



## AIRCRAFT OWNERS AND PILOTS ASSOCIATION OF AUSTRALIA

OVER 50 YEARS AS THE VOICE OF GENERAL AVIATION IN AUSTRALIA

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*"The right to fly without unnecessary restrictions and costs"*

### **Senate Inquiry into the Administration of the Civil Aviation Safety Authority (CASA) and related matters – June 2008**

Submission by Aircraft Owners and Pilots Association of Australia

#### INTRODUCTION

The enquiry is timely as CASA must increase focus on the safety of fare paying passengers due to the emerging higher risk, cost-cutting and budget-carrier, airline environment. Overseas entrants may have different safety cultures and even local carriers may stretch competitive operations closer to safety boundaries.

Recent fuel cost increases pose risk of reduced safety margins as airlines trade fuel reserves for passengers/baggage or the efficiency gains of minimising fuel weight. We believe (anecdotal advice only) that airline incidents may have already occurred at Perth and Sydney, where fuel margin has been of concern.

#### AOPA

AOPA<sup>1</sup> is a non-profit peak industry organisation providing a unified voice for general aviation (GA) pilots and aircraft owners via regular negotiation or consultation with CASA, Airservices, the Minister's department, and other airline and industry bodies.

#### RECOMMENDATIONS

This submission responds to the three terms of reference (TOR) advised for the enquiry and makes the following recommendations:

1. Re-establish a CASA Board to create improved governance.
2. Provide a mix of safety and industry aviation expertise at Board level.
3. Board to oversight the CASA Industry Complaints Commissioner.
4. Set firm deadlines to complete the CASA Regulatory Reform program.
5. Reduce CASA involvement in the 'non-fare paying' sector.
6. Establish a Decision Review Tribunal reporting to the CEO and/or Board.

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<sup>1</sup> <http://www.aopa.com.au/>

## RESPONSES TO THE TERMS OF REFERENCE

### **TOR 1 - effectiveness of administrative reforms undertaken by CASA's management since 2003**

Safety of the travelling public is the Government's highest priority that must underpin CASA reform. AOPA believes CASA continues to over-resource its habitual attention to the 'non-paying passenger' segment. Devolvement, by self-administration, of the private and training segment, would free CASA to focus more on fare paying passengers but the convoluted regulatory regime makes such devolvement unattractive and more expensive to a GA industry already in decline at base level. *"Some key trends in recreational flying over the period 1993 to 2003 include - a decline of 46 000 hrs—about 19 per cent—in the number of private hours flown by VH registered, type certified fixed wing aircraft".*<sup>2</sup>

Despite supposed CASA reforms general aviation, particularly the private sector, is less robust now than 2003. An opportunity for government, evinced in NZ by regulatory changes which we believe simply took up modified USA Federal Aviation Administration (FAA) Federal Aviation Regulations (FAR), is that a thriving private and training sector provides tomorrow's airline pilots. Australia is now suffering a lack of pilots, particularly a lack of flying training by Australian citizens, which will have a long-term effect on airline schedules, rural/remote areas, mining, government services and flying doctor operations. AOPA notes that Australia has a very proud and long-established local culture of self-managed air safety which is at risk of being lost if local Australian pilots are not encouraged to learn to fly.

The CASA Regulatory Reform Program (RRP) has missed deadlines, a consequence of complexity and difficulty of revising the overly prescriptive interweaved regulations (and exemptions) into plain language. Effort spent rewriting regulations is resource not directed to safety coaching and/or audit of passenger operators; therefore rapid RRP conclusion by a defined date should be made a performance mandate for CASA management.

The regulations are cumbersome and slow to move with change. An example is pilot duty time where the regulation unevenly intrudes into the private life of airline pilots. Under CAO 48, a commercial pilot must count after-hours social flying in a general aviation aircraft towards the limit of his or her duty time.<sup>3</sup> The same pilot may fly a Recreational Aviation Australia (RA Aus) aircraft, race go karts, or drive a taxi after hours, without constraint. CASA must recognise that the more complex the regulatory program, the more ongoing maintenance and change effort is required, therefore simplicity should be targeted.

