# Aviation Safety Regulation Review

# Executive summary

Australia has an excellent, high-capacity Regular Public Transport safety record and an advanced aviation regulatory system. However, there are opportunities for the system to be improved to ensure Australia remains a leading aviation state.

The Aviation Safety Regulation Review makes 37 recommendations for the Australian Government to consider.

Despite Australia's good standing, the aviation industry is highly self-critical and regularly has a 'take no prisoners' approach to public discourse. While this critical introspection may contribute to its good record, it can at times be counter-productive to promoting rational public debate on aviation safety and to building a positive and collaborative national aviation safety culture.

The current relationship between industry and the regulator is cause for concern. In recent years, the regulator has adopted an across the board hard-line philosophy, which in the Panel's view, is not appropriate for an advanced aviation nation such as Australia. As a result, relationships between industry and the Civil Aviation Safety Authority (CASA) have, in many cases, become adversarial.

Leading regulators across the world are moving to performance-based regulation, using a 'trust and verify' approach, collaborating with industry to produce better safety outcomes and ensuring the regulator stays in touch with rapidly advancing technology and safety practices. On occasions, individual operators may push the boundaries and require close regulatory oversight and a firm regulatory response. An effective risk-based regulator will judge when a hard line is necessary.

A number of countries with advanced aviation regulatory systems have developed collaborative relationships between their regulators and industry, leading to open sharing of safety data. Due to the present adversarial relationship between industry and CASA, Australia lacks the degree of trust required to achieve this important aim. Sharing safety data is a fundamental principle of good safety management.

The Panel concludes that CASA and industry need to build an effective collaborative relationship on a foundation of mutual trust and respect. Therefore, CASA needs to set a new strategic direction. The selection of a new Director of Aviation Safety should concentrate on finding an individual with leadership and change management abilities, rather than primarily aviation expertise. Other jurisdictions have appointed leaders without an aviation background, who have been successful in changing the strategic direction of the safety regulator.

The CASA Board should exercise full governance over the organisation. The addition of two extra directors and filling of two upcoming vacancies provides an opportunity to ensure the CASA Board has an appropriate blend of skills including experienced practitioners from across the aviation industry.

To help improve the industry – regulator relationship, the Panel recommends that CASA align its organisation with industry, re-establish small offices at major airports, adopt an industry exchange program, devolve medical renewals to DAMEs, and publish service KPIs.

The Panel also recommends a number of changes in regulatory oversight. The regulatory audit program should reflect international auditing standards, fully disclosing findings during an audit and at exit briefings. Findings should be graded on a scale of seriousness. The Panel also recommends that CASA make use of third party commercial audits as a means of supplementing its surveillance program.

Current appeals processes, while having a sound basis, can be improved. The Panel recommends that the CASA Industry Complaints Commissioner report to the CASA Board and be authorised to convene independent review panels on merits matters, chaired by a CASA non-executive director.

The Regulatory Reform Program has been ongoing for over two decades and has changed direction several times. This has led to widespread 'reform fatigue' within the industry. A speedy resolution to the current program is required, and a more manageable (but regular) process of periodic maintenance should be adopted. This maintenance should only change regulations when change is required to improve safety, or to ensure harmonisation with global best practice and the Standards and Recommended Practices of the International Civil Aviation Organization (ICAO). Australia should ensure that its unique regulatory requirements are minimised.

Industry is frustrated with many new Civil Aviation Safety Regulations, viewing them as overly legalistic, difficult to understand and focused on punitive outcomes. The situation has arisen from a combination of the move to a two-tier regulatory approach, policy decisions by the regulator, and government drafting requirements. The Panel recommends returning to a third tier of regulation, removing as much detail as possible from regulations, and using plain language standards in the third tier. A reduced number of high-level offence and penalty provisions would remain in the regulations. The third tier of standards should be carefully drafted using small project groups of industry experts working with the regulator, separate from the day-to-day regulatory task.

