

John Washbrooke

# Aviation Safety Regulation Review – 2014

Thank you for this opportunity to make a submission to the *Aviation Safety Regulation Review – 2014*.

First a few words about my more than 50 years' involvement in the following areas of the aviation industry:

Aircraft, maintenance, manufacture, airline and, general aviation operations, flying and remote piloted vehicle systems (UAS).

*I was a member of CASA's Standards Consultative Committees – Maintenance Sub-committees for 8 years – hands on policy development.*

My background therefore provides me with an excellent perspective from which to analyse and to comment on the industry of today.

## SUMMARY of KEY ISSUES

### 1. *A look at the history recent Reviews and Papers:*

- a) As the Minister for Transport and Regional Services in the Howard Government, "On 14 September 2006 the Minister for Transport and Regional Services, the Hon Warren Truss MP, and the Minister for Industry, Tourism and Resources, the Hon Ian Macfarlane MP, jointly announced the establishment of an Industry Action Agenda for General Aviation."

The review resulted in the GA Action Agenda Report (version. 1.2) dated 12 August 2008 made some good recommendations - *but nothings changed!!*<sup>1</sup>

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<sup>1</sup> GA Action Agenda Report (version. 1.2) dated 12 August 2008

- b) The Federal Government released an Aviation Green Paper in December 2008 outlining a range of policy options and possible reforms for the future of Australia's aviation industry.<sup>2</sup>
- c) Next was the National Aviation Policy White Paper – Flight Path to the Future.<sup>3 & 4</sup>

*This White Paper was more of a direction for maintaining the airline industry, with very little value for general or recreational aviation.*

- d) The Regional Aviation Association of Australia (RAAA) has launched its *Regional Aviation Policy* – a timely pre-election call to arms against ongoing government antipathy towards an industry the association calls “an integral part in Australia’s development”.<sup>5</sup>

## 2. *Aviation Industry Relationship and interaction with CASA*

CASA processes are irrational and have not helped health and wealth of the aviation industry

## 3. *Aviation Industry Relationship and interaction with CASA*

CASA’s relationship with Industry appears to have not improved.

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## Aviation Safety Regulation Review – 2014 - **Terms of Reference (TOR)**

### Objectives

*The principal objectives of the review are to investigate:*

*a• the structures, effectiveness and processes of all agencies involved in aviation safety;*

*b• the relationship and interaction of those agencies with each other, as well as with the Department of Infrastructure and Regional Development (Infrastructure);*

*c• the outcomes and direction of the regulatory reform process being undertaken by the Civil Aviation Safety Authority (CASA);*

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<sup>2</sup> ACT Government to [Submission to Aviation Green Paper](http://www.cmd.act.gov.au/policystrategic/aviation) [www.cmd.act.gov.au/policystrategic/aviation](http://www.cmd.act.gov.au/policystrategic/aviation)

<sup>3</sup> Aviation White Paper: an overview by Matthew James Science, Technology, Environment and Resources Section, Richard Webb Economics Section 24 February 2010, 2009–10 - [www.aph.gov.au/library](http://www.aph.gov.au/library)

<sup>4</sup> National Aviation Policy White Paper: Flight Path to the Future, Published December 2009, ISBN: 978-1921095-96-2

<sup>5</sup> Item by [australianaviation.com.au](http://australianaviation.com.au) at 10:40 am, Friday March 22 2013

d• *the suitability of Australia's aviation safety related regulations when benchmarked against comparable overseas jurisdictions; and*

e• *any other safety related matters.*

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**TOR - a•** *the structures, effectiveness and processes of all agencies involved in aviation safety*

Aviation Industry Relationship and interaction with CASA

i) *Submission into the Administration of CASA and related matters by the*

*Aerial Agricultural Association of Australia Ltd.-*

*AAAA submission states a common problem:*

*"...Trying to work with CASA is generally akin to prolonged guerrilla warfare, where success goes to the industry person or organisation that can build an alliance with competent staff within CASA and assist them to defeat the other retrograde forces at work within CASA to protect turf, retain power, resist change and to stifle industry.*

