

Professional Aviators Investigative Network.

PAIN.

Response to ASRR.

ASRR@infrastructure.gov.au



© Original Artist / Search ID: sran111

Rights Available from CartoonStock.com

Contents.

Cover letter.	2
Supported recommendations.	3
No objection recommendations.	3
Conditionally supported recommendations.	3
Item 4:	3
Item 8:	3
Item 14:	3
Item 17:	3
Item 18:	3
Rejected recommendations.	4
Items 3 and 20:	4
Items 9 and 19 :	4
Items 30 and 31.	5
Chapter 5.	6
Opinion.	6

Cover letter.

28 June 2014.

Mr David Forsyth AM (Australia)—Review Panel Chair.

Aviation Safety Regulation Review.

Dear Chairman.

The PAIN associates would like to thank the review panel and secretariat for their very much appreciated efforts; we are certain it was a difficult task.

As the report stands, the efforts made to 'shine a light' are noted, however it must be stated that while polite, political niceties are seen to be observed and delicate balances preserved, the industry is, literally, fighting for survival.

The ASRR report relies heavily on two supports:- that of a 'new' CASA Board and a 'new' director. No doubt the panel is fully aware of the published opinion and discussion related to both topics.

One of the fundamental weaknesses within the Forsyth report is the latitude granted for manoeuvring. There are several 'soft' areas where ample opportunity exists for an easy return passage to the CASA accepted norm. For example:-

R.18: Page 4. [This] procedure is to be followed in all cases, **except where CASA identifies a Serious and Imminent Risk to Air Safety.**

Currently, Colour Vision Defective (CVD) aircrew are being threatened with this codicil. There are no published guidelines or stated protocol to define 'what' is to be considered as a 'serious and imminent' risk. It is discretionary. PAIN can provide many examples (where the burden of proof, through show cause notice is reversed); of the most frivolous reasons being cited to invoke a "serious and imminent" accusation; resulting in Show cause being issued. There are simply no constraints, no justification, no checks or balances. A manager may simply 'declare', write the letter and once show cause is issued, it is up to the accused to prove 'innocence'.

There are many areas, within the ambit of the review which have been acknowledged but handled at arms length; for example, the Avmed department is distrusted, disliked and disdained by the DAME fraternity and aircrew alike and requires immediate attention. The ICC role is the butt of many derogatory remarks, again held in disdain and distrusted. We submit these issues have not been addressed any meaningful way, despite being of grave concern.

In conclusion, industry veterans are sceptical and the general view of the report is one of cynicism, tinged with hope. The Forsyth report takes some small steps along the road to rehabilitation and provides a glimmer of improvement; albeit depending on very the department under scrutiny to carry the burden of 'self correction'. The Minister should not be misled: the industry is hurting, cynical and angry. Remember, that which may be politely expressed within the constraints of tight terms of reference, without the 'guarantee' of privilege is not the same language used at the coal face to openly express industry contempt, lack of confidence and distrust for the CASA as it exists today.

Industry is, as always, willing to uphold their end of the bargain; but it would be a gross error of judgement to assume that it can be persuaded to tolerate another five years akin to the preceding five.

Thank you for your time, patience and courtesy, please accept our apologies for speaking bluntly, but we believe this is too important a matter to mince words.

Yours sincerely.

The editors – PAIN_Net.

Supported recommendations.

The following recommendations are fully supported:-

Items - 7, 10, 19, 23, 24, 25, 26, 27, 28, 32, 35, and 37, inclusive.

No objection recommendations.

The following recommendations raise no objection, provided the terms of reference are met and the associated infrastructure and oversight is functional:-

Items - 1, 2, 5, 6, 11, 12, 13, 15, 16, 21, 22, 29, 33, 34 and 36, inclusive.

Conditionally supported recommendations.