The Australian Transport Safety Bureau (ATSB) has been heavily criticised in Australia for its report into the 2009 ditching of a Pel-Air Westwind off Norfolk Island[1]. Canada's Transportation Safety Board is completing a review of the ATSB and will report shortly. The Panel considers that the Pel-Air report was an aberration, and not typical of the high standard that the ATSB usually attains. The Panel recognises that the ATSB is putting measures in place to prevent a reoccurrence. To improve the ATSB's governance, the Panel recommends that an additional Commissioner be appointed, with extensive aviation experience.

ICAO requires that countries formulate a State Safety Program (SSP), which Australia has done. The Panel considers that Australia should develop the SSP as a strategic plan for the aviation safety system, under the leadership of the Aviation Policy Group. To implement this plan, the Department of Infrastructure and Regional Development should play a stronger policy role in the SSP, providing policy guidance while respecting the operational independence of CASA, the ATSB, and Airservices.

The Panel appreciates the significant level of interest, support and contribution from both the aviation community and government agencies.

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1    ATSB, Ditching – Israel Aircraft Industries Westwind 1124A, VH-NGA, AO-2009-072, August 2012

# List of recommendations

The Aviation Safety Regulation Review Panel recommends that:

1.  The Australian Government develops the State Safety Program into a strategic plan for Australia's aviation safety system, under the leadership of the Aviation Policy Group, and uses it as the foundation for rationalising and improving coordination mechanisms.

2.  The Department of Infrastructure and Regional Development plays a stronger policy role in the State Safety Program.

3.  The Australian Transport Safety Bureau investigates as many fatal accidents in the sport and recreational aviation sector as its resources will allow.

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.

5.  The Australian Government appoints an additional Australian Transport Safety Bureau Commissioner with aviation operational and safety management experience.

6.  The Civil Aviation Safety Authority's Board exercises full governance control. The non-executive directors should possess a range of appropriate skills and backgrounds in aviation, safety, management, risk, regulation, governance and government.

7.  The next Director of Aviation Safety has leadership and management experience and capabilities in cultural change of large organisations. Aviation or other safety industry experience is highly desirable.

8.  The Civil Aviation Safety Authority:

    a.  reinstates publication of Key Performance Indicators for service delivery functions

    b.  conducts a stakeholder survey every two years to measure the health of its relationship with industry

    c.  accepts regulatory authority applications online unless there is a valid technical reason against it

    d.  adopts the same Code of Conduct and Values that apply to the Australian Public Service under the Public Service Act 1999.

9.  The Civil Aviation Safety Authority develops a staff exchange program with industry.

10. Airservices Australia, in conjunction with the Department of Infrastructure and Regional Development and the Civil Aviation Safety Authority, reconsiders the policy on 'Assessment of Priorities' that stipulates that air traffic controllers sequence arriving aircraft based on category of operation, rather than on the accepted international practice of 'first come, first served'.

11. The Australian Transport Safety Bureau and the Civil Aviation Safety Authority amend the wording of their existing Memorandum of Understanding to make it more definitive about interaction, coordination, and cooperation.

12. The Civil Aviation Safety Authority delegates responsibility for the day-to-day operational management of airspace to Airservices Australia, including the designation of air routes, short-term designations of temporary Restricted Areas, and temporary changes to the classification of airspace for operational reasons.

13. The Department of Infrastructure and Regional Development and Department of Defence (and appropriate agencies) establish an agreed policy position on safety oversight of civil operations into joint user and military airports.

14. The Civil Aviation Safety Authority changes its regulatory philosophy and, together with industry, builds an effective collaborative relationship on a foundation of mutual understanding and respect.

15. The Civil Aviation Safety Authority continues to provide appropriate indemnity to all industry personnel with delegations of authority.

16. The Civil Aviation Safety Authority finalises its Capability Framework and overhauls its training program to ensure identified areas of need are addressed, including:

    a.   communication in a regulatory context

    b.   decision making and good regulatory practice

    c.   auditing.