*It is industry that leads and daily implements aviation safety in Australia, not CASA.*

*The effect of much of CASA's processes is to stop industry from achieving adaptation to a changing market rather than to facilitate it, often as a result of CASA staffs' personal outlook on aviation.*

*Transparency, accountability and clear performance outcomes are almost unknown concepts within CASA, despite pockets of forward thinking individuals who try and hold CASA to the same standards that should be expected of other public service agencies.*

*CASA does not have aviation problems - it has management problems...."<sup>6</sup>*

ii) *"...comments at a meeting in Melbourne last Friday 10<sup>th</sup> Jan 2014, during which 40 general aviation people had the opportunity to air their grievances about regulation with an attentive Senator David Fawcett.*

*The meeting aired many concerns, each one of which Senator Fawcett responded to individually. The over-arching concern was that unnecessary*

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<sup>6</sup> Aerial Agricultural Association of Australia L td. - Submission to the Senate Standing Committee, on Rural Affairs and Transport Inquiry into the Administration of CASA and related matters undated maybe 2007?

regulation was driving maintenance, repair and overhaul (MRO) and charter companies out of business...<sup>7</sup>

- iii) On 21<sup>st</sup> November 2011 CASA began Audit of Recreation Aviation Australia, a follow-up audit was begun during April 2012, which was followed by another audit in July 2012 and basically grounded the fleet of many aircraft.

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**TOR - b** *the relationship and interaction of those agencies with each other, as well as with the Department of Infrastructure and Regional Development (Infrastructure);*

As one who has worked for the old Department of Transport & Regional Services (DoTaRS) - Aviation Section and CASA on short term contracts, I was never ceased to be amazed at the lack of co-operation between all sections of the Department.

Ever since Departments were melded together to form a massive Department of Transport etc. aviation regulator management in Australia has gone downhill.

Cost cutting is not a formulae for safety management, neither is the government's requirement that all Departments are required to pay back Performance Dividends.

Now Airservices, ATSB and CASA are all under the management of one department, the Department of Infrastructure and Regional Development, - heaven help us!

The Department's name does not even mention transport or aviation, yet when Mr Truss was previously the Minister for a short time, after Hon John Anderson's retirement, he came in and shook the management tree and had public servants jumping through hoops.

His tenure was a short one, he did not achieve anything of note, before he was moved to another ministry - Trade!

Shortly after that, there was an election followed by a change of government.

#### CASA's Role as Regulator and Policeman

CASA has failed in its roles over the years as a Regulator and Policeman.

Will this Review do anything to improve a situation that is many years overdue for improvement?

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**TOR - c** *the outcomes and direction of the regulatory reform process being undertaken by the Civil Aviation Safety Authority (CASA);*

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<sup>7</sup> Australian Flying magazine e-letter 17 Jan 2014

CASA's "new" Maintenance Regulations has taken more than a decade to be developed!

There were a number of reasons for the delay:

- a) Initially the Technical Panel were instructed to align the "new" Australian Maintenance Regulations with the US FAA maintenance Rules,
- b) Then with a change of Director, we were told to align with European Regulations, in fact every time CASA got a new Director, we had to go back to start of the process again – another time waster for Industry.
- c) At one time the experience level in aviation of Panel Members was over three hundred+ (300+) years.
- d) After each meeting CASA staff would go and make the Panel's suggested changes to the draft legislation, but the legal people [OLD] (Office of Legal Drafting) who rarely ever attended any Panel meetings. Would reject those changes.
- e) So CASA staff would again rewrite the document to make it "legal", so when finally presented to the Panel, we would find the document was unworkable and did not address the intent of intend regulation – *a time wasting exercise*.
- f) Maintenance Regulations cover all aspects of the aviation industry, often the Qantas representative would present the airline view, which was impossible for the General Aviation maintenance sector to accept for many practical reasons.
- g) During the 8 years I was a member of the Panels, there was always a change of membership, both CASA staff and industry - at times new members wanted to re-invent the documents – a great time waster.
- h) CASA Management has been the reason behind the long-time taken to develop and implement the Maintenance Regulations.