The following recommendations are conditionally supported with the noted provisions:-

Item 4:

Without demonstrable proof that the existing culture within the CASA has been radically changed, any CASA involvement with 'investigation' will be treated with deep suspicion. We believe this to be counterproductive as the existing reluctance to openly discuss a safety related event, even with ATSB is, at present, problematic. Currently an interview with CASA in attendance reduces the chance of discovering any form of meaningful information to a minus value. We believe it would be a grave error for the Minister to underestimate the distrust industry have of the CASA both as an organisation and of some officers employed.

Item 8:

Provided the CASA performance is actively monitored directly by the Minister or an independent 'Inspector', this recommendation may be supported. There is a clearly defined history of the CASA paying 'lip service' to many similar initiatives; being 'seen' to be compliant with the spirit and intent without any 'real or significant' change being effected within 'core' management.

Item 14:

Refer 4 and 8 above. Many have tried, none have succeeded. Much will depend on the DAS and the board, to be effective this item requires active, robust management and the oversight of, at very least, an independent 'Inspector'.

Item 17:

Refer 4, 8 and 14 above.

Item 18:

Refer 4, 8, 14 and 17 above. To be completely clear, industry has little faith and no confidence in the current iteration of CASA to manage change; this initiative, if not closely monitored will simply repeat the long history of window dressing and lip service to change until the 'spotlight' is dimmed.

Rejected recommendations.

The following recommendations raise the objections noted and are deemed unacceptable, as presented:-

Items 3 and 20:

Recently there has been fatal, light aircraft accident in which two men were killed. The accident presents classic signs of an aircraft being operated into weather conditions beyond the capabilities of both the pilot and aircraft. This type of accident reoccurs every few years, worldwide. As the 'new' generations emerge, the 'old' accidents reoccur. In years gone by, the Aviation Safety Digest (ASD) a.k.a. the 'Crash Comic' would, periodically publish cautionary tales on icing in winter, operations in poor weather etc. etc. The 'articles' were always drawn from first class accident investigations and transformed into an invaluable educational product. Without ATSB investigating 'all' accidents, valuable, real life safety education material is lost, to new generations.

For the most part, individual companies now rely heavily on internal safety management to provide their 'educational' and operational material; they do not publish their findings. Industry must rely heavily on the ATSB to 'fill in the gaps' and provide an equivalent standard of answers; CASA has not, particularly over the past five years produced any 'safety case' advice worthy of mention; the resource is squandered.

The logical step is to simply expand 'good' ATSB reports into 'educational' documents which could, as did the ASD, suggest or recommend procedures, practice and comment on the lessons learnt from less than salutary experience.

Items 9 and 19:

We fully concur with AMROBA and other industry associations and cannot support recommendation 9 (nine).

AMROBA states that it would not support Recommendation 9, warning that a collaborative culture would have to be established before such a scheme would work.

"Until CASA has proven that it has adopted a change to their regulatory philosophy and, together with industry, built an effective collaborative relationship on a foundation of mutual understanding and respect, this should be put on hold till it is achieved."

"Which certificate holder would accept a current CASA inspector as an employee? On the other hand, an industry person entering CASA would have access to competitors' records and intellectual property."

Items 30 and 31.

Officially, Australia has, since 1998 operated in a two tier legislative structure. The two tier structure has worked well for over 15 years, the recently introduced third tier has not. Participants involved with a CASR Part 42/145 organisation for example will confirm and define exactly what the problems are, even to a simple, routine matter such as negotiating a 'variation'.

To have a third tier of legislation (by whatever name, Manuals of Standards, Aviation Standards, CAO etc.) which require no less than full parliamentary process for each operational change is a significant impost; but, it is the built in rigidity, the 'inflexibility', which raises objections from an industry already enraged, disadvantaged by and burdened with the cost of regulation, combined with an aggressive, obsessive culture of micro management.

The premeditated, deliberate CASA manipulation of the "Manuals of Standards" (MOS) has been designed in such a way that Australia has, to all intents and purpose, been returned to a third tier structure; this without the benefit of industry consultation, consideration or acceptance.

