

AERIAL AGRICULTURAL ASSOCIATION OF AUSTRALIA LTD.

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Aviation Safety Regulatory Review

AAAA Supplementary Submission

Overview

In considering the best way forward to improve aviation safety regulation in Australia, it has become clearer that the Civil Aviation Act 1988 has a number of key deficiencies which have led to the current untenable situation.

There are at least four key areas needing attention and amendment:

- Lack of the principles of cost/benefit analysis for CASA decisions, especially relating to regulatory reform
- Lack of the principles of fostering and promoting aviation as an integral responsibility of the regulator, to be balanced against the primary role of safety
- Lack of a clear delineation between the level of resources to be dedicated to fare paying passenger regulation versus the appropriate regulation of aerial work and private aviation.
- Lack of Board powers to actively engage in improving the management of CASA through directing the CEO/Director of Aviation safety.

In addition to changes to the Act, there are administrative/structural arrangements that would also make a significant difference to the outcomes of regulatory reform and safety promotion.

Finally, there are a range of practical steps that are essential to significantly lift the performance of CASA and open the organisation up to objective assessment, rather than the current attempts by the CASA Board and CEO to present the organisation as being effective, efficient and having all the answers.

Amendment of the Civil Aviation Act 1988

The Act should be amended in the following manner:

- Section 9A Require CASA to foster and promote aviation wherever possible, while maintaining the regulation of safety as the number one priority.
- Require CASA to conduct all dealings with industry in accordance with the principles of fairness, transparency, efficiency and minimal cost.
- Require CASA to adopt a risk management approach to regulation, recognising and establishing a clear regulatory distinction between protection of fare-paying passengers and operations such as aerial work and private operations.
- Require CASA to consider the cost/benefit impacts of all regulation and decisions, recognising and establishing a clear regulatory distinction between protection of fare-paying passengers and operations such as aerial work and private operations.
- Add a requirement for CASA to establish a clear safety case before a regulation can be proposed.
- Section 16 Require CASA to also take any views garnered during consultation into account when applying a cost/benefit and risk management approach to regulation (as suggested for Section 9A above).
- Require the CASA Board to meet with representatives of industry, including industry peak bodies, at least once per year.
- New Section 17 The role of an independent Industry Complaints Commissioner should be formalised, including the introduction of direct reporting lines to the Minister and preferably, to the Parliament. Both the ICC reports to the Minister and the Minister's response should be made public.
- New Section 18 The concept of expert peer reviews should be introduced where CASA decisions are open to challenge from industry – including industry associations representing a number of operators or individuals. Once a challenge has been lodged and if the challenge meets certain requirements (such as an adequate safety case not being put by CASA, significant economic hardship or a lack of operational relevance), CASA would be required to establish a panel of, for example, two established experts in the field and a CASA officer to review the case. Decisions could then be posted on the CASA website, further strengthening the transparency and relevance of 'new' CASA decisions.
- Section 49 Require CASA to establish key performance benchmarks and to report on these benchmarks in the Annual Report each year, including but not limited to:
- Current AOC applications outstanding and length of time outstanding

- Average amount charged for AOC applications by sector (eg RPT, charter, aerial work)
- Current AOC variations/amendments outstanding and length of time outstanding
- Current medical suspensions and time outstanding

Section 52 Board membership should be amended to allow for:

The appointment of up to eight members, with a minimum of four to be drawn from the airline, regional aviation, aerial work and maintenance aviation sectors.

The removal of the Director of Aviation Safety as a member of the Board.

Section 53 The power of the Board to issue directions to the Director should be clarified. It must be clearly established that the Board is in control of CASA, rather than the Director. (see also Section 73 (1) which seems to provide this head of power).

Section 83 All CASA staff should be overtly bound to comply with Section 13 of the *Public Service Act 1999* – The APS Code of Conduct

As there are a range of other amendments that could be usefully made to the Act, consideration should be given to a significant review of the Act, including consultation with industry. Other important amendments could include:

Division 3c Reporting – inclusion of additional safeguards against CASA using ATSB reports or direct reports to CASA for punitive action – in other words a high level enshrining of the principle of a ‘just’ culture in the principle piece of aviation law in Australia.

Section 7A Application of the Criminal Code – consideration needs to be given to the impact of this requirement on the current regulatory reform program and whether Civil Aviation Orders may be more appropriate for operational matters rather than the current ‘two tier’ regulatory approach.

Division 2 AOCs – there is currently no ability to ‘amend’ an AOC – with each variation triggering a ‘new’ AOC application process. This is a significant addition to costs for no safety purpose.

There is also a problem with the various requirements for AOCs in the Act now being applied to small operations as if they were a large operation – in other words, CASA staff are able to interpret and manipulate the heads of power of the Act to require things from aerial work operators that were

only ever intended for airlines, such as a Head of Aircraft Airworthiness and Maintenance Control. The remedy would be to clarify the classification of operations in the Act to ensure that CASA is not able to apply heavy handed and costly requirements on relatively small and simple operations such as those found in aerial work and private aviation. This issue may tie in with Section 9A as suggested above.

