforcement is a national issue,²⁰ and therefor rulemaking has been separated from enforcement.

However, if there was any substance to this view, it is far outweighed by the very prescriptive and inflexible nature of the JAA style of regulation.²¹

- *It is openly acknowledged that many JAA "safety" regulations are based on factors that are unrelated to air safety.*
- *Many of the existing rules clearly exist as restraint of trade measure, using "safety regulation" as a trade protection measure in favour of very high cost European aviation companies, which are otherwise internationally noncompetitive.*^{22/23/24/25}

¹⁹ SCC Meeting May,2001: Nominal acceptance of FAA Regulatory format nominally conceded by CASA, but the real extent of this "retreat" by CASA is unclear.

²⁰ UK CAA have refused to accept JAA limitations on recognition of training conducted in US, on the basis that such a ban was contrary to UK Restrictive Trade Practice legislation and was not a safety issue.

²¹ Subsequent to the drafting of the original edition of this document, it has become clear that a change of policy is taking place in ECAC, with consideration of Industry "Codes of Practice" as a possibly preferred vehicle, rather than the present prescriptive and rigid system. The author believes this is in recognition of the increasing number of ECAC country's disenchantment with the original JAA approach.

²² See previous Note 10, Pilot Training US/UK.

²³ JAA non acceptance of US built aircraft, even when they are certified to "harmonised" FAR/JAR 23.

²⁴ Banning some US noise certified aircraft " because they only just meet the standard"

²⁵ JAA refusal to accept ICAO Annex 1 or Annex 8 standards.

A PROPER SEPARATION OF POWERS.

Australia must have an Aviation Safety Administration framework, a safety regulatory framework, which meets current normal Australian standards for public administration. The current CASA framework clearly fails this test.

- *A framework of proper separation of legislative, administrative and judicial power*
- *CASA does not meet this test.*

A fundamental restructuring of Aviation Safety Administration in Australia requires that the law making functions, the technical functions and high level surveillance, and law enforcement roles are separated.

- *The policy and law to be administered must be suited to Australia's national interests, must be technically competent and based on World's Best Practice^{26/27}.*
- *Such laws must pass all the tests of the Productivity Commission.*

In recent times, with the amendments to the Civil Aviation Act 1988 to remove the word "commercial" from the Act, the statement is now commonly made:

- *"CASA is not concerned with the commercial or economic consequences of its actions, CASA's only concern is air safety"²⁸.*

In the opinion of the author, this is a true measure of the incompetence of CASA, to suggest that any level of damage to the Australian economy is acceptable on the basis of a declaration by CASA that any action is for "air safety".

²⁶ World's Best Practice: In this instance, a rule that achieved its intent with minimum cost and restriction, and not to be confused with "World's Most Restrictive Practice".

²⁷ Australian "self administration" practices for Sports Aviation bodies are, in the opinion of the author, already examples of World's Best Practice.

²⁸ CAA Act 1988,S.3A: It is clear that "absolute safety" is not a required performance of CASA. See "safety": Gleeson, CJ, [Jones v. Bartlett [2000 HCA 56 at 23]]

ICAO AND THE CHICAGO CONVENTION

ICAO compliance should only be a guide, ICAO recommendations are all sufficiently flexible that Australia does not have to sacrifice its national interest to "comply with ICAO".²⁹

ICAO Standards, Recommended Practices and Procedures are, in themselves the product of a consensus that is not necessarily unquestionable, and many are well out of date in an aviation environment of the new millennium.

²⁹ CAA Act 1988, S.11: Only requires Australia to be "consistent with" Treaty obligations.

THE OPPOSITION TO REFORM

CASA Under Many Guises Has Been Able To Resist Permanent Change Or Reform With Remarkable Consistency and Success

- *Reforms that do not have the support of the CASA CULTURE are mightily resisted.*

If reforms are politically imposed, these reforms are reversed at the next change of Minister or Government, or otherwise at the earliest opportunity.³⁰

Even reforms that are not opposed by CASA senior management are blocked at District level, if individual "officers" of CASA do not personally agree with the reform³¹.

