

**RAeS AUSTRALIAN DIVISION
SUBMISSION TO AVIATION SAFETY REGULATION REVIEW**

The Media Release that accompanied the review mentioned two specific issues:

- to make a good safety system even better, and
- The GA and regional aviation industry consider that the costs of regulatory compliance compare adversely with other countries.

These two issues may not be complementary, cost reduction changes may impact adversely on safety. The specific issues of industry concern were not advised, and therefore cannot be directly addressed. This submission can therefore only address issues that are known to members of the Royal Aeronautical Society Australian Division.

This submission will cover the following issues:

- The demands of the Civil Aviation Act that safety is the most important consideration;
- Differing standards for carriage of passengers under RPT and Charter;
- Risk Based Regulation;
- Effective Implementation of Safety-Outcome based rather than Prescriptive Regulations;
- CASA staffing; and
- Industry use of correct contacts to provide input to CASA.

The Civil Aviation Act

The role of the Civil Aviation Safety Authority (CASA) is specified in the Civil Aviation Act 1988. Section 9 of the Act defines CASA's functions, as shown below, but abbreviated to:

- CASA has the function of the safety regulation of civil air operations, in and outside of Australia territory.
- CASA also has the safety-related function of encouraging a greater acceptance by the aviation industry of its obligation to maintain high standards of aviation safety.

Section 9A states in the clearest possible terms that in exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration.

Section 11 requires CASA to perform its functions in a manner consistent with the obligations of Australia under the Convention on International Civil Aviation (Chicago Convention).

The Act therefore focuses CASA directly on safety. Nowhere in the roles of CASA is there any reference to having consideration of the economic situation of operators. Indeed, the Act is specific in insisting that CASA regard safety as the most important factor. No other factors are listed as having an influence on CASA. It is recognised that CASA is not prevented from having regard to other considerations, but those are always to be considered less important than the safety of air navigation.

This is a more demanding criterion than is imposed on the United States Federal Aviation Authority (FAA) which has a function of "Encouraging and developing civil aeronautics, including new aviation technology". Transport Canada, under section 4.2 of the Aeronautics Act (Canada), regarding the Minister's responsibilities in respect to aeronautics,

The Minister is responsible for the development and regulation of aeronautics and the supervision of all matters connected with aeronautics and, in the discharge of those responsibilities, the Minister may (a) promote aeronautics by such means as the Minister considers appropriate.

Hence, Australia by legislation requires that CASA have such a focus on aviation safety that issues such as economics are so secondary as to be not normally be considered. In practice, all actions of CASA must be done in consultation with industry, and economic issues are necessarily part of the consultation process.

The conditions and details of application regarding safety issues may have a significant impact on operator costs, and the wording of the Act may not accurately reflect community values in regards to recognition that economic and other considerations exist and that safety at any cost is not a pragmatic outcome. These are political issues, and can only be judged by a body that reflects Australian opinion, the Federal Parliament. The number of Parliamentary reviews of aviation safety in Australia reflects the difficulty in achieving the correct balance of priorities, but the importance of the issue warrants a fresh look at the Act under which CASA derives purpose and authority.

The RAeS Australian Division recommends that CASA's functions be reviewed to explicitly allow other factors beside safety to be considered by CASA in performing its functions.

Differing standards for carriage of passengers under RPT and Charter

Section 11 of the Civil Aviation Act requires CASA to perform its functions in a manner consistent with the Chicago Convention. The International Civil Aviation Organization (ICAO), a body of the United Nations, is charged with administering the Chicago Convention and with the governance of international civil aviation. An aspect where ICAO and CASA differ substantially is in relation to Categories of Operations. ICAO recognises Passenger Services, Aerial Work and Private Operations. In contrast, CASA splits Passenger Services into Regular Public Transport (RPT) and Charter operations, and applies substantially different standards to each category. ICAO expects the same standard to be applied to all passenger services, but CASA allows a lower standard for charter operations, substantially lower in some essential safety aspects.

