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By Email

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Ms Ann Redmond
Assistant Secretary Aviation Reforms
Domestic Aviation & Reforms Division
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Dear Ms Redmond,

AUSALPA COMMENTS ON THE DRAFT 2021 AUSTRALIAN AIRSPACE POLICY STATEMENT

The Australian Airline Pilots' Association (AusALPA) is the Member Association for Australia and a key member of the International Federation of Airline Pilot Associations (IFALPA) which represents over 100,000 pilots in 100 countries. We represent more than 7,100 professional pilots within Australia on safety and technical matters. Our membership places a very strong expectation of rational, risk and evidence-based safety behaviour on our government agencies and processes and we regard our participation in the work of the Australia's safety-related agencies as essential to ensuring that our policy makers get the best of independent safety and technical advice.

AusALPA commends the drafters on adopting a more future-focused and risk-based approach to the draft Australian Airspace Policy Statement (AAPS) for 2021.

We note that there is a parallel consultation on the National Strategic Airspace: National Aviation Policy Issues Paper that, among other things, will inform development of Australia's Future Airspace Framework to be developed and implemented by CASA. At the risk of some repetition, we will seek to avoid the potential for some issues to remain unaddressed while the complementary coverage of both documents is established.

Residual issue from our 2018 submission

In 2018, we highlighted an apparent policy gap in administering Australia's sovereign airspace between the upper limit of Class A controlled airspace and, as we understood at the time, the lower limit of the Australian Space Agency jurisdiction of 100km above mean sea level. We expressed the view that Australian airspace policy should be seamless from ground level to the edges of space.

While civil aircraft operations are unlikely to exceed an altitude of Flight Level 600 in the immediate future, there are both defence and emerging civil technologies that will either primarily utilise or transit this very high altitude airspace. In each of these cases, collision risks arise both within and below that airspace.

AusALPA recommended that the AAPS should reflect both the agency to administer that airspace and the necessary coordination and administrative arrangements, including accident investigation, that are required to ensure safety is maintained. We still believe that such an inclusion is necessary in the AAPS.

Machinery of government issues

The draft AAPS highlights some significant machinery of government issues. These issues constrain the proper contemplation of airspace risk and mitigation, as well as the generation of appropriate safety-based advice to the Government.

The Office of Airspace Regulation

The 2021 draft replicates the text that insists that the Office of Airspace Regulation (OAR) will be a distinct operational unit of CASA. What is not clear is what that text means or is intended to convey in terms of airspace regulatory governance.

While there is a manager and dedicated staff within the OAR, there are three levels of management between the OAR and the DAS/CEO of CASA. Each of those supervising levels of management bring with them the politics of bureaucracy and the potential to impose perceptions of costs and detriments that may suppress real safety benefits or simply seek to appease other agencies most affected by OAR advice.

Airservices Australia

In theory, CASA as the safety regulator decides on airspace requirements and Airservices as the service provider gives those requirements substance. However, in practice, AusALPA perceives that Airservices attempts to control the narrative at all levels, both in terms of policy and implementation. It also appears that, despite the AAPS-implied independence of CASA airspace determinations, the mandatory "close consultation" might better be characterised as requiring "consensus". If, as we suspect, Airservices is granted excessive influence in airspace policy decisions, then the result is effectively a role reversal that largely sidelines OAR in the process.

Most recently, it appears to us that Airservices is trying to implement changes within the broad classes of airspace classification without invoking the Airspace Change Proposal (ACP) process. The proposed introduction of a Surveillance Flight Information Service (SFIS) at Ballina (and possibly Mangalore) is touted to provide a safety benefit through a new level of service that uses existing communications and surveillance assets, controller and technical skills and experience, but without changing the class of airspace. To the best of our knowledge, there is no ICAO standard for this type of service and no external scrutiny over the controller training, resource allocation or risk assessments.

Unfortunately, Airservices seemingly eschews transparency of any of its recent airspace and airspace-related activities, particularly consultation feedback, leaving us unable to verify whether these activities are being conducted wholly or in part to benefit Airservices' organisational requirements in preference to those of the industry and the traveling public.

Service and infrastructure costs

As with the 2018 AAPS, this draft reiterates the requirement to "consider cost implications for all airspace users". AusALPA strongly supports the consideration of costs in implementing regulations that prioritise safety – but not necessarily by CASA and certainly not so far down in the organisation as the OAR currently sits. We also question whether CASA can competently assess the real cost of its determinations.

The relevant costs here are service and infrastructure costs imposed on operators and the industry through the "user pays" mechanism from the activities of a monopoly for-profit service provider. In the absence of competition and public scrutiny, implementation costs solely determined by Airservices can be used as a powerful political tool both for and against risk mitigation determinations made by CASA.

Contextually, AusALPA considers that in the present circumstances Airservices acts more like a self-interested private entity than a public interest agency. There is little to no incentive for monopoly suppliers to minimise costs in a pass-through system where the end-user, the travelling public, has no real influence over the supply chain.