CASA overlooks a minute general aviation aircraft fleet in comparison to USA yet creates work by treating Australia as unique. Rework occurs in CASA rewriting or overriding manufacturer and USA Federal Aviation Administration (FAA) documents, whereas use of manufacturer and FAA documents and a regulatory system adopting sensible overseas regulations would free up CASA resource. The whole purpose of international comity is to avoid repetitious legislation achieving the same fundamental result. US laws are not suspect when it comes to assessment of air safety and can be adopted with minimum separate enquiry.

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<sup>2</sup> BTRE Report 111 - [http://www.bitre.gov.au/publications/37/Files/btre\\_report111.pdf](http://www.bitre.gov.au/publications/37/Files/btre_report111.pdf) Page xviii

<sup>3</sup> GIO7/1078, DCEO Carmody to AOPA CEO, 20 Dec 2007

AOPA negotiations with the CASA Industry Complaints Commissioner (ICC) confirm the CASA administrative reforms are yet very incomplete and he notes *“matters are complex and the issues were not assisted in my view by the way CASA officers implemented the Cessna SID or communicated advice to industry”* and *“In my review of the (ongoing) Cessna SID process it became apparent that the complaints went directly to the very way the CASA carried out its regulatory responsibilities. The process revealed a number of deficiencies and problems with a number of different areas within CASA.”*<sup>4</sup> To AOPA this finding indicates that, five years into the reforms, there is broad lack of sound regulatory result when investigated by the ICC.

By imposing airworthiness constraints above those recommended by manufacturers, AOPA believes CASA is imposing unwarranted costs that are making GA aircraft ownership unattractive - which then reduces on-line aircraft available for pilot training. In the Cessna SID (Supplementary Inspection Document) example quoted above, CASA has implemented 'safety' mandates that neither the manufacturer nor USA FAA require – at estimated costs of \$60,000 (and above) for compliance for privately owned small twin engine aircraft.

This is an outstanding example of unnecessary cost, passenger inconvenience, aircraft groundings and unnecessary retirement of aircraft and operators from the industry. This approach cripples the GA / small business end of industry. Plainly, if sensible recommendations are to be implemented, they must have full regard to the impact on industry and the country of manufacture and licence of the original design and an appropriate local consultative process should be adopted.

CASA intends to flow the SID /CPCP (Corrosion Prevention and Control Programs) to other makes and models. CASA exceeds its safety charter in its over-reaction, stating *“Most old, small aircraft do not yet have SIDs and CPCPs. Less maintenance could unfairly win them business from Cessnas and other aircraft that have SIDs and CPCPs.”*<sup>5</sup> AOPA suggests it is outside CASA safety charter to suggest competitiveness implications are safety flow-on triggers.

Even at airline levels, CASA re-invents what exists overseas, causing delay, cost, and resource diversion. AOPA understands, as one anecdotal example, Ansett Airlines reported that for each aircraft it imported it was required to configure to CASA requirements to a cost of one million dollars per aircraft, which was required to be removed prior to export sale at the end of its life. This removal cost was an additional million dollars. It is acknowledged that these special CASA requirements were never involved in the preventing of any air accident or incident. This cost and delay to the Australian public and to industry must be prevented.

A current example is drug and alcohol testing that already exists in Europe and USA but is being re-invented by CASA and consultants for Australia.

Questions we believe the enquiry could ask as assistance to establish reform effectiveness in targeting fare paying passenger safety since 2003 are: -

- How many successful prosecutions and enforceable voluntary undertakings have occurred since 2003 in the two segments – airline/charter and 'other'?
- Of the CASA resource, what are the relative percentages dedicated to airline/charter and to 'other'?
- How many staff are dedicated to airline/charter audit at field level – that is, audit 'in field' as distinct from at CASA 'desktop'?