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***TOR - d• the suitability of Australia's aviation safety related regulations when benchmarked against comparable overseas jurisdictions; and***

**Light Sport Aircraft Regulations**

- i) When CASA formed their Light Sport Aircraft (LSA) Working Group of which I was a member, the Group was fully involved with the US American Society for Testing and Materials (ASTM) in developing LSA Rules. Our LSA Working Group submitted changes to ASTM to increase their Stall Speed requirement to 45 knots, this was accepted into the final US LSA Rules.

- ii) However, since then it appears that CASA has not contacted nor attended any ASTM (now ASTM International) meetings since 2006 based on information from a Chairman of an ASTM International LSA Group.
- iv) This lack of interface with ASTM, may explain why CASA has a lack of knowledge of International LSA Rules or an understanding of European Light Sport Aircraft certification.
- v) The following statement says a lot:

“...In all this, whether it is ASTM or understanding EAS Aregulations, we cannot compensate for a CASA lacking to do their homework in inetrnational Authority relationship! Sounds to me again and again, they live on the island and do not care what happens around them. A shame !!...”<sup>8</sup>

### CASA's grounds hundreds of RA Aus registered aircraft in 2012.

CASA over the years have performed many audits of the files held by the former Australian Ultralight Federation (AUF) and Recreation Aviation Australia (RA Aus).

Some 10 years ago, I was the AUF Technical Manager and I was trying to get all AUF aircraft documentation files analysed for any missing data and then was requesting Owners, Importers and Manufacturers to forward the missing items.

However, back in mid-2003, the AUF Executive Officer and Board complained about my diligence, saying I was acting too much like CASA in wanting all aircraft records to be complete and up-to-date!

Fast forward to 2011, CASA carried out audits on RA Aus aircraft files which resulted in the grounding of many hundred aircraft.

My question is how come it took more than 10+ years of CASA audits, to find these so called non-compliances?

Some so called non-compliance's were claimed to be for MTOW limits others for fitment of inflight adjustable propellers to LSA aircraft and others for missing documentation, etc.

- 1) The CASA claims of a number of imported Type Certified (TC) Ultralight aircraft being granted incorrect Max Take-Off Weights (MTOW), is a totally uninformed decision by CASA staff.

Those aircraft have been operating safely for up to 10 years in accordance with their registration MTOW statement.

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<sup>8</sup> Extract from an email sent on 21 August 2013 2:53:38 PM AEST by the Technical Director of a EU LSA Manufacturer

- 2) CASA Certification Managers in 2002 developed Guidelines for Importing Type Certified (TC) Ultralight to be used by AUF Flight Training Facilities.
- 3) A number of Type Certified Ultralight Aircraft imported during 2002-03 were “Accepted” by the AUF in conjunction with CASA Certification Staff and Guidelines.
  - a) For example – an aircraft type picked as operating at an incorrect MTOW by CASA was the German built and Type Certified ultralight aircraft - Flight Design CT2K.

The TC and TC Data Sheets were inspected and accepted in April 2003 by CASA Certification staff with the CT2K being granted approval to operate at a MTOW of 544kg.

- b) The AUF issued an Acceptance Certificate of the Flight Design GmbH CT2K aircraft included the following notes:

- “i). CT 2K aircraft is restricted to a Maximum Take-Off Weight of 544 kg”<sup>9</sup>
- ii) Ultralight aircraft operated in Europe have MTOW limit of 450kg.”

