Aviation Safety Regulation Submission

Dr Arthur Pape

This submission is a personal submission in relation to the Aviation Colour Perception Standard (ACPS)

Background:

I am a medical practitioner in General Practice in Geelong, Victoria. I hold an Australian Commercial Pilot Licence, a Multi-Engine Command Instrument Rating (MECIR) (not current), I am a Designated Aviation Medical Examiner (DAME) for the Civil Aviation Safety Authority (CASA). I have a colour vision defect (CVD), and in 1976 I started an examination of the ACPS that was driven by a conviction that the rationale then being given for the restrictions imposed on pilots with a CVD did not make sense. This work, after some twenty years of investigation and, led eventually to a challenge by myself in the Administrative Appeals Tribunal (AAT) whereby I sought to have the restriction on night flying removed from my Private Pilot Licence (PPL). This appeal was successful.

In the months following the appeal outcome, it became clear that the Authority of that time (1987) was unwilling to pass on the success of my appeal to any other similarly affected pilots. This fact led to a second appeal, in which I was intimately involved, whereby the wider issues involved in the ACPS were to be examined by the AAT for all classes of CVD and all levels of Pilot Licencing. This appeal was conducted in the name of Hugh Jonathan Denison, but was in fact, and by mutual consent between the parties, a broad-ranging 'Test Case' for all CVD pilots. The appeal was won in 1989 by the appellant and the restriction on night flying was subsequently removed for all classes of CVD. It was agreed by the parties that the Denison AAT decision should be promoted internationally as the most comprehensive and thorough examination of all the evidence pertaining to the topic of the ACPS

Without labouring the point too much, with the rational support of Aviation Medical Directors Rob Liddell, Jeff Brock and Peter Wilkins, many pilots who had earlier been prohibited from flying a small aeroplane at night, now found themselves, after the Denison Decision, able to seek employment as First Officers and Captains in the major airlines of this country. I have no access to data held by CASA, but I estimate there are many hundreds of Australian and immigrant pilots who have forged unrestricted careers over the intervening 25 years since the Denison decision. Their safety record is, to the best of my knowledge, without blemish.

In the last 30 years I have addressed numerous national and international aviation medical meetings on the topic of the ACPS and the significance of the Australian experience in promoting a rational and evidence-based approach to not only colour perception regulations, but aviation medical standards in general.

However, in recent times, it has become apparent that not everyone is happy with this situation, and this is particularly so in the current medical staff of the Office of Aviation Medical in CASA. Some see

the state of affairs that has existed for a quarter of a century in this country as a weakness and in breach of the International Civil Aviation Organisation (ICAO) Standards and Recommended Practices (SARPs). The current Principal Medical Officer (PMO), Dr Pooshan Navathe, has made his opinion quite clear in a recent statement of evidence to the Administrative Appeals Tribunal, and has set about unilaterally dismantling the privileges that CVD pilots have enjoyed, as I have said, for a quarter of a century. There are instances where pilots who had been earlier assessed as competent and safe notwithstanding their CVD status, and who had amassed many tens of thousands of hours of “safe performance of duties”, have in the last few months had restriction re-imposed that they had not suffered for decades. This unilateral development flies in the face of a complete absence of any reported safety issues throughout their careers.

What appears to have triggered this frantic and senseless behaviour is that a pilot who has NOT been afforded a completely unrestricted medical certificate as a consequence of his performance on some of the residual colour vision testing regimens, has lodged an appeal with the AAT whereby he is seeking to have those remaining restrictions removed. The appeal should have been a simple matter of evaluating the practical relevance of a device called the control tower signal gun, which employs coloured lights to convey, ostensibly, directions between the tower and an aircraft with a known radio failure. The basis of the appeal was to be that the control tower signal gun is never used in Regular Public Transport operations, and that in the extremely improbable event of a total radio failure, communications should be established using modern cell phone or satellite phone technology. Many pilots even with severe forms of CVD have passed the Control Tower Signal Gun Test, and as a result have been passed as “meeting the standard”. There are captains in each of our major airlines who owe their careers to the passing of this test.

There are two matters I wish to raise in regard to this appeal and to the measures taken by Dr Navathe in the interval since the appeal was lodged. The first is that the appeal in question legitimately sought to have an independent adjudication of a matter that CASA was unable to resolve, namely the relevance of the particular test being employed to differentiate between those who might be classed as “Safe” and those who should be considered “Unsafe” in respect of their CVD status. On the basis of the reasons for the appeal, the AAT allowed basiclly three days of hearing. However, Dr Navathe is turning this particular appeal process into a ‘de-facto’ appeal against the earlier Pape and Denison AAT decisions, with the stated aim of making Australia once again a strict and literal adherent the ACPS. His aim is to align Australian practice with that of New Zealand, a jurisdiction that has punitive restrictions in place for all but the mildest of CVD aircrew. My understanding is that Dr Navathe played a significant role in bringing about the New Zealand version of the ACPS. He intends to call many overseas witness in his endeavour to reverse the Australian implementation, which in my opinion is already fully compliant with the ICAO SARPs.

The second, is that the net result of this litigious approach by CASA is that there has been a huge cost blow-out for both the CASA and for the pilot who has lodged this appeal. It is estimated that CASA is likely to spend at least $600,000 on this appeal, and that the candidate’s costs are likely to be in the order of $3-400,000. This situation is nothing short of ludicrous. There is no safety case to support this approach by CASA, and is seen by many in the industry as outright bullying of the candidate.

In summary, Australia, as a direct consequence of the AAT appeals quoted, and in compliance with undertakings made by the Authority in the second AAT (Denison), as well as with the active support and involvement of three earlier Directors of Aviation Medicine, has led the world in bringing about a far more rational approach to the issue of the ACPS. The current legal manoeuvrings of the Office of Aviation Medicine are unjustified, extremely expensive and without any safety case to support them.

I make this submission in good faith and conscience. I am willing to provide further evidence if that is deemed necessary.

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