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<sup>4</sup> ICC File: 08/13437, Michael Hart to AOPA CEO, 22 April 2008

<sup>5</sup> <http://casa.gov.au/airworth/AWB/02/007.pdf> (AWB Issue 7)

AOPA's experience in dealing with CASA indicates that answers often are disingenuous and require careful scrutiny. AOPA recommends that the Enquiry proceed on that basis with any statement of recommendation from the CASA.

As one high-level example of misdirection, CASA CEO Byron (31 Jan 07) to the Senate committee re Airspace Bill 2006 *"Our safety record in passenger transport is comparable with the best in the world and our general aviation accident rate reduced by about six percent a year over the last ten years."*<sup>6</sup>

BTRE statistics demonstrate that over those ten years GA private flying decreased from 261600 hours in 1996 to 227200 in 2006, and RA Aus recreational flying (which has taken over much of the private GA market) hours increased from 92900 to 120200 in that one end year (2006).<sup>7</sup> Since the RA Aus accident rate is not included in the GA statistics, and private GA flying has reduced, the statement that the GA rate "reduced by about six percent a year" is misleading as data are not homogeneous.

AOPA also notes, as international comparison, that self administration by the Gliding association has produced lower crash rates than Government administration of the same sport in the USA. In other words there is a good case to say that self administration of GA will result in better safety outcomes.

AOPA acknowledges CASA reform may have been clouded by lack of understanding of what the government really desires of CASA – safety regulator, business, or administrator? CASA is restricted by having to structure parts of its operation as a business as there is a dichotomy between safety and raising revenue - resource that is dedicated to, or constrained by, revenue targets must balance business achievement against safety.

A minor example is the Visual Pilot Guide, formerly issued free by CASA as a safety essential – that is now available by purchase. Mick Toller, Director of Aviation Safety, CASA, stated about Edition 1 *"The new VFR Flight Guide is an important element in improving aviation safety in Australia ... by reading and using this guide every time you fly, you will be making a vital contribution to 'safe skies for all'"*.<sup>8</sup> CASA argues that the information is now internet available but the internet is not a general in-flight capability, therefore revenue has now been placed ahead of safety.

The government 'user pays' philosophy also shields CASA from continuous improvement. Rather than examine and shed administrative processes, CASA is able to cater for inefficiency and over-regulation by imposition or raising of fees, so less emphasis exists on reform as would occur in a competitive environment. The fee for processing a private pilot medical is outrageous in comparison to what the DAME charges for conducting the detailed examination. Safety per se is not a competitive business matter, and should be divorced from economic advantage.

AOPA recommends Attachment 1, particularly paragraph 5, as an indication of a well qualified assessment of some current CASA reform gaps. The writer makes mention of the seriousness of reform – yet this is five years into the process.  
(We ask for confidentiality reasons that this attachment remains unpublished.)

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<sup>6</sup> <http://casa.gov.au/corporat/ceo/speeches/07-01-31.htm> (and see also footnote 2)

<sup>7</sup> [http://www.btre.gov.au/statistics/aviation/general\\_aviation.aspx](http://www.btre.gov.au/statistics/aviation/general_aviation.aspx)

<sup>8</sup> Introduction, CASA VFR Flight Guide Ed 1, September 2001 'Safe Skies for All'

## TOR 2 - to examine the effectiveness of CASA's governance structure

AOPA finds the present regime militaristic, prescriptive, and varying in approach to industry concerns. AOPA has difficulty communicating with CASA senior management as constructive feedback or request for substantiation of decision is regarded defensively or personally. The conduct of safe air navigation is better managed by an open well-canvased approach by all to a common goal. CASA's management in recent years has not been to that end. A safety improvement culture requires a determination for continuous improvement and consultation that has not been demonstrated to AOPA. We note as an example of CASA defensiveness that this Senate enquiry is not publicised on the CASA public website at time of writing.<sup>9</sup>

The CASA Industry Complaints Commissioner exists as an avenue of improvement suggestion or concern but may be limited by reporting to the CASA CEO. Possibly the ICC should report to a Board to ensure systemic gaps are given broader scrutiny and corrective actions are then required to meet industry standard timelines.