The "Law Enforcement" functions of CASA have been the subject of many inquiries, it is the view of the author that CASA day to day "enforcement" has little to do with objective air safety, and more to do with the prosecution of various CASA "informal" (ie no legal head of power) policies of various origins.³²

- *The 1999/2000 audit of CASA by the International Civil Aviation Organisation clearly illustrated this when they found a lack of objective standards for surveillance, noting that "CASA must be satisfied" was not a standard.*³³

³⁰ CASA & predecessors have always resisted the requirement to cost/benefit justify rules. During the legislative changes to create CASA, the legislated requirement to take into account cost was removed. This change was not noted in the Explanatory Memorandum to the Bill, and nobody knew that the rule had been repealed until after the Act was proclaimed.

³¹ District Office refusal to action Private Operations Instrument Rating legislation.

³² This is despite the Administrative Decisions (Judicial Review) Act and other legislative stipulations.

³³ ICAO Safety Oversight Audit of CASA, August 1999, Findings and Recommendations Relating to Primary Aviation Legislation and Civil Aviation Regulations, Appendix 1-2,

CASA - AS AN ADVERSARY OF AVIATION.

The real power of CASA versus the industry, in what is very clearly an adversarial role, is so over whelming that CASA is, for all practical purposed, law maker, investigator, prosecutor, judge and jury. Few in the industry have the power, financially, to resist a typical CASA onslaught.

- **"Power Corrupts, Absolute Power Corrupts Absolutely".**
- **CASA clearly fails the test of a structure to meet accepted and current standards of public administration, and as a direct result, the CASA system fails because it cannot succeed.**
- **Policing roles are never popular or easy, that is why it is so fundamentally important that (subordinate) law making, administration, and policing of the laws be separate, and be seen to be separate.**

A PREFERRED SOLUTION

CASA Have Completely Ignored The Possibility Of Learning From The Hard Won Experience Of Other Transport Modes.

The NSW Road & Traffic Authority Model.

For those of us with a long memory and a long time of residence in NSW, the predecessor to the present Road and Traffic Authority, RTA, will remember the old Department of Motor Transport, the DMT.

- *The DMT was a byword for inefficiency, poor service, and both institutional and criminal corruption.*
- *The problems of the DMT were very similar but less acute than the CASA problem.*

At least in the old DMT case, most low level enforcement was by police. Unfortunately police corruption, particularly the former Highway Patrol was such that there is a very close parallel between the DMT problems in totality, and the present CASA situation.

- *A similar solution will work in the Aviation Safety Administration field, as it has worked so well in the NSW road safety field.*
- *The present Minister for Transport and Regional Services has tacitly acknowledged this in the present published aviation policy.³⁴*

Despite this written policy direction,³⁵ and the encouragement of the Australian Airline Passenger Association, AOPA and others, CASA have completely ignored the possibility of learning from the experience of other transport modes.

The present Minister for Transport, The Hon. John Anderson, MP, in discussion with the author, has agreed with the author that the transformation of the DMT into the Stay Safe Committee and the RTA has made virtually all aspects of road safety administration in NSW *politically and operationally* non controversial.³⁶

- *Air Transport is just another mode of transport, there is no fundamental reason why the administration of aviation safety should be any different to any other mode of transport.*
- *There is no "mystique of air safety". Good risk management is good risk management in any industry, but CASA has resisted good risk management.*
- *The most serious myth is a myth of the superiority of Australian air safety, a myth that is a serious impediment in the quest to improve Australian air safety.³⁷*

³⁴ Civil Aviation Act 1988, S12: Minister's Charter Letter, p2 "--- the Board should closely examine the work of road safety regulators outside the aviation industry, in particular the road safety authorities".

³⁵ CAA Act 1988, S12(A)(1)

³⁶ The Hon. John Anderson, MP, meeting with AOPA President, Canberra, Nov. 2000.

³⁷ AOPA Air Safety Report, Jon A. Bruner 22 Feb 2001. ATSB & NTSB public air accident records.

RESISTANCE TO CHANGE

CASA and its predecessors have been remarkably successful in resisting any effective change or outside influence. This is despite the remarkable number of inquiries and investigations, large and small, carried out over the years.