This situation has been recognised for some time, and a change to the regulations was proposed some years ago. The latest exposure of CASA intentions is via Notice of Proposed Rule Making (NPRM) 0903OS, released in July 2012 and titled "Australian Air Transport Operators – Certification and Management, Proposed CASR Part 119 of the Civil Aviation Safety Regulations 1998."

This NPRM sums up the situation clearly in paras 3.2.1 and 3.2.2, which say:

... It is socially inequitable that present legislation in Australia allows discrimination with regard to the level of aviation safety that can be assured between different operators potentially providing in the majority substantially similar services. People presently travelling between centres where a scheduled service (RPT) is available are able to access aviation services that are of a regulated higher safety standard than those available to persons who presently travel on on-demand (chartered) aircraft services.

3.2.2 Furthermore, it is inconsistent with internationally accepted (ICAO) standards and those of many peer nations for Australia to continue to have different standards legislated for scheduled and on-demand air services. (NPRM detail attached).

The problem is adequately recognised in the NPRM, but the protracted delay to date in implementing the necessary changes does not give confidence that CASA will swiftly correct the current anomaly. The growth of Fly-In-Fly-Out operations in Australia increases the importance of achieving an adequate safety level for charter operations. The increase in these operations also means that regulatory delay will only increase the difficulty to introduce the necessary changes.

The RAeS Australian Division recommends that the development of CASR Part 119 be accelerated to provide a single high standard for the carriage of passengers.

Risk Based Regulation

Aviation regulation and safety decisions should be risk based, as is the case in Europe. This approach to regulation should go some way to addressing the concerns regarding different standards for RPT and Charter operations, because economics and potential outcomes (including reputational damage, etc) would need to be actively considered in establishing or changing any regulations.

Regulations by themselves do not guarantee safety. In defining regulations, CASA needs to recognise the risks involved and the likely costs in compliance. Similarly, the Australian aviation industry must also recognise the intent of the regulation and seek to develop cost effective methods for compliance.

Lastly, compliance by itself does not necessarily ensure safe outcomes. Recognising this situation, inspectors should assess operational performance, as well as compliance, and the key factors, including culture that influence it. Such an oversight program would take account of an organisation's own safety leadership, demonstrated understanding of risk, change management practices; and internal records of decision-making.

Effective Implementation of Safety-Outcome based rather than Prescriptive Regulations.

From the genesis of the CASA Regulatory Review, CASA made it clear that it would be creating an environment with a much greater focus on safety outcomes rather than the heavily prescriptive approach taken under the Civil Aviation Regulations 1988 (CAR). (See, for example, the CASA booklet "Safety management and the CEO" of 2008, ISBN-978-1-92-921475-02-3, pages 8 and 9 "The regulators role in managing safety".) To create this environment required the successful implementation of risk-management based Safety Management Systems that put the responsibility on industry management to ensure these organisational systems are effectively developed, implemented and sustained; oversighted by CASA surveillance, which was identified previously.

In the event, two issues arose that compromised this vision. Firstly the process applied to 'Australianise' the EASA regulations (the CASA approach, as agreed with industry, was to develop "EASA-like" regulations) has resulted in a progressive diminishment of the outcome-focussed approach, replaced by greater emphasis on prescriptive requirements. Nevertheless, those CASRs have now been made in the case of RPT and there is little or no likelihood of going back to the drawing board.

The second issue, about which something can be done, is that the interpretation and application of the CASRs has seen an even further move towards prescription, as CASA officers have either been inadequately trained and/or the CASA surveillance culture has stagnated and not evolved to be aligned with risk managed, safety outcome focussed systems. The actions of the regulator in enforcing the regulations are just as important as what the regulations themselves provide. It appears that the mindset is still to prescribe how things are to be done, rather than what outcome is to be achieved. This situation creates confusion in industry, loss of respect for CASA and its officers and potentially a diminishing of safety as a consequence.