Placing a Board over CASA would make CEO and senior management accountable for deadlines and ensuring Government safety policy is vigorously adopted as well as articulated. A Board mix of aviation and safety expertise would be valuable. Our discussions with Airservices Australia CEO Greg Russell confirm the accountability and statutory detail he must ensure through having Board oversight of his role.<sup>10</sup>

AOPA experience is that CASA is not even handed. It has formal tools and procedures to assess risk and change but is flexible in their use when local airlines seek dispensation. Issues affecting the National Airspace System (NAS), which is a ministerial dictate in the Australian Airspace Policy,<sup>11</sup> are proposed for alteration at airline behest on grounds that are disclosed by analysis to relate to airline economics altering the safety baseline, not safety itself.<sup>12</sup> International Civil Aviation Organisation (ICAO) procedures are altered based solely on airlines 'perception'. *'In making this finding, we recognise that empirical evidence shows that risk levels are lower at CTAF aerodromes and that radio participation rates are high despite their voluntary nature. However, addressing deeply-held perceptions of increased risk at CTAFs would assist in building confidence in the arrangements at non-towered aerodromes'*.<sup>13</sup>

A Board would more likely ensure adherence by CASA to Government and ICAO policies and conformance with genuine safety case and 'as low as reasonably practicable' (ALARP) safety guidelines.

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<sup>9</sup> <http://www.casa.gov.au/>

<sup>10</sup> Meeting, G Russell and AOPA VP Brian Hannan, 28 May 2008

<sup>11</sup> *Airspace Act 2007*, The Australian Airspace Policy Statement, 28 April 2007

<sup>12</sup> *File Ref: EF08/766, CASA OAR to AOPA CEO, 4 Jun 2008*

<sup>13</sup> PCR, FINAL REPORT ON THE REVIEW OF CHARACTERISTIC 29, OF THE NATIONAL AIRSPACE SYSTEM (NAS) STAGE 2C 11 December 2006,

### **TOR 3 - to consider ways to strengthen CASA's relations with industry and ensure CASA meets community expectations of a firm safety regulator.**

CASA must shift focus more toward fare paying passengers, particularly areas of known risk (smaller Regular Public Transport / charter operations).

CASA should reduce or exit its current over-management of private GA operations. As but one example CASA reviews medicals for private pilots that have been issued by CASA Designated Aviation Medical Examiners rather than allowing the DAME to verify the patient health and efficiently provide the medical on site. RA Aus pilots flying in the same airspace in similar performance aircraft do not require a medical.

Creation of CASA industry relationship managers may warrant consideration, as exists in Airservices Australia, which creates more focussed productive consultation.

CASA should adopt more flexible, less prescriptive (and thus currently limited), solutions to safety issues. The recent CASA study into Avalon airspace<sup>14</sup> produced a prescriptive model that is less likely to address the causal factors than the earlier Airservices tailor-made genuinely consultative safety model that was previously agreed with the airline and Avalon operator and promulgated in late 2007.<sup>15</sup> The CASA study has been soundly criticised by several industry groups.

The CASA Notice of Proposed Rulemaking (NPRM) process should follow its own rules and industry feedback should be tested against desired safety outcomes and included. In one recent NPRM CASA moved to implementation - while the NPRM process was still open for comment. The urgency was allegedly of meeting ICAO standards and timelines for English Language competency – in Australia, where English is the existing standard.

When challenged, CASA excused their failure to follow due NPRM process by claiming *“AOPA had the opportunity to review the pre-release version of the NPRM when it was posted on the Standards Consultative Committee forum, prior to it being published. I have been advised that there was a very limited response to this pre-release posting.”*<sup>16</sup> This is a blatant breach of due process and confirms CASA is a demanding regulator – yet unable to lead by example in abiding by its own rules.