During the terms of the author as Vice-Chairman of the Program Advisory Panel, PAP of the recent CASA Review, and Chairman of the Regulatory Framework Committee of the CASA Review, some quite remarkable things were said to me.³⁸

In fact the author also had a long-term wager with a now retired senior officer of CASA as to whether any significant reform would ever be achieved by the above-mentioned CASA Review³⁹.

- *The view of the retired CASA officer was that any reforms (if any at all !!) that might be achieved would only be a very short term change and would be rolled back once the Review had packed up and completed its work, or:*
- *The Minister or the Government changed, or:*
- *Any other opportunity to revert to "normal" arose*
- *Directing risk management resources in proportion to the areas of known risk is virtually unknown in CASA, the most graphic example of CASA rejection of accepted and validated risk management practices.*

THEY COME, THEY GO!!

The following comments were made about Ministers:

- *Ministers come and go, directors of CASA come and go:*
- *The core organisation, the core culture always remains.*

The sheer strength of the CASA culture, as was revealed during the early days of this most recent Review, was quite a revelation to the author. It is very clear that there can be no long-lasting reform in the civil aviation safety administration, and no achievement of the best air safety outcomes, under the present framework.

- *With the disbanding of the last CASA Review, and under the present management, there has been a complete resurgence of the CASA Culture.⁴⁰*

³⁸ "You tell us what industry wants, I'll tell you what industry can have"-- name available.

"We have to consult with Industry, we don't have to take any notice of what they say": CASA General Counsel, Archerfield PAP meeting.

³⁹ Former CASA District Flying Operations Manager: Name not for publication.

A MINIMALIST REFORM

Any minimalist attempts at reform, which do not address the underlying reason for so many years of turmoil, will fail, as all previous attempts have failed.

- *Unless the underlying issue of the separation of powers is addressed, aviation safety regulation will continue to be a political time bomb. Australia's aviation safety outcomes will continue to languish.*^{41 /42}

Indeed, one of the proposals floated to the author suggests a proposal that would recreate the Air Transport Group in a Dept. of Transport, headed by a Deputy Secretary of the DoTRS. The author believes it is only necessary to look at the history of the period before the formation of CASA to see that the period was not a happy one for the Government of the day, or the aviation community.

- *Reverting to an already failed model, with the reasons for the failure the same as the present underlying problems, will achieve little more than continuing turmoil for industry and political problems for any Minister responsible for aviation.*
- *While it is quite true that strong and effective leadership will bring some respite from CASA problems, it is fundamental to air safety that planning does not rely on heroic standards of behavior to maintain acceptable risk levels.*
- *Similarly, an air safety administrative system should not be dependent on heroic standards of management to keep a fundamentally flawed system from the next predictable and completely inevitable crisis.*
- *The author believes that the culture of CASA is so thoroughly entrenched that solutions that will work in a conventional Department will not work at CASA.*
- *Everything in the history of CASA and its predecessors supports the above contention, every attempt at reform within the historic framework has failed.*

⁴⁰ Senior CASA Officer to the author: " We are the experts, when we have decided the policy, we will tell industry what it is". The recent Discussion Papers, Parts 121A, 133 and 137 are the output of this "policy development process". All three documents are of little use. *The Chairman of CASA has publicly declared Part 137 DP "a disaster"*

⁴¹ AOPA Air Safety Study, Jon A. Bruner and AOPA President, 22 Feb, 2001, and supporting publications from the Australian Aviation Underwriting Pool, AAUP, and the Australian Air Safety Foundation.

⁴² The Minister for Transport has sent the AOPA Air Safety Study to US NTSB for confirmation of accuracy. The report will be confirmed, as it was prepared using publicly available NTSB and ATSB data. Senate RRA&T hearings have raised the possibility that ATSB data for the most recent available year understates the Australian accident record. *If this is confirmed, the Australian figures will reflect an even worse performance v. the US safety record.*

THE SEPARATION OF POWERS

THE CORE PROBLEM.

