

## By Email

29 November 2019

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Dear Mr Wolfe,

## 2019 NASF IMPLEMENTATION REVIEW

As you are aware, AusALPA represents more than 7,100 professional pilots within Australia on safety and technical matters. We are 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. Our membership places a very strong expectation of transparent, rational, risk and evidence-based safety behaviour on our government agencies and processes as well as for active engagement with us as key Australian aviation industry stakeholders.

AusALPA welcomes the opportunity to participate in this very timely Implementation Review, particularly as we remain completely independent of the political and commercial interests of other stakeholders.

### **AusALPA's Commitment to NASF**

AusALPA applauds the achievements of NASAG in creating the NASF. We consider the NASF to be well in the forefront of the essential protection of aviation infrastructure worldwide and we are committed to contributing our operational knowledge to furthering the positive achievements of airport safeguarding in Australia. Critically, we maintain a focus on aviation safety and offer perspectives that we believe that regulators, service providers and aircraft operators have consistently failed to provide in past consultations.

AusALPA recognises the inherent difficulties faced by NASAG participants, particularly those brought about by Constitutional issues and the politics of Federation. While we acknowledge the complexities, we nonetheless believe that the NASF is the best current vehicle to eventually achieve our goal of a standardised national approach to airport safeguarding that applies to all airports in all jurisdictions.

### **The Review Terms of Reference**

AusALPA considers the ToRs to be appropriately focused from an intergovernmental perspective on increasing the tempo of NASF implementation. However, given that we

are not yet a permanent participant in the consultative mechanism, it is difficult to identify the obstacles that apparently prevent the NASF from moving to congruence with our very strong desire for a single ubiquitous approach to airport safeguarding.

Importantly, it is far from clear to us whether the Commonwealth, the States or NASAG as a separate collaborative entity have a strategy or a timeline to achieve the endpoint of “full implementation” or an agreed description of what that endpoint will actually look like. None of the SCOTI/TIC communiqués identify either a strategy or a timeline.

Consequently, our comments have been formulated without the benefit of any real exposure to the thinking or planning of NASAG. The continuing lack of transparency by governments and their agencies is a significant threat to achieving balanced outcomes and, in some cases, has led to the perpetuation of otherwise avoidable safety risks.

### **Legislative Implementation of the NASF**

In the absence of a clear safeguarding endpoint, legislative implementation is doomed to be fragmented and potentially inconsistent, if not counter-productive.

AusALPA does not believe that the hopeful adoption of the Guidelines in State or Territory legislation, regulated individually by those jurisdictions in the absence of umbrella Commonwealth legislation is a viable model. The absence of any vestige of enforcement by DITCRD at the leased Commonwealth airports hardly sets an appropriate example for other levels of government. Unfortunately, a range of effective ownership and control issues mean that a simple single solution is not practicable.

While noting the much narrower focus of this review, AusALPA considers Australia’s airports as strategic national assets in the first instance, with their economic benefits following close behind. Notwithstanding that recent events at Essendon indicate little effective Commonwealth control over leased assets, the privatisation of all but the 22 leased Commonwealth airports has complicated the strategic management by governments of all our airports. Considering both Defence and Disaster Management implications means that strategic outcomes will necessarily remain a multi-jurisdictional issue. On the other hand, economic outcomes should remain with the relevant jurisdiction within which the airport is situated or which retains legal control.

However, in order to achieve our goal of a standardised national approach to airport safeguarding that applies to all airports in all jurisdictions, AusALPA believes that there needs to be a single authority that is ceded all necessary powers by each of the jurisdictions to enforce the intended safety outcomes. With the exception of *Guideline A Measures for Managing Impacts of Aircraft Noise*, AusALPA considers the remaining Guidelines to be all safety-related and amenable to the application and enforcement by one agency.

SCOTI/TIC has undertaken a number of such exercises previously: on 19 August 2011, the Council of Australian Governments signed Intergovernmental Agreements to establish the national maritime regulator, the national rail safety regulator and investigation system and the national heavy vehicle regulator. While AusALPA surmises that the compromises and concessions required in those spaces were relatively simple compared to the complexity of airport safeguarding, as far as we are aware there are no Constitutional challenges from the States and Territories to the current position that the Commonwealth covers the field in regard to aviation safety matters. Despite our reservations, CASA emerges as the least worst option as the choice of a single agency that all jurisdictions accept as the standard setter for most safety outcomes at airports.

While CASA has proven to be particularly weak in airspace protection, the reality is that they are weak regulators in all of the safety-related Guideline areas. More often than not, CASA hides behind a lack of legislated authority - but even where they do provide advice, as best as we can tell, it rarely if ever reflects any philosophical strength.

AusALPA considers this weakness to be primarily a function of the constraints placed on CASA by DITCRD, which clings to the legacy of the encroachment on safety matters of the *Airports Act 1996* as well as to an apparent over-sensitivity to Constitutional matters related to land use planning despite the aviation safety consequences. Although ICAO does not provide standards for the safety-related Guideline topics, that absence is no impediment to Australia imposing its own standards.

We believe that CASR Part 139 is the natural home for these standards.

Nonetheless, the protection of prescribed airspace needs a complete overhaul. At the moment, the only protection of prescribed airspace is empowered by Part 12 of the *Airports Act 1996* and the Airports (Protection of Airspace) Regulations 1996, of which paradoxically Guideline F at paragraph 23 outlines a workaround. That legislation only affects the 22 leased Commonwealth airports and is regulated by DITCRD, not CASA – at all other airports, CASA imposes a duty on the airport operator to prescribe and protect the OLS and PANS-OPS surfaces notwithstanding the lack of authority and power of the airport operator to protect that airspace.

AusALPA has no visibility of the extent to which State, Territory or local governments provide protection of that airspace from encroachment, if at all.