CASA must monitor and meet its own communications charter guidelines. User pays increases the expectation and entitlements of users to expect service within guidelines. We cite one example of CASA refusal to answer simple questions – albeit that may have demonstrated the impropriety of their past actions – since August 2006, a matter that is still awaiting finality with the CASA ICC from late 2007. This refusal was accompanied by CASA suggestion that AOPA pay for an estimated 40 hours CASA review – when the matter related to a unique Australian decision not supported by the manufacturer and the onus was actually on CASA to show cause.<sup>17</sup> AOPA submits this as an example of CASA using fees as a means to stifle genuine investigation of the validity of a safety matter.

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<sup>14</sup> CASA OAR, File Ref: 07/4830, Aeronautical Study of Avalon, May 2008

<sup>15</sup> <http://www.casa.gov.au/oar/rapac/minutes/vic071004.pdf>

<sup>16</sup> File Ref 07/6312, CASA DCEO Carmody to AOPA CEO, 7 Jan 2008

<sup>17</sup> CASA DCEO Shane Carmody to AOPA CEO, 27 Jul 2007

Delays in CASA are endemic, even at escalation. On 15 December 2007 the CASA ICC advised, concerning the CASA over-reaction causing the Cessna grounding, *“that means they stay on the ground until two things happen; either the owner is SID compliant or we find a regulatory solution. The latter is not impossible from my view and is being worked on. Lastly I must also emphasise I can offer no immediate solution but hopefully we may have an answer or solution by mid to late January.”*<sup>18</sup> At time of writing, the owners remain grounded with no CASA solution achieved.

CASA must be more open to industry advice. A recent CASA safety grounding – publicised as ‘3000 aircraft grounded’ was poorly handled, industry advice initially rejected<sup>19</sup>, decision reversed after media exposure, then considerable CASA effort spent on media release to recover CASA public credibility.<sup>20</sup> This unnecessary grounding affected tour and charter operators and essential services including finance – e.g. daily ‘bank run’ aircraft that transport cheques from rural locations to clearing centres - and was implemented without consultation or advice or considering the unnecessary end user costs, public inconvenience, and potential embarrassment to government.

AOPA members are in general agreement that CASA is not even handed and can resort to ‘payback’ and favouritism. This is not conducive to a safety culture that should include self-reporting. *“Safety Regulation - A lack of consistency in the application of regulation by CASA was the most common regulatory issue raised”.*<sup>21</sup>

In that regard, although we do not claim expert knowledge, we draw attention of the Senate committee to the very successful programs of the Defence Department which, even though operating in a military structure with greater disciplinary control in any case, ensures via its Directorate of Defence Aviation and Air Force Safety (DDAAFS) that a self-reporting and even a reward culture of safety ownership by members and teams is nurtured.

One means of overcoming concern at CASA having the role of prosecutor, judge and jury, and to establish mediation strategies to promote non-punitive safety action, is to establish a Decision Review Tribunal (DRT) within CASA to examine appeals and issues that may be slated for legal referral. The DRT could comprise an external Chair, CASA rep, and Industry rep relevant to the ‘offender’ and the DRT could have power to make recommendations, rather than decisions, to the CEO and Board.

In closing, AOPA contends that strengthening CASA’s relationship with industry to realise optimal safety achievement is a challenge that dictates a dynamic CEO and qualified executive, supported by a well selected Board of management.

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<sup>18</sup> CASA ICC, Michael Hart, email 15 Dec 2007 to AOPA VP Brian Hannan

<sup>19</sup> CASA Group GM, General Aviation Ops Gp, Greg Vaughan to AOPA VP Brian Hannan, 14 Mar 08

<sup>20</sup> <http://www.casa.gov.au/corporat/casabriefing/08Mar.htm>

<sup>21</sup> BTRE Report 111 - [http://www.bitre.gov.au/publications/37/Files/btre\\_report111.pdf](http://www.bitre.gov.au/publications/37/Files/btre_report111.pdf) - page 104