Australia must have an aviation safety regulatory structure that actually works in the interest of Australia, and Australian aviation, not just the interests and convenience of the aviation safety administration

None of the forgoing chapter will come as a surprise to students of the development of British styles and systems of government, public administration and the delivery of justice and the rule of law, in the last 200 years.⁴³

- *There is nothing unique or special about the problems of CASA being a severely dysfunctional semi-government organisation.*
- *The only thing that stands out about CASA is the ruthlessness with which the popular media is used to promote the idea that the CASA, as the air safety administration, is the only guardian of aviation safety and the public.*

The public "Fear of Flying" and general lack of knowledge of aviation, is ruthlessly exploited by the air safety authority of the day to reinforce the power of that authority.⁴⁴

- *Any proposed reform is presented as interference with the untrammelled activities of the safety administrator and is publicly promoted as an attack on aviation safety and an attack on public safety in general.*

In the long history of legislation in the development of public administration, the propensity for the executive/administrative arm of government to seek to shield itself from both the judiciary and parliamentary scrutiny is an issue on which textbooks have been written and academic courses have been constructed.

- *Lord Hewart remarked that executive government would always seek to avoid the scrutiny of the Parliament and the Judiciary.*⁴⁵
- *Protected by a cloak of the guardian's of Air Safety, CASA and its predecessors have been remarkably successful in exploiting the public fear of aviation, the fear of flying, to protect the CASA powerbase and maintain control.*
- *Inordinate resources are expended in areas that do not contribute to the aircraft accident record, maintenance, but accord with CASA preferences for satisfying an internal and public perception that has been generated by CASA in the first place.*

⁴³ Separation of Powers: Australian Federal Constitutional Law: G.Winterton, H.P.Lee, A.Glass & J.A. Thomson, LBC Information Service, Sydney 1999.

⁴⁴ During the "Monarch Inquiry", then CAA produced some thirteen Press Releases in three days, all claiming that boosted CAA budgets would prevent a re occurrence of accidents. It has not done so.

⁴⁵ The New Despotism: Lord Hewart, UK,1929.

In recent attempts by CASA to overturn joint Ministerial decisions⁴⁶ on the form of the aviation safety regulatory framework, we have seen a classic example of the attempts of executive government to put together a regulatory framework that avoids the scrutiny of the Parliament or the judiciary.⁴⁷

This is achieved by the simple expedient of trying to put the real day-to-day power of the organisation into documents, which are purportedly not disallowable documents. This is coupled with strengthening the provisions for administrative penalties imposed by CASA.

➤ *The last time this was tried was in mid'80's, when it was claimed that Civil Aviation Orders were not "legislation" and not, therefore disallowable documents.*⁴⁸

In light of the knowledge of the author and immediate colleagues, all of whom have been involved in the Australian aviation scene for many many years, and the examples available, we come to an inescapable conclusion.

➤ *We must have an aviation safety regulatory structure that actually works for the interests of Australia, and Australian aviation.*

➤ *We cannot have a regulatory structure whose prime purpose is:*

➤ *" The safe conviction of pilots and engineers "*⁴⁹

If problems like those of CASA are to be successfully dealt with, the basic structure of a reform program, to avoid continual repetition of the present problems, is a relatively simple task. CASA is not a big organisation. Instituting a change program is not a difficult task, once the decision has been made, but it must always be completed quickly, particularly given the Australian political cycle.

The author has already mentioned a prime example earlier in this document. The example is the reform of the NSW DMT, to produce the StaySafe Committee and the Road and Traffic Authority, with the great majority of low level enforcement just normal police operations, using accepted investigative and judicial procedures.

⁴⁶ Minister for Transport and the Attorney General, 1998, decision on "two tier aviation legislation", a two year attempt to reverse this decision was finally abandoned by CASA, at the CASA Standards Consultative Committee meeting, Canberra, 22 May,2001.

⁴⁷ National Press Club/CASA Web site: Director of Aviation Safety and CASA CEO, Mick Toller has even voiced concerns about the DPP and the Court System being involved in aviation matter, and making decisions that did not suite CASA.