The RAeS Australian Division recommends the adoption of a comprehensive risk based and safety outcomes focused aviation regulation and compliance approach for Australian aviation activities.

CASA Staffing

The effectiveness of regulation in assuring safety in a cost effective manner is greatly dependent on the quality and number of CASA staff. The agency must have adequate resources to afford to recruit and retain highly qualified, engaged and fair-minded experts, ideally with practical experience in aviation operations and its support, particularly CASR Part 145 Approved Maintenance Organisations operators where there is a need for appropriately resourced, adequately trained people involved in this area of speciality.

The RAeS Australian Division recommends that CASA brings in the expertise required to rapidly develop and embed a risk managed, safety outcome based operational model and engages in intensive training of its surveillance officers and relevant management so their skills are compatible with the original intent of the new CASRs; and to align with the rapid development of these skills and capabilities that have occurred within industry.

Industry use of correct contacts to provide input to CASA

Commonwealth Ombudsman

In 1995 the House of Representatives Standing Committee on Transport, Communications and Infrastructure (HORSCOTCI) conducted an inquiry into the safety of the commuter and general aviation sectors. Following completion of the inquiry the Committee published its report, titled PLANE SAFE.

During the inquiry, a number of individuals and organisations made submissions to the Committee, complaining that actions by CASA, and by officers of CASA, amounted to victimisation. The Committee's response, and the way forward recommended by the Committee, were given in PLANE SAFE, section 12.30:

12.30 The committee believes that industry organisations should encourage their members to appeal to the Commonwealth Ombudsman if they consider they are being victimised. Over the years the office of the ombudsman should be able to develop a profile of CASA which may require the regulator to restrain, admonish or transfer staff who are found wanting. If necessary the ombudsman should be given the necessary resources to handle any large increase in workload.

This sentiment is also found in one of the recommendations of the Committee. Section 12.32, recommendation (q) states:

industry associations be asked to encourage their members to take their complaints of victimisation by officers of the Civil Aviation Safety Authority to the Commonwealth Ombudsman.

The RAeS Australian Division believes the wisdom inherent in this recommendation remains valid today. In all industries that are regulated by a state authority, it is inevitable that some of those who are regulated will suffer experiences that leave them feeling they have been treated unreasonably or unfairly, or that they have been victimised. There is a risk that the accounts these people give of their treatment will be passed around the industry, possibly being embellished over time, ultimately doing damage to both the regulator and the regulated. In the case of the aviation industry, the Committee's recommendation is that anyone who feels aggrieved or victimised by the actions of CASA, or officers of CASA, should promptly take the grievance to the Commonwealth Ombudsman where it will be dealt with in a professional and impartial manner. It is not appropriate for persons aggrieved by the actions of CASA to seek redress by taking action directly with the CASA officer concerned or with a CASA manager.

The RAeS Australian Division also believes that, in the eighteen years since PLANE SAFE was published, the Commonwealth Ombudsman has not made adverse findings of the kind envisaged in section 12.30; and the Ombudsman has not developed a profile of CASA, which indicates a need for corrective or disciplinary action. The time is right for the Committee's recommendation of 1995 to be put before the aviation community again.

Other appeal mechanisms

The actions and decisions of CASA and other government agencies and Departments of State can be appealed to the Administrative Appeals Tribunal and the Federal Court of Australia. A small fee is chargeable for these appeals.

The RAeS Australian Division believes aggrieved persons and organisations should make maximum use of the appeal facilities available through the Tribunal and the Court. The Society is aware of aggrieved members of the aviation industry who take their grievances to other members of the industry, parliamentarians, celebrities and the media but who do not give the Tribunal and the Court the opportunity to examine their grievances in a professional and impartial way, and give a sound judgement on whether the grievance can be upheld or not.

If a member of the aviation community takes a grievance against CASA to the Administrative Appeals Tribunal or the Federal Court, and the result is that the grievance is upheld, it provides a clear and powerful message to CASA. If the grievance is not upheld, it provides a clear and powerful message to the aviation community. Either way, the outcome is much better than where the grievance circulates widely and informally throughout the aviation community, but without the support of a reliable judgement on its reasonableness.

