



Royal Federation of Aero Clubs of Australia

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The Hon. Warren Truss MP
Deputy Prime Minister,
Minister for Infrastructure and Regional Development

Aviation Safety Regulation Review
Department of Infrastructure & Regional Development
PO Box 6100
Parliament House
CANBERRA ACT 2600

by email

30 June, 2014

Dear Minister,

Re: Aviation Safety Regulation Review - Report Recommendations Industry Comment

The Royal Federation of Aero Clubs of Australia [RFACA] commends you for implementing this Review and congratulates the ASRR members on a comprehensive and positive report that, if implemented, will significantly enhance aviation safety in Australia

The report and its 37 recommendations are in principle welcomed and agreed to by the RFACA.

That said, a major failing of the report is that it has not made recommendations for changes to the *Civil Aviation Act 1988* [the Act] and related legislation. Changes must be made to give effect to the recommendations. Without such changes to existing known problematic sections of the Act with inappropriately subjective wording that does not take any account of commerciality for the continued viability of the aviation industry, the recommendations can never be effectively implemented, as no Government or regulator can operate in disregard of the statute.

Section 3A – Must be Repealed / Revised

The objects of the *Civil Aviation Act 1988* [Cth] is as set out in section 3A of the Act: and states:

“The main object of this Act is to establish a regulatory framework for maintaining, enhancing and promoting the safety of civil aviation, with particular emphasis on preventing aviation accidents and incidents”

Whilst the aim of 'preventing aviation “accidents” and “incidents” is worthy, it is an obvious outcome envisaged by the main objective of s 3A: 'to establish a regulatory framework for maintaining, enhancing and promoting the safety of civil aviation'. The prevention of accidents and incidents is an objective in itself that is arguably beyond practical achievement however such a requirement that compels the regulator to place particular emphasis on the prevention of accidents and incidents and is therefore a principal objective of the Act, distorts the balance between practical, reasonable and acceptable safety outcomes on the one hand



and reasonable aviation outcomes on the other. Many of the issues with regulatory oversight brought to the attention of the ASRR have their origins in the requirements of 3A.

Section 9 A – Must be Repealed / Revised.

The primary directive to the CASA is as set out in current section 9 A of the *Civil Aviation Act 1988* [Cth] and states'

“CASA must regard the safety of air navigation as the most important consideration.”

There is no room to move here even against extreme costs that in the past have been imposed upon industry. The reality is that you cannot “ladle out safety”. Safety is a by-product of a process. The processes must therefore be specified and must be commercially realistic and have due regard to the intended design risk parameters of the certification category or operation intended. ICAO provides a wide range of target levels of acceptable risk. These should be accepted by CASA, both formally and philosophically. “Risk” is quantifiable; “safety” is an emotive expression without dimension.

The starting premise is that Australia must have a financially viable, vibrant, Aviation Industry.

This as the core object and directive must be fostered and promoted within the legislation supported by technical education, training, technology and assistance, drawing upon the considerable expertise within the industry to ensure the industry as a whole functions at an acceptable level of competency and operational risk.

As has been stated by Spencer Ferrier [aviation lawyer] in his submission:

“The present unspecific task of ensuring 'air safety' is logically meaningless” ... “There is no process presently in place to resolve who shall exercise that subjective view and how it may be reviewed, other than by executive fiat and later, expensively and slowly, by the legal process”.

The question of 'air safety' in any context should be settled not by the adversarial system of the law, but by a proper group decision of those capable of assessing the issue in question”.

“The current law is that the CASA need take no account of commercial issues. That is patently in need of reform. Aviation does not operate in a vacuum regardless of costs and the cost/benefit/safety issue is a continuing balance process for industry”.

The law must acknowledge the reality of the expense and cost of aviation when assessing 'safety' issues.

Aviation is a global activity. Australian Aviation businesses [whether training, maintenance, agricultural transport or special operations] have to be commercially competitive internationally and must not be specifically disadvantaged therein by the Australian Regulator or Australian Regulations.

Tiers of Legislation

In 1997, the CASA Review gave careful consideration to “two tier” versus “three tier” legislation, and the decision to change to “two tier” was a carefully considered decision, made jointly by, at the time the Minister for Transport and Regional Services and his department, [Secretary, Dr. A. Hawke], the Attorney-General's Department, and the CASA Review, the CASA Board [Chair: Mr. Justice William Fisher] the CASA CEO and supported strongly by the Program Advisory Panel of the CASA Review.



It is not possible, in the space of this letter, to make all the arguments, but suffice to say that we already have reverted to a defacto three tier system, with “Manuals of Standards” being secondary legislation, subject to the full weight of legislative development, including Parliamentary disallowance. We are already experiencing the complete inflexibility of the “three tier” system.

It makes no sense that, for example, that minor changes to weather minima criteria for a major airline have to be subject to the Parliamentary process of a Legislative Instrument. To suggest that a pilot training syllabus must be a Legislative Instrument is completely unnecessary, the “enforcement” is that the candidate does not get a license if the “standard” is not achieved.

In short summary, “two tier” legislation, comprising the Act and Regulations, supported by Advisory Circulars, is “a way”, but not “the only way” to comply with a regulation, and is consistent with:

- [1] Australian industry practice in general. [Documents such as Australian and New Zealand Standards [AS/NZ] Association publications are not Legislative Instruments].
- [2] “Two tier” legislation is consistent with the present Government’s policy on “red tape reduction”.
- [3] Harmonises with the United States FARs, with which we should be closely associating.
- [4] Allows flexibility, adaptability, and ease of modification, without compromising target risk levels [safety], indeed it allows rapid responses to potential risk reduction [more safety].

Aspects of the ASRR recommendations opposed by the RFACA:

Recommendation 4

The Australian Transport Safety Bureau and the Civil Aviation Safety Authority utilise the provision in their bilateral Memorandum of Understanding to accredit CASA observers to ATSB investigations.

The RFACA has significant ongoing concerns with CASA and its lack of understanding and implementation of a ‘just culture’. RFACA concerns regarding the critical importance of maintaining and in fact enhancing the deidentification of safety information provided to CASA will remain until the RFACA sees evidence of a significant change in CASA’s maturity in terms of appropriate responses to accidents and incidents that conform to a ‘just’ culture.

Recommendation 19

The Australian Transport Safety Bureau transfers information from Mandatory Occurrence Reports to the Civil Aviation Safety Authority, without redaction or de-identification.

Presently, when CASA suffers from such a significant range of weaknesses and problems as identified in this report, such an action would be premature and probably result in additional damage to the CASA/industry relationship. Such a recommendation could only ever be considered **after** CASA had successfully introduced a ‘just’ culture and had rebuilt trust with industry. The alternative is to see further undermining of the currently fragile accident reporting culture in Australia – mostly attributable to the fear of unfair prosecution or harassment by CASA.



Recommendation 20

The Australian Transport Safety Bureau transfers its safety education function to the Civil Aviation Safety Authority.

The Review Panel has presented no logical argument for this recommendation. ATSB fulfils a significant role with their style of safety education and they have far greater trust from the industry that their information is relevant.

We thank you for the opportunity to assist in these deliberations.



Milton Holmes
President
Royal Federation of Aero Clubs of Australia