⁴⁸ The prospect of being able to impose "Orders" without Parliamentary constraint cause the Safety Regulator of the day to issue a 3inch binder to all pilots, in which could be placed all the new "orders". The CAA Act 1988 was amended to make it clear "Orders" were disallowable documents. Mercifully, as a result of the amendment to the Act, an additional 3 inches of A4 "rules called orders" never eventuated.

⁴⁹ CASA Office of Legal Counsel, General Counsel: Statement to Regulatory Stewardship Group, RSG, to RSG Members, J.V.Kimpton, C.Boughton, W.J.R.Hamilton.

WILL IT WORK ??

WILL AVIATION REFORM IN AUSTRALIA EVER WORK ??

- *First and foremost, the reform program finally chosen must work because we cannot continue doing aviation business in Australia as we are doing at present time, and;*
- *Continuing as we are is not an option, the cost to Australia is too great, and;*
- *The Australian economy and the Balance of Payments cannot afford the CASA in its present form, with imposition of unjustified increased costs and restrictions, and;*
- *With every prospect of the Regulatory Enforcement impositions actually causing deteriorating air safety outcomes*

DETERIORATING AIR SAFETY OUTCOMES

It is widely acknowledged the present direction of CASA is highly likely to produce deteriorating Air Safety Outcomes, in addition to the financial losses to proprietors of aviation companies and wholesale closure of many small aviation companies, and the consequent loss of jobs and services.

There is not room in this document to fully detailed reason for the above statement.^{50/51}

- *I would ask the readers of this document to except the fact the authorities quoted support this contention.*

The reforms will work because they will very closely align the administration of aviation safety with similar administration of industry safety and other risk management standards related issues in many other safety critical Australian industries.

- *In conventional and accepted industrial risk management terms, it is the CASA that is seriously out of step with Australian and international best practice. This view was reinforced by the ICAO Report into CASA, and the Australian National Audit Office report into CASA 1999/2000/*

⁵⁰ See the collected works of Reason, Lee, Maurino, Kerns, Heimlich, Lewis, et al

⁵¹ Captain Dan Maurino, ICAO Montreal, speaking at SafeSkies99; "The Beatings Will Continue Until Moral Improves", in an address on failed air safety strategies. The CASA core policy, announced the same day, fitted perfectly the description of a failed policy to improve air safety outcomes, as detailed by Captain Maurino.

***A PROPER SEPARATION OF POWERS, A PROPER SEPARATION OF THE
LEGISLATIVE, ADMINISTRATIVE AND JUDICIAL FUNCTIONS***

- *The reform proposal will be effective for the same reasons that the reforms to the Department of Motor Transport in New South Wales were effective.*

In fact, it can be validly claimed that the NSW RTA is now an example of world's best practice, the structure has been exported to Germany, as the answer to similar intractable problems of dysfunctional executive government.

- *In the simplest possible terms proper effect must be given to a separation of powers, a separation of the legislative, the executive and the judicial process.*
- *The fundamental irreconcilable conflicts of interest must be eliminated, and formulation of proper standards, practices and procedures must follow the conventional course of Australian industry and international best practice.*
- *In terms of a theory of public administration, we propose a proper separation of powers, a proper separation of the legislative, administrative and judicial functions*

WE ARE FORTUNATE

A Working Example Of What We Need Is Right On Our Own Doorstep

It is proposed that detailed policy and subordinate or delegated legislation, to give effect to the proper management of aviation safety, be placed in the hands of body which is in many respects similar to the StaySafe Committee for road regulation in New South Wales.

- *The proposed structure is NOT identical to the NSW road safety model.*
- *The proposed body would draw from the experience in the development of the StaySafe Committee in NSW, and:*
- *The Australian aviation specific experience of previous reform programs, particularly:*
- *The success of the CASA Review/Program Advisory Panel, the PAP, and its associated structure of Industry/Government Consultative Committees.*

The proposal further draws on the knowledge of the US Aeronautical Regulatory Advisory Committee system, ARAC and other Standards setting bodies, such as:

- Standards Australia, AS;
- Standards New Zealand;
- New Zealand Civil Aviation Authority;
- The Society of Automotive Engineers, SAE, and;
- The American Society for Testing of Materials, ASTM.