The "manual of standard" terminology was originally used to describe certificates issued under CASR Part 21 such as aircraft TC, STC, APMA, ATSO. etc. **It was never intended to meet 'aviation safety standards' specified in 9(1)(c).**

Simply put, there is no risk reduction (safety benefit) in the current interpretation of 'third tier' of legislation. Arguably the reverse is true, due to regulator inability to act or respond 'quickly' to rapidly changing aviation circumstance. Indeed, it could be reasonably argued that the inflexibility of three tier regulation increases operational and accidental breach risk levels.

Under the Acts Interpretation Act 1901(Cth), the Legislative Instruments Act 2003 (Cth); and, due process to create/enact/change a legislative instrument, change can take years, while an AC/AMC (1) advisory) can be changed within days of a requirement becoming known.

(1) An incorrect, although commonly made statement is "Advisory Circulars (AC) are not enforceable". This is a complete misrepresentation of the legal position. The preamble to every AC states: "A way but not the only way to comply with Regulation ABC; (the regulation which raises the AC). However **"not the only way"** clearly releases the operator to 'negotiate' an alternative Acceptable Means of Compliance (ACM) with CASA.

Three tier legislation, modelled on the Canadian system would be acceptable, provided changes the current two-tier regulatory framework evolved to where the third-tier **standards** are drafted in plain, easy to understand language and **Regulations** are drafted in a clear succinct style, defining provisions for enabling standards and necessary legislative provisions, including offences.

Third tier 'standards'; provided as either 'legislation' or Advisory (Acceptable Means of Compliance) - must comply with CASA function under Sec 9 (1)(c) of the Act to develop and promulgate appropriate, clear and concise aviation safety standards. Amending '**standards**' specified in the regulations to "**aviation safety standards**" specified in regulations, to be provided in either Operational Specification or as an Instrument.

Section 98 5AB of the Act states that a legislative instrument can be issued. An instrument must not prescribe a penalty.

Chapter 5.

Part 2.6.6. Chapter 5, Options 4 and 5.

We believe the review panel have 'sidestepped' several core issues, germane to the discussion and of the review. Part 2.6.6. (page 24) being almost offensive to the intelligence of industry and not, in our opinion, worthy of the review panel.

In Chapter 5, options 4 and 5, fail to acknowledge the radical issues, or to persuade that the depth of industry anger at the time wasted, the inefficiency, the sub standard results and appalling cost (to industry) of the 'reform' process has been properly understood.

There is, we believe a deliberate attempt to distract attention away from core issues by the recitation of 'complex' legal reasoning for not allowing a simplification of regulation. The CAA NZ has managed to do this; EASA and the FAA are actively engaged in doing it: there is no valid reason for Australia not to follow their path. A NZ 'style' of regulation is urgently required; short, concise, unambiguous; and, importantly, providing an essential reduction in compliance uncertainty and accidental breach.

Opinion.

The PAIN associates believe the matter of 'how' the regulations should be structured and managed, for the benefit of industry should be opened to debate. As it stands, the review suggestions on the matter of regulatory reform are as nugatory and inconclusive as the proposed restructure of CASA is positive and excellent.

There is a great need to reform 'the authority' and the efforts of the panel in this area are applauded; however, to do this effectively it is essential there be a clear, unequivocal policy on the regulations within which both 'regulator' and 'regulated' must work.

A majority of recommendations in the Forsyth report may be implemented without need to amend the 'Act'. However, experience gained from previous inquiries, investigations, Senate and Ministerial reports clearly demonstrate, that the CASA method of 'implementation' will slowly, but inevitably return the 'system' to disarray. This will, once again, create an untenable situation forcing both government and industry to yet another review at some point in the future.

Without a complete renaissance of the CASA, regulatory reform will continue in the same expensive, unsatisfactory, embarrassing manner, it has for the past quarter century.

End Report. P2.
