ARCHERFIELD AIRPORT CHAMBER OF COMMERCE INC.

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30 June 2014

The Hon. Warren Truss MP
Deputy Prime Minister,
Minister for Infrastructure and Regional Development
Aviation Safety Regulation Review
Department of Infrastructure &
Regional Development
ASRR@infrastructure.gov.au
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Minister,

RE: AVIATION SAFETY REGULATION REVIEW - REPORT RECOMMENDATIONS INDUSTRY COMMENT

This submission is the Chamber's comment on the report and recommendations of the Aviation Safety Regulations Review of 30th May 2014. This may be published and is not confidential.

We believe that the report has not adequately addressed its terms of reference, that is, the Government's objective of reducing the cost of regulation to business.

In relation to the 37 recommendations we strongly disagree with recommendations 30,31, 9 and19.
In general we agree or conditionally agree with the other recommendations – largely along the lines as presented by AMROBA however these need to be embodied within legislation so the situation the Industry now finds itself cannot occur again with the next change of government or CEO.

Failure to Recommend *Civil Aviation Act 1988* etc be changed

The Terms of Reference of the review required the review to:

Provide advice to Government on priorities for future regulatory development and implementation strategies;

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Section 9 A – Must be Repealed / Revised.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. I.C.A.O 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 required is that:

Australia must have a, vibrant, Aviation Industry that is financially viable and sustaining.

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 and always having:

due regard to the design risk parameters of the certification category or operation intended

With acknowledgement of by Spencer Ferrier (aviation lawyers) in the submissions – we re-iterate:

"*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*."

Section 3A – Must be also be Repealed / Revised

The objects of the *Civil Aviation Act 1988 (Cth)* is as set out is 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.

Tiers of Legislation – Must be reverted to Simpler Two Tier – (i.e. Coalition Policy)

History

We have had a two tier structure, officially, since 1998, but CASA has handled "Manuals of Standards" in such a (deliberate) way that we are already back to a defacto costly third tier system.

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 Minster 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.

Three Tier Cumbersome and Inflexible

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 and its adverse costs upon industry.

It is ludicrous that, for example, that minor changes to weather minima criteria for a major airline has 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.

Summary Reasons to Maintain/Revert to Two Tier:

1. The decision taken by CASA Review in 1996 as to tiers was very carefully and professionally analysed and the decision supported by all segments of the aviation community, including AOPA and RFACA, AAAA, RAA, AATA etc, the Department of Transport, the Attorney-General's , the CASA Board (Chair: Mr Justice William Fisher), the Director of CASA, and the Minister's Program Advisory Panel of the CASA Review.

2. I.C.A.O does not require Three Tier complexity. Two Tier has worked well for over 15 years, the recently introduced third tier has not and in part is the reason for the review. Australia has a mature aviation industry with a good safety record that was built on a safety partnership between the Department and industry. Transferring to an enforcement compliance approach, instead of a (flexible) safety compliance approach has not been successful except for closing down many aviation participants.

3. Two tier is consistent with:
    i) USA/FAA
    ii) EASA --- which is a strictly two tier legislative structure.
    iii) New Zealand.
    iv) All the other counties that follow either the US or EU aviation regulations, which is a large proportion of the significant aviation nations.(Inc. China)

4. Is entirely consistent with:
    i) The review Terms of Reference and Australian Government policy on red tape reduction and the reduction of associated costs, and;

ii) Australian Government policy to remove redundant or unnecessary regulation that impedes industry. (The inflexibility of our defacto third tier, "Manuals of Standards", is a glaring example), and;
iii) The policy of the Productivity Commission, and;
iv) The Office of Best Practice Regulation, and;
v) The practice in Australian industry generally, where wide spread standards, most published by the Australian Standards Association as AS/NZ standards, are not legislative documents, but they are complied with, never the less, or a user must negotiate an "alternative means of compliance" with whatever Government authority administers the regulations that give rise to the standard.

5. There is no risk reduction (safety) benefit in a third tier. The processes to create/enact/change a legislative instrument can take years, but an Advisory Circular ("AC") or an Acceptable Means of Compliance ("AMC") can be changed in days. Two Tier allows flexibility, adaptability, and ease of modification, without compromising target risk levels (safety), indeed it allows rapid responses to potential risk reduction (more safety) e.g. technical innovation. Conversely due to the inability to quickly react to changing aviation circumstances; it could be argued that the inflexibility of three tier regulation increases risk (less safe).
6. A three tier system is entirely inconsistent with the terms of reference of the review, that is the Governments objectives of reducing the cost of regulation to business, more specifically

> examine and make recommendations on options for improving future aviation safety regulatory reform having regard to international experience and stakeholder views, and the Government's objective of reducing the cost of regulation to business;

Unique CASA Proposed Part 61 – is entirely rejected by Industry and must not be implemented

The proposed Part 61 is a monster, with a huge "Manual of Standards" (a legislative instrument), including such things as details for competency based training, training syllabi etc. The issues are way more complicated than this, but the bottom line is: We do not need a third tier of aviation regulation in Australia. In fact we need a lot less regulation in the second tier and the unique CASA proposed part 61 delivers neither.

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.

Yours faithfully
Archerfield Airport Chamber of Commerce Inc.

Lindsay Snell
President