Both AIPA and AFAP wrote to Senators in regard to the Civil Aviation Amendment Bill 2019 and the potential consequences of economic decisions interfering with safety decisions. We warned of the difficulties of getting the balance right and not allowing private interests to overshadow public interests. Furthermore, we made the point that the aviation safety regulator has a difficult and narrow path to tread in ensuring that the public safety interest is met without unnecessary constraint on the public economic benefit and the participating private interests. The danger to the public safety interest comes from a safety regulator that gets role confusion and starts to act like an economic regulator. In our view, CASA had already demonstrated a propensity to dilute the former role for a taste of the latter, particularly in the areas of fatigue management, airports and airspace protection.

AusALPA has a strong view that OAR should not decide what is affordable or politically achievable. Instead, OAR should provide the DAS/CEO of CASA with risk-based advice, uncensored by the intervening levels of bureaucracy, which is then taken to an appropriate politico-economic forum for subsequent cost/benefit analysis. The most appropriate forum in our view is the Aviation Policy Group (APG). Importantly, all relevant decisions by the APG, including reasons, should be freely available to the public.

Transparency

AusALPA strongly reiterates that all matters of aviation safety should be transparent and fully open to public scrutiny. This very important document has properly shifted to a risk-based approach – consequently, the assessment of risks, their mitigation and frequent monitoring should be on the public record along with the analysis and reasoning behind decisions to act or not to act on emerging risks. Safety can never be a secret.

THE DRAFT 2021 AAPS

Clause 5

The term "a distinct operational unit" should be clarified.

Clause 6

Although Clause 6 simply summarises Part 2 of the Airspace Regulations 2007 (the Regulations), it raises a related question in the context of the SFIS proposal for Ballina whether regulation 9 *Particulars of air traffic services* acts to severely curtail CASA's powers as potentially authorised by s11(2)(c) of the *Airspace Act 2007* (the Act).

S11(2)(c) provides a head of power for CASA to make regulations to determine "the services and facilities to be provided by the providers of air navigation services in relation to particular volumes of Australian-administered airspace". However, the only

regulation related to s11(2)(c) is silent on making determinations and, instead, limits CASA to the role of publisher of the "details of the air traffic services that are to be provided", "including details of the manner in which the services are to be provided". Those details are apparently further limited only to those services provided "in accordance with Annex 11 to the Chicago Convention".

If that analysis is legally correct, then Airservices becomes the determiner of the manner in which Annex 11 compliant services are provided as well as both the standards and delivery of non-Annex 11-compliant services such as SFIS. That would be an entirely inappropriate outcome that is inconsistent with the scope of CASA powers envisaged under the Act.

Clause 8

AusALPA applauds the Government Policy Objectives generally and the safety objective in particular. However, subject to our further comment on Clause 13, we suggest that this clause could be expanded to make it clear that, although the Act makes equity of access a consideration, it is not a right and may be affected to a greater or lesser extent by the primacy of safety of passenger transport services.

Clause 11

As we understand it, Australia provides services additional to those required under ICAO airspace classifications. In pursuing a goal of closer alignment to ICAO, which we support in principle, there should be a reference somewhere to those features of our current airspace system that are different from ICAO and which have been identified for change by CASA. In many respects, ICAO adopts standards by consensus and by reference to the capability of various States to implement standards, thus creating common rather than best practise. The end result may be reductions rather than enhancement of services.

Clause 13

While the latter portion of this clause includes a mixture of safety, security and evidence protection, it nonetheless relates to equity of access as well. Consideration might be given to a separate clause combining those issues and the consequences. At the moment, it seems an uneasy fit with "regulatory Review".

Clause 14

The AAPS is for the action of CASA and the advice of others. Much of this clause involves considerations that are most properly the remit of other agencies, yet there is no guidance on how CASA is to meet these obligations. While there clearly appears to be a role for the APG, is there a more appropriate mechanism to ensure that CASA is properly informed by the other agencies?

Additionally, while the ultimate dot point relates to being a user of technological advancements, we believe that CASA should also be empowered to be a research leader in searching for cheaper, more efficient and effective communications, navigation and service (CNS) solutions.

Clause 16

Clause 16 basically defines the service levels for each class of airspace. The retention of Class F raises some questions, particularly as it is rarely used internationally and seems to be limited to special rather than general usage:

1. what services does an “air traffic advisory service” provide in the Australian context?
2. is our version of a “flight information service” identical to the ICAO version?
3. what are the practical differences between ICAO Class F and our Class G?
4. Is Airservices’ proposed SFIS actually a form of Class F, rather than a sub-class of Class G?

Given that there are no definitions in the draft AAPS, there clearly is a presumption that the terms embodied therein have formal primary definitions somewhere in the aviation legislation or advisory publications. A comparison of CASR Part 172, the Part 172 MOS, the CASR Dictionary, Airservices Manual of Air Traffic Services, ICAO Doc 4444 and ICAO Annex 11 provides no consistent answer of sufficient specificity for those four questions above.

It seems to us that, if the Act and the Regulations do not define these services, the AAPS is the Government’s direction on service levels and must provide greater specificity.