THUMBNAIL SUMMARIES

In the appendix the author will include brief summaries of several countries which have aviation significance to Australia.

They will include:

The United States
The United Kingdom
New Zealand

INTERNATIONAL COMPARISONS.

- *That the formal structure of aviation safety regulation in most countries appears superficially similar is quite misleading.*

It is the historical and practical differences rather than the superficial similarities that are very significant in measuring the success or otherwise of aviation safety administration.

In successive appendices, the author has given thumbnail sketches of the author's views as to the relative merits or otherwise of the success or otherwise of various forms of regulation.

Several generalisations can be made, regardless of the details of any structure.

- *Firstly, the greater the degree of success in isolating the real regulatory structures from Parliamentary or judicial reach, the more dysfunctional and dictatorial and inflexible the bureaucratic body will be.*
- *Secondly, the greater the incorporation of industry expertise in a genuine and respected industry/administration partnership, and the fewer will be the serious and public arguments about air safety problems.*
- *The more enlightened the understanding of the very limited role "regulations" and "compliance and enforcement" play in achieving world's best air safety outcome, the better the achieved air safety outcomes will be.*

APPENDIX 1

FEDERAL AVIATION ADMINISTRATION of USA.

The author regards the US Federal Aviation Administration, FAA, as a very successful organisation. The FAA (and its regulations) is far from perfect, but that is only a small part of the "big picture" of US aviation.

This is when measured in terms of assisting to achieve a highly successful aviation industry, at all levels, combined with the world's best aviation safety outcomes, consistently improving over many years.

- ***There are many and complex reason for the dominance of the US in civil aircraft production and operation, particularly from the late 1920's to the present day.***

These are little known within the boundaries of the old British Empire, because a system of British Preferential Tariffs, and a system of outright bans on non British built aircraft, from any source, prevented Australian companies from operating non British aircraft until after World War 11. This was and is compounded by a strong but non specific anti US cultural bias in the "Old British Empire".

The "Company Culture" of the Federal Aviation Administration and its origins are worthy of consideration, because of the pattern of success of aviation in USA, literally dating from shortly after World War 1.

- ***The US has a highly developed system for joint industry/FAA development of all regulatory change. It has been proven to be highly effective over many years.***
- ***However, it is another aspect of the FAA that "proves the rule".***

In exceptional circumstances, the FAA Administrator can proceed "Direct to a Final Rule", and bypass the whole consultative process.

In every such case known to the author, FAA attempts to avoid consultation have always resulted in the same kinds of problems that are regarded in Australia as "normal".^{52/53}

- ***This fact is a powerful example of the vital need for industry involvement, beyond "consultation", to ensure acceptable and workable policy and regulatory outcomes.***

⁵² FAA central attempts to bypass the ARAC process with FAR 43/145, in the guise of the FAA/JAA harmonisation program requiring it, and the political uproar was something with which the Australian aviation community is all too familiar.

⁵³ "Cessna Exhaust" and "Bell 47 Blade Grip" Airworthiness Directives. Both had to be withdrawn or substantially altered, as they were unworkable in their original form. Forced consultation with industry as a result of the problems revealed showed that trying to avoid industry input only results in a far more protracted or totally failed outcome. When US adopts the "Australian way" the result is the same, unworkable outcomes, that have to be revisited at great cost in time and money.

APPENDIX II

It is clear to the author that there are several principal reasons for the relative success of the FAA, and I stress the word relative, because there is no organisation that could not be improved.

The Hon. Kim Beazley made an interesting comment to the author, as a result of his experiences as Minister for Aviation. He said:

- ***" The reason aviation in USA works is because it is too big for the bureaucrats to micromanage, in Australia aviation is so small the bureaucracy can micromanage it, and because they can, they do!"***

The FAA works, in part because:

- The detailed differences in the system government in the US and Australia.
- Those principal differences being the fact that the executive government in US is entirely separated from the Congress and the Senate.
- The history of the growth of civil aviation in the US. The growth of civil aviation in the US was not an outgrowth of the military.
- The administration of civil aviation in the US has always been a totally civilian agency, not an agency that grew out of the military.⁵⁴
- Because the FAA and its predecessors have always been civilian agencies, there has never been the resistance to industry or indeed civilian input into the processes of establishment and maintenance of an air safety administration.
- The very strong resistance we see in CASA is in part because of the number of ex military staff of CASA, with no civilian experience, and a learned and traditional military antipathy bordering on contempt, for civilians, especially pilots.
- The judicial function the FAA, with the system of administrative law judges and a right of appeal to an entirely independent body, the National Transportation Safety Board.
- This means that the compliance and enforcement functions are handled completely differently to similar functions in Australia. There is a judicial system that is sufficiently separate that the aviation community does not hold it in general contempt.
- The FAA has recently backed away from even their relatively benign administrative fine system, in favor of even greater emphasis on training and education.^{55/56}

⁵⁴ The original US body was the Civil Aeronautics Board, the CAB. The CAB started off as part of the US Department of Commerce. The original Australian body was an office of the military.

- The steady progress in improving air safety outcomes in US is a quite remarkable example of sustained policies of cooperation within the aviation community at all levels.^{57/58}
- Every segment of aviation operations has shown steady improvement.
- Despite the many shortcomings of the FAA structure, and a regulatory system that is far from "modern", the pragmatic approach taken at all levels, the very practical recognition that aviation is a practical pursuit, results in a system that consistently works.
- There may be a few creaks and groans in the FAA system from time to time, but the adversarial attitudes and literal enforcement zero tolerance "letter of the law" Australian approach is unknown.
- Where it matters, in dealing with blatant and deliberate contravention of the air law, the US system is unforgiving.
- A workable balance has been achieved, producing a vibrant and expanding aviation community, and ever improving safety results.

⁵⁵ The heavy reliance on punitive action in Australian aviation regulation is remarkable. Indicative figures for the last six months suggest that there was a greater total of formal enforcement actions in Australia than US. Australian aviation is about 5% of the US.

⁵⁶ Fourteen NSW country centres have lost air services in the past eighteen months. CASA has played a major role in causing the withdrawal of these services. Across Australia, the total is much greater, with some eleven small airlines or larger charter organisations being shut down. The author is informally advised that CASA "White Board" policy is to eliminate the use of piston engine aircraft from Regular Public Transport operations. The results of CASA activities lend weight to this claim. Public statements by the Director lend further weight to this "unofficial policy".

⁵⁶ The problems of the economics of Cessna 208/Pilatus PC-12 compared to Cessna 400 series of Piper Chieftain were presented in a paper at the Regional Airlines Association Australia Conference 2001.

⁵⁷ Political responses to public pressure are the main driver of "irrational" rule making: Nick Lacy, FAA Head of Flight Standards Service: Asia-Pacific Airworthiness Partners Conference: Brisbane, 1999: Despite the hundreds of millions of dollars spent in bringing Part 135 Commuters up to Part 121 standard, FAA is unable to identify any improved air safety outcomes". Author's Note: The cost to Rural and Regional Australia of a similar policy, "One level of safety" for the "fare paying passenger" will achieve the same end result, a major increase in costs, for no air safety benefit.

⁵⁸ The US rules for Emergency Locator Transmitters, ELTs were copied worldwide. The death of a US Senator in Alaska brought about the rule. Only now, about 20 years later, as a result of a campaign by AOPA of Australia, the ELT rules are being recognised for what they always were, economic waste, with statistically nil air safety benefit.

APPENDIX 111

NEW ZEALAND.

- *The New Zealand CAA structure has the same inherent flaw as CASA.*

The complete regulatory revamp in New Zealand has been a great success, and the reasons are well documented⁵⁹ but the inherent failings of the structure have once again become evident.

- *The honeymoon with the NZ CAA is over.*

As has happened for brief periods of time, the right people can make the wrong system work. However, the system will eventually fail, as has recently been demonstrated in New Zealand.