Parliamentarians, the senior management of CASA and other aviation agencies should not pay undue attention to complaints and grievances that could have been tested in the Administrative Appeals Tribunal or the Federal Court, but have not. Parliamentarians and the senior management of aviation agencies should encourage members of the aviation community to make use of these appeal mechanisms wherever appropriate.

Aviation Industry Ombudsman

Lastly, Australia already has three bodies that essentially fill the role of industry ombudsmen: the Australian Airline Customer Advocate, the Aircraft Noise Ombudsman (ANO) and CASA's Industry Complaints Commissioner (ICC). It may be worth considering combining these three roles into a truly independent Aviation Industry Ombudsman. As the ICC is within CASA and the ANO is funded and supported administratively by Airservices Australia, there may be questions with respect to the independence of those two roles. An Aviation Industry Ombudsman could serve to create an independent view of industry health reporting to the Government as well as potentially providing a cost saving.

The RAeS Australian Division recommends a review and rationalisation of aviation industry appeal mechanisms, as well as a development of a continuing education program to ensure that issues affecting aviation safety are brought to the right agency and are resolved in an expeditious manner.

RECOMMENDATION SUMMARY

Listed below is a summary of recommendations contained in this submission.

- The RAeS Australian Division recommends that CASA's functions be reviewed to explicitly allow other factors beside safety to be considered by CASA in performing its functions.
- The RAeS Australian Division recommends that the development of CASR Part 119 be accelerated to provide a single high standard for the carriage of passengers.
- The RAeS Australian Division recommends the adoption of a comprehensive risk based and outcomes focused aviation regulation and compliance approach for Australian aviation activities.
- The RAeS Australian Division recommends that CASA brings in the expertise required to rapidly develop and embed a risk managed, safety outcome based operational model and engages in intensive training of its surveillance officers and relevant management so their skills are compatible with the original intent of the new CASRs; and to align with the rapid development of these skills and capabilities that have occurred within industry.
- The RAeS Australian Division recommends a review and rationalisation of aviation industry appeal mechanisms, as well as a development of a continuing education program to ensure that issues affecting aviation safety are brought to the right agency and are resolved in an expeditious manner.

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EXTRACT FROM CIVIL AVIATION ACT 1988

9 CASA's functions

(1) CASA has the function of conducting the safety regulation of the following, in accordance with this Act and the regulations:

- (a) civil air operations in Australian territory;
- (b) the operation of Australian aircraft outside Australian territory;

(ba) ANZA activities in New Zealand authorised by Australian AOCs with ANZA privileges;

by means that include the following:

- (c) developing and promulgating appropriate, clear and concise aviation safety standards;
- (d) developing effective enforcement strategies to secure compliance with aviation safety standards;
- (da) administering Part IV (about drug and alcohol management plans and testing);
- (e) issuing certificates, licences, registrations and permits;
- (f) conducting comprehensive aviation industry surveillance, including assessment of safety-related decisions taken by industry management at all levels for their impact on aviation safety;
- (g) conducting regular reviews of the system of civil aviation safety in order to monitor the safety performance of the aviation industry, to identify safety-related trends and risk factors and to promote the development and improvement of the system;
- (h) conducting regular and timely assessment of international safety developments.

(2) CASA also has the following safety-related functions:

(a) encouraging a greater acceptance by the aviation industry of its obligation to maintain high standards of aviation safety, through:

- (i) comprehensive safety education and training programs; and
- (ii) accurate and timely aviation safety advice; and

(iii) fostering an awareness in industry management, and within the community generally, of the importance of aviation safety and compliance with relevant legislation;

(b) promoting full and effective consultation and communication with all interested parties on aviation safety issues.