“...The German Type Certificate for the following products issued; Ultralight Aircraft - The Type Certificate Data Sheet No. 61.151 is part of this Type Certificate”

The TCDS Compliance Documentation in Section A states”

“1. Target

*This Compliance Documentation is made to proof that*

- (a) *with maximum take off weight 450 kg CT2K meets all requirements for ultra light aircraft BFU95 which ensure safe utilization of CT to fulfil tasks and do not endanger air traffic;*
- (b) *with maximum take off weight 600 kg CT2K can be safe operated beyond the BFU95 mass limitation...”*<sup>10</sup>

- c) Thus based on the above Type Certificate Data Sheet No. 61.151 CASA approved the AUF to Accept the CT2K for operation at 544kg. <sup>11</sup>
- d) It seems CASA Sport Aviation auditors had not checked their records before taking action. <sup>12&13</sup>

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<sup>9</sup> AUF “Acceptance Certificate of the Flight Design GmbH CT2K” aircraft dated 17 April 2003

<sup>10</sup> German Type Certificate Data Sheet No. 61.151 dated 6 June 1999

<sup>11</sup> CAO 95.55 Paragraph 1.6 Issue 3, dated 18 October 2000

Note: Reference to Civil Aviation Order 95.55 was revised in 2011, paragraph 1.6 was removed and replaced by:

1.2 (f) Aeroplane

“...(iii) that has a maximum take-off weight not exceeding:

(A) in the case of an aeroplane not equipped to land on water - 600 kg...”<sup>14</sup>

*Explanatory Statement states:*

“... One of the changes has been to increase the maximum weights specified in some of the specifications to 600 kilograms for an aircraft not equipped to land on water and to 650 kilograms for an aircraft equipped to land on water. This is in accordance with equivalent standards in place in overseas countries where many of these aircraft are manufactured. It will allow the operation under the new Order of some aircraft that had previously not met the previous limitations....”<sup>15</sup>

Based on the above CASA guidelines, the AUF Technical Manager in 2003 wrote a procedure to enable TC aircraft of European Manufacture to operate at an increased MTOW.<sup>16</sup>

“..Interestingly, I presented this to Mick Pool at Avalon this year and was told "It's not worth the paper it's written on and ... "I have no way of known it's real, you could have made it up...”<sup>17</sup>

Comment is typical of Sport Aviation Office's attitude to the Industry.

4) *The fitting of inflight adjustable propellers (IFAP) to new LSA aircraft.*

a) Another case of CASA auditors not doing their homework prior to acting, if they had, they would have found that in:

Advisory Circular AC 21-42(1): *Light Sport Aircraft Manufacturer's Requirements*

**6.7.5 If the manufacturer decides** to include a type certificated product such as an engine or propeller in its aircraft, then these components are still subject to the

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<sup>12</sup> AUF Procedure to obtain approval to operate at an MTOW greater than 450 kg in Australia - 2003

<sup>13</sup> Email from Gary Carr (CASA) Subject: Approval to operate at an MTOW greater than 450 kg dated 17 Feb 2003

<sup>14</sup> Civil Aviation Order 95.55 dated 6 April 2011, Federal Register of Legislative Instruments F2011L00617

<sup>15</sup> Explanatory Statement to F2011L00617, Civil Aviation Act 1988, Civil Aviation Order 95.55 Instrument 2011,

<sup>16</sup> AUF Procedure to obtain approval to operate at an MTOW greater than 450 kg in Australia - 2003

<sup>17</sup> Record of conversation with Mick Poole CASA staff to Shaun Seipel - Flight Design Dealer at 2013 Avalon Airshow



requirements of the CASRs. For instance, the data plate of a type-certificated product such as an engine or propeller should be in accordance with CASR 21.820.<sup>18</sup>

“...The intended effect of the rules covering these standards is to allow the manufacture of safe and economical aircraft, to be operated for the purpose of sport and recreation, to carry a passenger, and to conduct flight training...”<sup>19</sup>

- b) Please note that I have bolded the above section of the reference.
- c) The important words are “***If the manufacturer decides***”
- d) So **if** CASA staff had been fully aware and understood Advisory Circular AC 21-42(1) before the audit of RA Aus LSA aircraft files in 2011-12, they may have not caused so much grief to Recreational Aviators.
- e) CASA staff refused to help aircraft importers and owners to come up with a way of overcoming certification problems caused by aircraft with IFAP.
- f) I was requested to write a Submission to the ASTM International to get an ASTM ballot going to propose an enhancement to the ground adjustable standard that EASA has in CS-LSA

I also requested Australian based LSA aircraft importers to support my submission, but did not inform CASA staff’s due to their negative approach to fitting of in-flight adjustable propellers to new LSA aircraft. RA Aus likewise were not informed of the Submission to ASTM.