Prior to the recent major reform program, and the formation of a separate Airways Corporation to handle Air Traffic Control, NZ CAA exhibited all the problems of the Australian CAA, and now CASA,

- *Any system that depends on "heroic management" to succeed is fundamentally flawed, such a system will eventually fail.*

Such is the uproar surrounding (principally, but not only) medical issues, every representative group in the New Zealand aviation community has contributed to a fund to take High Court action against NZ CAA, seeking Court orders requiring CAA NZ to comply with its own Act and Regulations. The Director of CAA NZ has been forced to resign, as have several other employees, including the Director of Medical Services.

- *An inherently flawed system will fail, even with the best people, all that the quality of staff will alter is the total time to failure, New Zealand has just proved this.*
- *The New Zealand CAA has attempted to persuade the New Zealand Parliament to legislate to put the actions of the CAA beyond the District Court, a classic example of trying to put the Authority effectively beyond the Court System.*

⁵⁹ See the Marsh report to the Program Advisory Panel of the CASA Review. CASA 1998.

APPENDIX IV

THE UNITED KINGDOM.

- *The United Kingdom is an interesting, indeed fascinating study.*⁶⁰

Until post World War 11, UK was a very significant light aircraft manufacturer, and had a major airframe manufacturing industry.

Responsibility for training and testing was divided amongst various bodies in the aviation community. At the time the author first commenced flying in the UK, 1962, the arrangements were as approximately as follows:

- **The Board of Trade:** All licensing and medical standards, records, flight testing from Commercial Pilot License and up, some technical aspects of aviation and economic regulation of airlines, plus the National Air Traffic Service.
- **The ARB Ltd, a company owned by the major aircraft manufacturers:** All design and performance standards, and maintenance standards, all examination of these areas, including Performance and Operations for pilots, and supervision of many aspects of industry operations.
- **The Royal Aero Club:** All testing for Private Licenses.
- **The Guild of Air Pilots and Navigators:** All Instructor training and testing for General Aviation.

THE UK Civil Aviation Authority, CAA

In the mid 60's, virtually all these fundamental functions were progressively absorbed into UK CAA, and many believe the inflexible & bureaucratic CAA is a core reason for the virtual disappearance of conventional light aircraft manufacturing, major airframe manufacturing, and a major civil role as other than a component manufacturer.

In remarkable similarity to Australia, Sports aviation under the wing of the Popular Flying Association, PFA, is relatively prosperous, as "conventional GA" collapses under the weight of safety irrelevant administrative requirements.

⁶⁰ A draft thesis by the author, W.J.R.Hamilton. MAIAA, suggests a straight line correlation between the collapse of the post WW11 British civil aviation manufacturing industry, and the growth of the Government aviation bureaucracy, including the State airline corporations, BEA and BOAC. A case can be argued that the only commercially successful (with the possibly arguable exception of the Vickers Viscount) aircraft were designs to the specification of small non-Government airlines.

Under the auspices of UK CAA and JAA, almost 40% of the UK based GA fleet is no longer registered in the UK, and most of the latter are registered in US. Such is the vote for a practical endorsement of the general US approach to aviation safety regulation.

Light Aviation, conventional GA, has become progressively more unaffordable in the UK^{61/62/63} and most of the ECAC countries.

⁶¹ Royal Aeronautical Society: Occasional Paper, The Future of General Aviation, Anne Brooksbank: In this paper for the Royal Aeronautical Society, the author has forecast : Conventional General Aviation will cease to exist in UK within ten years, under the weight of "one size fits all" airline type regulation and the irrelevant consequent administrative burden flowing down to the operation and maintenance of small aircraft.

⁶² Royal Aeronautical Society: Occasional Paper Aircraft Maintenance. This paper estimated that the chargeable maintenance man hours for small aircraft has increased by 50% in the last ten years, without any increase in the actual man hours in hands on maintenance. The paper pointed out that the basic maintenance requirements for a DeHavilland Gypsy Major Engine had not changed in any substantial way since 1936. The only changes involve Airworthiness Directives, with little effect on routine maintenance.

⁶³ Sqd.Ldr. W.A.Webb, W.A.Webb Aircraft Engineering, Biggin Hill Airport, Kent, UK: Speaking to the author, Sept 1999: " It now takes me more time to complete the paperwork for the engine inspection on a Public Transport Dove, than it does to do the work".