(3) CASA also has the following functions:

(aa) implementing the ANZA mutual recognition agreements;

(a) cooperating with the Australian Transport Safety Bureau in relation to investigations under the Transport Safety Investigation Act 2003 that relate to aircraft;

(b) any functions conferred on CASA under the Civil Aviation (Carriers' Liability) Act 1959, or under a corresponding law of a State or Territory;

(ba) enforcing the requirements of this Act and the regulations in relation to insurance and financial arrangements required under Part IVA of the Civil Aviation (Carriers' Liability) Act 1959;

(c) any functions conferred on CASA under the Air Navigation Act 1920;

(ca) entering into 83 bis agreements on behalf of Australia;

(cb) any functions conferred on CASA under the Aviation Transport Security Act 2004;

(cc) any functions conferred on CASA under the Airspace Act 2007 or under regulations under that Act;

(d) any other functions prescribed by the regulations, being functions relating to any matters referred to in this section;

(e) promoting the development of Australia's civil aviation safety capabilities, skills and services, for the benefit of the Australian community and for export;

(f) providing consultancy and management services relating to any of the matters referred to in this section, both within and outside Australian territory;

(g) any functions incidental to any of the functions specified in this section.

(4) In performing the function under paragraph (3)(f), CASA may, under a contract with a foreign country or with an agency of a foreign country, provide services for that country or agency in relation to the regulation of the safety of air navigation or any other matter in which CASA has expertise. Those services may include conducting safety regulation in relation to foreign registered aircraft under the law of a foreign country.

9A Performance of functions

(1) In exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration.

(2) Subject to subsection (1), CASA must exercise its powers and perform its functions in a manner that ensures that, as far as is practicable, the environment is protected from:

(a) the effects of the operation and use of aircraft; and

(b) the effects associated with the operation and use of aircraft.

11 Functions to be performed in accordance with international agreements

CASA shall perform its functions in a manner consistent with the obligations of Australia under the Chicago Convention and any other agreement between Australia and any other country or countries relating to the safety of air navigation.

Notice of Proposed Rule Making

Australian Air Transport Operators – Certification and Management

Proposed CASR Part 119 of the Civil Aviation Safety Regulations 1998

EXTRACT FROM NRPM 09030S

Para 3.2 Reasons for change

3.2.1 It is socially inequitable that present legislation in Australia allows discrimination with regard to the level of aviation safety that can be assured between different operators potentially providing in the majority substantially similar services. People presently travelling between centres where a scheduled service (RPT) is available are able to access aviation services that are of a regulated higher safety standard than those available to persons who presently travel on on-demand (chartered) aircraft services.

3.2.2 Furthermore, it is inconsistent with internationally accepted (ICAO) standards and those of many peer nations for Australia to continue to have different standards legislated for scheduled and on-demand air services.

3.3 Objective(s)

3.3.1 A discrepancy exists with regard to the regulated aviation safety standards between charter (on-demand) and RPT (scheduled) operations in present legislation. The principal aim of the proposal for Part 119 of CASR 1998 is that the discrepancy between charter and scheduled service (RPT) operations be minimised. It is proposed that this discrepancy would be addressed principally by increasing required standards for on-demand (charter) operations to match those already required for scheduled (RPT) operations.

3.3.2 It is the further aim for Part 119 of CASR 1998 to improve the focus of Australian air transport operators on the potential for human and organisational failure to cause accidents, and in doing so for them to build defences that will enhance aviation safety.

3.3.3 To be consistent with internationally accepted (ICAO) standards and those of peer nations for Australia.

3.4 Change proposals

Charter and RPT distinction to be minimised

3.4.1 Most differences in standards between charter and RPT operations are operational in nature and are therefore covered by proposed Parts 121, 133 and 135 of CASR 1998. However, there are several additional distinctions that Part 119 of CASR 1998 proposes to remove that are detailed (below) in this NPRM. The differing AOCs for RPT and Charter would be merged into only one AOC type for the carriage of passengers and/or cargo that would be called air transport operations.