- g) Our Submission was successful in achieving:

[ASTM International](#) (formerly known as the American Society for Testing and Materials) has recently released its Standard Specification for the Design and Testing of Light Sport Aircraft Propellers ([ASTM F2506-13](#)). This provides LSA aircraft manufacturers with a means of compliance for in-flight adjustable propellers on Light Sport Aircraft.<sup>20</sup>

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**TOR - e• any other safety related matters.**

1) Director of Aviation Safety

“...At a recent Regional Safety Forum in Sydney, the Chair, CASA’s Director of Aviation Safety, John McCormick, foreshadowed that he’d be convening a

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<sup>18</sup> Advisory Circular AC 21-42(1): *Light Sport Aircraft Manufacturer’s Requirements dated February 2006* – clause 6.7.5:

<sup>19</sup> Ibid., – clause 4.1

<sup>20</sup> RA Aus Webpage In-Flight Adjustable Props on LSA’s - September 23, 2013 by *Darren Barnfield*  
A/g Technical Manager RA Aus.

meeting of all RAAO's (Recreation Aviation Administrative Organisations) in the coming months to consider the merits of the American EAA (Experimental Aircraft Association) model...."<sup>21</sup>

- a) CASA's Director has now been in his job for almost 5 years, but it appears he has not learnt too much about recreational aviation. This is shown by his apparent lack of knowledge of the 30+ year history of the AUF/RA Aus and the SAAA etc.
- b) Many overseas countries have modelled their own Ultralight aircraft operations and Legislation on the AUF Operation & Technical Manual which is based on the CASA CAO 95 Series.
- c) I have been a Member of the EAA for more than 40 years, the EAA has many different group functions, with a warbirds and a large homebuilt focus.

However, EAA does not provide certification and registration services on behalf of the government regulator (FAA).

Is the Director trying to minimise the number of aviation groups CASA interacts with or to manage?

## 2) General Aviation (GA) task force

### 1. Background and Purpose

1.1 In recognition of the significant changes and challenges facing what is broadly recognised as the general aviation (GA) sector in Australia, today and in the future, the Director of Aviation Safety (DAS) decided to establish a General Aviation Task Force (GATF) to review regulatory issues affecting activities and participants within the GA. Sector.<sup>22</sup>

GATF Manager, Mr Peter John's charter does not seem to cover addressing any results of this 2014 Aviation Safety Regulation Review:

"...The manager, GATF, should consult with the Deputy Director of Aviation Safety or the Associate Director of Aviation Safety, if he or she has any doubt about the application or relevance of any other CASA policies or guidelines. It is also incumbent on the manager, GATF, to obtain the advice from the Legal Services Division on any questions of interpretation of the legislation or any other issues that may have legal implications."<sup>23</sup>

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<sup>21</sup> Position Report by Mark Clayton CEO RA Aus, Sport Pilot magazine page 21 December 2013

<sup>22</sup> CASA Webpage [http://casa.gov.au/scripts/nc.dll?WCMS:STANDARD::pc=PC\\_100705](http://casa.gov.au/scripts/nc.dll?WCMS:STANDARD::pc=PC_100705)

<sup>23</sup> Ibid

### 3) Regulations

- a) Recently there was much fanfare about the release of Part 61, but after a number of face-to-face meetings with pilots and industry, Part 61 was put on hold!

Maybe someone in CASA had not done their homework before going public.

- b) Regulations should be considered “living” documents, Regulation revisions are taking far too long to become law and then there is the time to implement them.

### 4) CASA Relationship with the Industry

- a) Over the past ten years or so, CASA has lost a large number of very experienced staff through retirements, their replacements would appear to be found lacking in knowledge and understanding (as mentioned above).