### **The Opacity of Implementation and Decision-making**

AusALPA's greatest difficulty is that, as the primary users most exposed to the safety risks, we continually need to force our way into the various debates and consultations.

Our greatest disappointment is that DITCRD, CASA and airport operators all actively frustrate scrutiny of compliance with the NASF – a complete failure to act in the public interest and to accept public accountability for actions, decisions and outcomes.

With very few exceptions, airports exist to serve the Australian public and the safety-related standards and processes exist so that we can make their travel as uneventful as possible. None of the safety-related standards and processes exist for the benefit of officers of DITCRD, CASA or the airport operators – AusALPA strongly believes that a total change of mindset is required.

Currently, the only visibility of the application of the NASF that we get is through the MDP process at the leased Commonwealth airports. Only Canberra and Sydney proactively engage with us, otherwise we have to hope that our very limited resources detect the notification of a pdMDP on individual airport websites within the relevant consultation window. We do not believe that such a hit-or-miss system for those major airports is the best that can be done in the interests of aviation safety.

Complicating the MDP issue a little further, the recent Airports Amendment Act 2018 increased the monetary threshold for MDP treatment to \$25M, fortunately somewhat less than the \$35M proposed. Our view is that environmental and operational risk consequences are not well correlated with project size and complexity and that increasing the threshold only hides more projects from public scrutiny.

AusALPA recently engaged with the Airport Building Controller (ABC) at Essendon in regard to a building that was under construction in close proximity to the runway and which appeared to penetrate the published OLS within even the inappropriately

truncated Guideline B assessment area. The development was not subject to an MDP and consequently there was no public consultation.

It took considerable effort to gain any information from the ABC, whose first step was to consult with DITCRD. Although the next step was to suggest that the legislation prevented the release of any information to us, we eventually gained a response to some questions on notice. One of those questions was about a Guideline B turbulence and windshear analysis – the ABC advised us that no such study had been conducted. Subsequently, in separate correspondence, CASA advised us that a study had been conducted.

It was never volunteered which agency had requested the study or who had conducted it, but it was most apparent that such a request was neither a standard requirement by the ABC nor the supervising section within DITCRD. In the end, we were left to surmise that there was nothing untoward in this assessment in CASA's possession – we were unable to confirm the technical details for ourselves and the building is now complete and occupied. While the solution to the OLS penetration issue was for the airport operator to artificially shrink the OLS, there is no such “smoke and mirrors” solution to mitigating the likelihood of building induced turbulence in the vicinity of the threshold of runway 08. There was absolutely no transparency of the building approval process and AusALPA has no evidence available to us that suggests that either CASA or DITCRD has the technical capability or interest in verifying the Guideline B analysis.

The only documented process for safety-related development analysis of which we are aware relates to the 22 leased Commonwealth airports. If we then consider the effective absence of any public scrutiny of the remaining airports in Australia, the combined outcome frustrates the public interest and is totally unacceptable.

### **Impediments to Full Implementation**

Notwithstanding our continuing concerns about the content of some of the Guidelines, in the absence of evidence AusALPA has little or no faith that the Guidelines are being properly applied, even at all of the airports subject to the *Airports Act 1996*. Given that the Essendon ABC is a company providing the same services at a number of airports, it seems reasonable to conclude that their corporate knowledge and procedures do not extend to applying some (or any) of the Guidelines to minor developments, regardless of the potential hazards.

If, as it appears to us, the DITCRD system doesn't work, then what models are the other levels of government intending to apply to what types of developments and with whom do they intend to consult in the process?

Recently, we heard that DITCRD is embarking on what anecdotally is their first enforcement action in airspace protection, despite many historical non-compliances, some of which were apparently egregious in their disregard for the existing legislative framework. In our experience, a track record of appeasement has never improved compliance. One story had it that, in order to avoid both embarrassment and the need for enforcement action, DITCRD attempted to retrospectively approve a serious OLS penetration but failed to complete the process before the crane was removed after many months of illegal operation.

If true, what enforcement models can we expect the other levels of government to apply given the Commonwealth's example?

Further to the likelihood of different enforcement models being applied according to the politics of State and Territory economic development, there is also the likelihood of

significantly different pathways for administrative and judicial review or other forms of dispute resolution. The NASF is silent in this regard.

## A Way Forward

To be clear, AusALPA recognises that the economic decisions surrounding airports, i.e. determining the balance between the economic benefits of developments and the detriments to the accessibility, efficiency and capacity of an airport, rest entirely with the relevant jurisdiction within which the airport is situated or which retains legal control. The issues of enforceability and dispute resolution of development approvals would remain consistent with those jurisdictional norms.

However, contrary to current practice, we are proposing that the assessment, mitigation and enforcement of the safety consequences of all relevant developments be ceded by those jurisdictions to CASA as an independent decision-maker.

Consequently, CASA needs to change its model of how airport standards are applied and enforced so as to obviate the gaming of the system so exemplified by the Essendon experience or by the uncontrolled expansion of the thousands of airspace penetrations at Sydney. As a further consequence, DITCRD should seek major amendments to the *Airports Act 1996* that change the current subservient and excessively constrained role attributed to CASA and that also clarify the safety considerations that ABCs must undertake in regard to minor developments.

Furthermore, we are proposing that the visibility of developments affecting the safety outcomes at airports is vastly improved in all jurisdictions.

The public interest is best served by accepting that the potential hazard created by a development is on or near an airport not a function of cost but rather the amalgam of the issues set out in the Guidelines. Each jurisdiction should commit to a public register of development proposals that may present a potential hazard to safe airport operations, enhanced by a published list of stakeholders who are alerted to each new relevant development submitted to the jurisdiction for approval.

Yours sincerely,



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