Broadcast Areas

Just as Airservices has their SFIS proposal, CASA has created Broadcast Areas – highly reminiscent of Mandatory Broadcast Zones from a previous era. Both inventions attempt to solve the deficiencies of self-separation in Class G airspace within an aerodrome’s Common Traffic Advisory Frequency airspace volume: SFIS with enhanced traffic information; and BAs with mandatory communications. Technically, the airspace remains as Class G but the service levels and communications requirements are different. AusALPA suggests that Clause 16 might be an appropriate place to recognise these different Class G variants and to exert some form of oversight of their use consistent with Clauses 22 -30.

Review and Change of Airspace Classifications, Services and Facilities

Removal of the previous Table 1 Airspace Review Criteria Thresholds is understood to have been instigated in order to provide OAR with greater flexibility to address airspace risk on a range of factors in addition to movement data, even though that option previously existed. To the extent that exceeding the previous thresholds did not result in expected changes, AusALPA accepts that little has been lost in the short term, given the much greater emphasis now placed on risk assessments.

Ideally, OAR will now provide much better risk statements and assessments, free in the first instance of economic or political considerations, which are well argued and readily available for public scrutiny as an appropriate historical record of the relevant safety considerations. The AAPS should clearly state that aspiration.

Proponents

The 2018 AAPS explicitly set out that the change process could be instigated by CASA or another proponent. The only mention of a “proponent” in the draft AAPS is in Clause 40, itself a mash up of the old clause 14 to include the new AFAF concept.

AusALPA strongly suggests that the draft be amended to make it clear that CASA is not the sole entity that can initiate a risk review and/or an ACP.

Clause 24

AusALPA fully supports the requirement for CASA to make a formal determination of airspace risk, noting that such a determination is, and must remain, free of any cost consideration by any party. This is a specialist assessment that must be conducted for worst case scenarios of peak traffic in the worst weather as well as for identifying daily and seasonal variations in risk. It should be a standalone risk determination, intended to inform but separate from the clause 27 airspace determination, and on the public record.

Based on our experience with CASA and its performance in risk assessment, we believe that the initial determinations under this draft AAPS should be independently advised and separately peer-reviewed by risk specialists recommended by the Australian Institute of Risk Management, the Risk Management Institute of Australasia or a similarly respected professional body. The intention is to quickly create a culture of robust standards and integrity in airspace risk assessment within CASA – a reflection of the central thrust of this proposed AAPS.

Clause 27

AusALPA strongly believes that CASA should publish as many of the public comments as possible, subject to privacy provisions, as well the final determination. That determination should be accompanied by a robust safety case that includes not only the identified risks and mitigations but also a statement of the intended risk outcome. It should be made clear that a determination made under this clause is entirely separate from and different to a determination of risk made under clause 24.

Future change proposals, whether actioned or rejected, should be benchmarked and included as part of the continuing safety case, which itself be on the public record.

Clause 28

“Close consultation” should not be misinterpreted to mean consensus. Airservices (or less likely Defence) must not be permitted to frustrate the process through any lack of cooperation.

Again, we must reiterate that CASA, as a safety and technical agency, should not be making economic or political decisions about risk mitigation – CASA should be providing advice to the APG who should be much better placed to be accountable for the impact of economics and politics on safety issues.

Clause 30

AusALPA accepts that there may be times when urgent action is required and parts of the prescribed process may have to be foregone. Given the shallow coverage of possible but unpredicted situations in the regulations, it is unclear why the insertion of “in accordance with the Airspace Regulations” has been inserted. We see that constraint as unnecessary and counterproductive in that form.

Notwithstanding, urgent action does not justify a subsequent lack of transparency and this clause should include a post-urgency scheme to allow public scrutiny of any decision made under this clause.

Clause 40

AusALPA fully supports the AFAF concept as outlined in clause 9. What remains unclear about the AFAF is where it will sit with existing manuals such as the CASA

Airspace Risk and Safety Management Manual or whether it is intended to become the Australian equivalent of the more comprehensive Eurocontrol Manual for Airspace Planning.

Clause 42

Clause 42 should be followed by an intervening clause that confirms that, despite all of the collaborative and consultative requirements, nothing in the AAPS prevents CASA from reporting to the Minister at any time that CASA identifies an unacceptable risk and the required collaboration/consultation is impeding or preventing a timely mitigation. Clause 30 contemplates such urgent action, but the additional clause should ensure an absence of doubt.

Concluding Comments

AusALPA welcomes the broad thrust of the draft AAPS, subject to a range of broader organisational issues.

Interposing three layers of management between the Manager of OAR and the DAS/CEO of CASA is not good governance or organisational design if the OAR is to have any effective voice in airspace regulation.

OAR should not be influenced or pressured by economic or political considerations when conducting safety-based airspace risk management.

Decision on the affordability or otherwise of airspace determinations should be made by the APG, not CASA.

The influence of Airservices should be reviewed to ensure that it is not excessive.

Above all else, accountability and transparency are critical to ensure that the best decisions are made for the right reasons to reduce risk in our skies.

As always, we are happy to participate in any processes that enhance the safety of Australian flight operations and protect the travelling public.

Yours sincerely,

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