17. The Civil Aviation Safety Authority publishes and demonstrates the philosophy of 'just culture' whereby individuals involved in a reportable event are not punished for actions, omissions or decisions taken by them that are commensurate with their experience and training. However, actions of gross negligence, wilful violations and destructive acts should not be tolerated.

18. The Civil Aviation Safety Authority reintroduces a 'use of discretion' procedure that gives operators or individuals the opportunity to discuss and, if necessary, remedy a perceived breach prior to CASA taking any formal action. This procedure is to be followed in all cases, except where CASA identifies a Serious and Imminent Risk to Air Safety.

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

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

21. The Civil Aviation Safety Authority changes its organisational structure to a client-oriented output model.

22. The Civil Aviation Safety Authority establishes small offices at specific industry centres to improve monitoring, service quality, communications and collaborative relationships.

23. The Civil Aviation Safety Authority shares the risk assessment outputs of Sky Sentinel, its computerised risk assessment system, with the applicable authorisation holder.

24. The Civil Aviation Safety Authority provides full disclosure of audit findings at audit exit briefings in accordance with international best practice.

25. The Civil Aviation Safety Authority introduces grading of Non-Compliance Notices on a scale of seriousness.

26. The Civil Aviation Safety Authority assures consistency of audits across all regions, and delivers audit reports within an agreed timeframe.

27. The Civil Aviation Safety Authority implements a system of using third-party commercial audits as a supplementary tool to its surveillance system.

28. The Civil Aviation Safety Authority establishes a safety oversight risk management hierarchy based on a categorisation of operations. Rule making and surveillance priorities should be proportionate to the safety risk.

29. Recreational Aviation Administration Organisations, in coordination with the Civil Aviation Safety Authority, develop mechanisms to ensure all aircraft to be regulated under CASR Part 149 are registered.

30. The Civil Aviation Safety Authority changes the current two-tier regulatory framework (act and regulations) to a three-tier structure (act, regulations and standards), with:

    a. regulations drafted in a high-level, succinct style, containing provisions for enabling standards and necessary legislative provisions, including offences

    b. the third-tier standards drafted in plain, easy to understand language.

31. The Civil Aviation Safety Authority structures all regulations not yet made with the three-tier approach, and subsequently reviews all other Civil Aviation Safety Regulation Parts (in consultation with industry) to determine if they should be remade using the three-tier structure.

32. The Civil Aviation Safety Authority reassesses the penalties in the Civil Aviation Safety Regulations.

33. The Civil Aviation Safety Authority applies a project management approach to the completion of all Civil Aviation Safety Regulation Parts not yet in force, with drafting to be completed within one year and consultation completed one year later, with:

    a. a Steering Committee and a Project Team with both CASA and industry representatives

    b. implementation dates established through formal industry consultation.

34. The Civil Aviation Safety Authority's Director of Aviation Safety meet with industry sector leaders to jointly develop a plan for renewing a collaborative and effective Standards Consultative Committee.

35. The Civil Aviation Safety Authority devolve to Designated Aviation Medical Examiners the ability to renew aviation medical certificates (for Classes 1, 2, and 3) where the applicant meets the required standard at the time of the medical examination.

36. The Australian Government amends regulations so that background checks and the requirement to hold an Aviation Security Identification Card are only required for unescorted access to Security Restricted Areas, not for general airside access. This approach would align with international practice.

37. The Civil Aviation Safety Authority amends the current Terms of Reference of the Industry Complaints Commissioner so that:

    a. the ICC reports directly to the CASA Board

    b. no CASA staff are excluded from the ICC's jurisdiction

    c. the ICC will receive complaints that relate to both the merits and the process of matters

    d. on merits matters, including aviation medical matters, the ICC is empowered to convene an appropriately constituted review panel, chaired by a CASA non-executive director, to review the decision

    e. while all ICC findings are non-binding recommendations, the original decision-maker is required to give reasons to the CASA Board if a recommendation is not followed.