- b) Senator Fawcett suggested that:

“...the regulator has a bunch of people who are working hard and with good intent, but as an organisation there seems to be a lack of consistency in standardisation, and that has an impact on industry....”<sup>24</sup>

### 5) Industry Watchdog(s)

All governments and their Departments tend to run wild at times, with changes being a done deal and no means of appeal, Industry requires some form of appeal and/or protection from an overzealous Regulator/Police Force.

Part 61 above is a good example of the Regulator running wild – in this case the Industry re-acted.

Even overseas they are not “safe” from an overzealous regulator:

“...A recent and worrisome example of a Regulator (FAA) who overstepped its mission to ensure public safety with a new pilot medical certification policy that uses a pilot’s weight to screen for a disqualifying medical condition.”<sup>25</sup>

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<sup>24</sup> Profile – Senator David Fawcett by [Paul Phelan July 25, 2013](#)

<sup>25</sup> Jack J. Pelton EAA Chairman of the Board, page 1 EAA Sport Aviation Vol. 63 No.1 Jan 2014

## 6) External scrutiny of CASA

- a) CASA's operations underwent intense scrutiny by the Senate Standing Committee on Rural and Regional Affairs and Transport through its Inquiry into the Administration of CASA and Related Matters in 2008
- b) The Office of the Industry Complaints Commissioner (ICC) provides a means for stakeholders to make complaints about CASA and provide information related to aviation safety,

The number of complaints made about CASA to the ICC continued to fall in 2008–09.

*Why complain when the ICC just hand them over to CASA to handle!*

*Another explanation could be the fear of losing their Certificates, Licences, Businesses, etc. as CASA pays back those who complain.*

Complaints received by the ICC related to a broad range of issues concerning CASA's oversight and regulatory responsibilities for aviation and aviation safety.

- c) Complaints about CASA were lodged with the Commonwealth Ombudsman and referred by the Ombudsman to the ICC for appropriate action and responses.

*What would be the point of going to the Commonwealth Ombudsman if he/she just passes the complaint on to another agency?*

- d) While certain types of regulatory decisions made by CASA are subject to merits review by the Administrative Appeals Tribunal. 'Merits' review involves the reconsideration of an administrative decision. On the facts before it, the tribunal decides whether the correct decision (or, in a discretionary area, the preferable decision) has been made in accordance with the applicable law.
- e) Media analysis in 200-09 shows 90 per cent of stories were neutral in tone towards CASA, while 1 per cent was positive and 9 per cent were negative.

CASA published 148 media releases in the same period, so above figures could explain why the media was neutral in tone.

## 7) Sport Aviation

This is aviation's fastest growing sector; CASA has involvement with more than 40,000 participants, more than 9000 aircraft and 288,000 parachute jumps each year.<sup>26</sup>

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<sup>26</sup> CASA Webpage [http://casa.gov.au/scripts/nc.dli?WCMS:STANDARD::pc=PC\\_93439](http://casa.gov.au/scripts/nc.dli?WCMS:STANDARD::pc=PC_93439)

CASA has many recreational aviation organisations to work with, whose thousands of Members may work in the aviation Industry.

All too often, CASA is found to be acting as a policeman on the beat, instead of offering friendly guidance.

**An interesting point is the staffing of CASA's Self-Regulation Sport Aviation Office – with many staff poached from RA Aus headquarters.**

In the past week, the RA Aus Operations Manager Zane Tully has joined CASA!

CASA's Mission Statement must be changed to include encouraging General and Sport aviation industry to grow in a safe manner.

8) Aviation Turbine & 100LL Fuel Replacement

Now a final question on CASA's future capabilities:

Is CASA equipped to handle the certification of any replacement fuels for airliners and the General Aviation fleet?

At this stage, one would have to doubt it!

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Note: I have not addressed CASA imposed "*Penalties or Fees*" as I believe it would muddy the waters of this Review.

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Thank you for your time

John Washbrooke