Section 98 3) c) Needs to be expanded so that CASA has a clear head of power to prohibit the building of hazards to aviation where they occur NOT in the vicinity of an aerodrome. A clear example is wind farms and wind monitoring towers, radio masts and other hazards to aerial application.

Structural/Administrative Changes

CASA to be brought back under the Department of Infrastructure

AAAA believes that the current problems with CASA are due to a lack of oversight by the CASA Board of the many problems that have been raised by industry over a very long period of time. The Board's lack of commitment to engaging directly or consult with industry – either formally or informally - puts them at odds with every other public agency Board that AAAA has had dealings with – and that includes many at the state government level.

While AAAA's position on the urgent need to replace the current Board and to reform the structure of the CASA Board is clear, it may be necessary to also consider bringing CASA back under the Department as a responsible agency of the Department in a similar manner to other Department of Infrastructure agencies.

This would at least add a level of oversight and moderation that is currently missing.

AAAA believes that this should be kept as an option should reform of the CASA Board, structural changes, a new CEO and a new Ministerial direction to the Board fail to rapidly change outcomes.

Regulatory Reform Moved to the Department of Infrastructure

AAAA strongly believes that having CASA developing the rules that it will then enforce has led to an over-reliance on the 'prosecutability' of regulations, rather than a stronger focus on outcome-based regulations that provide clear guidance.

It has also led to legal officers being given precedence over those with operational experience in determining what regulatory approaches are more relevant to getting good safety outcomes.

There is a significant discussion that should be had between industry, regulator and government as to the balancing act that is essential between outcome versus prescriptive legislation, and the need for effective laws that permit the regulator to do its job and the requirement from industry – especially in aerial work and private operations – to not be

overburdened with regulations that do not address safety but which impose costs and time delays.

AAAA believes that removing the regulatory reform process from CASA and giving it to the Department of Infrastructure would be more likely to provide effective reform in a shorter period of time than what has been seen to be produced from CASA over the last 15 years and longer.

In addition, consideration should be given to a new approach to regulatory consultation and drafting, whereby the current cumbersome approach of the CASA Standards Consultative Committee and its attendant working groups could be replaced by a modification of a previously more successful model being the Program Advisory Panel that operated in the 1990s.

By having a smaller group of people involved on an ongoing basis and bringing in expertise when dealing with particular operation areas (such as AAAA for aerial application operations, licencing and maintenance), there would likely be greater consistency, simpler language and less legalistic approaches adopted.

In addition, if CASA were to re-establish previous success as the Agricultural Unit, there would also be an improved focus on removing impediments and simplifying regulations, rather than making them ever more complex, as the current systems has been delivering.

Safety Promotion Moved to the ATSB

AAAA strongly believes there is much stronger synergy in aviation safety promotion being under the control of the ATSB. However, it is critical that resources as well as responsibilities be moved.

Economic and Efficiency Review

CASA has grown significantly in recent years, funded by a significant increase in the fuel excise levied on industry which was opposed at the time by AAAA and others.

Despite CASA bleating that it was resource poor and that its long term funding strategy was unsecured, CASA recently managed to turn a \$12 million profit.

This has clearly led to the situation where waste, inefficiency and increasing costs imposed on industry are tolerated by CASA because it has no incentive to reform itself.

The unacceptable costs of CASA doing business is closely related to the philosophy of the 'Big R' regulator, where more and more regulation is seen to be a badge of achievement rather than a sign of inefficiency in attaining an outcome of safe aviation.

A smart regulator would be aiming to achieve sound outcomes with the least amount of regulation and cost on the industry, especially in areas such as aerial application where the overall risk profile would warrant a different regulatory approach.

Despite recent attempts by the CASA Board and management to portray CASA as an effective, lean regulator, evidence to the ASRR panel has strongly made the case that this is a facade that demonstrates management has lost touch with the reality of what industry experiences at the coal-face every day – inefficiency, waste, lost paperwork, applications and medicals, lengthy delays for time critical approvals, duplication, policy on the run, personal preferences being proffered as ‘law’, lack of experience of CASA staff in operations, a lack of coherent systems and a host of other symptoms.

A closely related element in this issue is the apparent inability of CASA to prioritise its activities to focus more on fare-paying passengers rather than on risk-aware participants operating in aerial work.

This lack of a risk ‘probability and consequence’ approach to its regulatory systems, including entry control, surveillance and audit, means that sectors such as aerial application - which have a very positive safety and accident trend over the last 15 years - are being subject to regulatory action that is simply not commensurate with its risk profile.

The simplified systems that have been proven to work for aerial work in the past have simply been abandoned by CASA – because it has no incentive or pressure to be more efficient.

AAAA strongly believes that an independent and external committee, including strong industry representation, should be established to identify better systems that can be deployed in CASA to achieve sound safety outcomes at lower cost and greater efficiency.

Key objectives of such a committee would be to establish:

- the optimal staffing level for CASA
- appropriate ratios of management to operational to administrative staff (including legal, HR etc)
- the reasons for the continuing degradation in performance of key areas such as the ‘Service’ Centre and
- the key management systems lacking that are leading to delays despite additional staff.

It would then be critical to ensure that the recommendations made by the committee are implemented by CASA management and that this process is overseen by a senior CASA manager appointed with that single task.