Australian & International Pilots Association ABN 30 006 191 853

Advancing the interests of our members and the profession

By Email

28 September 2020

Senator Susan McDonald
Chair
Senate Rural and Regional Affairs and Transport Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Email: rrat.sen@aph.gov.au

Dear Senator McDonald,

SUBMISSION TO THE SENATE REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE INQUIRY INTO THE CURRENT STATE OF AUSTRALIA'S GENERAL AVIATION INDUSTRY

AusALPA is the umbrella organisation representing more than 7,100 professional pilots within Australia for aviation safety and technical matters. AusALPA consists of the Australian and International Pilots' Association (AIPA) and the Australian Federation of Air Pilots (AFAP) and is the Member Association for Australia within the International Federation of Airline Pilot Associations (IFALPA), which represents over 100,000 pilots in 100 countries. Many of our members either work in or provide vital connections to rural, regional and remote Australia.

AusALPA maintains a dedicated Safety and Technical organisation, committed to protecting and advancing Australia's aviation safety standards and operations. We strive to ensure that the views of Australia's professional airline pilots are considered in important safety and technical matters.

We are grateful for the opportunity to contribute to the essential work done by the Rural and Regional Affairs and Transport References Committee, particularly in regard to the current state of Australia's general aviation industry. Please find attached our submission.

Yours sincerely,

Mark Sedgwick
President AIPA

SUBMISSION TO THE SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE INQUIRY

INTO

THE CURRENT STATE OF AUSTRALIA'S GENERAL AVIATION INDUSTRY

28 SEPTEMBER 2020

AIPA SUBMISSION TO THE SENATE REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE INQUIRY INTO THE CURRENT STATE OF AUSTRALIA'S GENERAL AVIATION INDUSTRY

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EXECUTIVE SUMMARY

Realities of the marketplace

Definitions of the activities considered to be GA have changed. Charter operations in high capacity aircraft, particularly jets, are now quasi-RPT operations and should be considered as such. Many low-capacity RPT operations in small aircraft were traditionally considered to be GA, but now are not. "True" GA charter operations are now just a shadow of their previous presence due to the expansion and consolidation of RPT services generally.

The advent of RAAus and LSA/ultralight aircraft training has had a disruptive effect on traditional GA training. The emergence of airline training 'academies' where airlines have significant control over all aspects of the provision of flight training has also had a disruptive effect on traditional GA training. The combination of those two disrupters has significantly altered the landscape for generalised flight training schools and aero clubs.

The impact of legislative changes and CASA decision-making must be considered against the background of those changes to the economic landscape for GA.

The legislative and regulatory framework

The legislative and regulatory framework is more complex than just the aviation safety legislation. Other government policies impose both direct and indirect costs, as well as occasionally producing unintended outcomes.

The appropriateness of the CASA regulatory model needs to be examined, particularly in light of the ubiquitous "judge, jury and executioner" epithet. It is essential that both the government and the industry have a well-defined and shared model of how aviation safety regulation is best managed.

It is important that the distinction between political and technical decisions is clarified and that processes that separate those decisions are put in place. The political decisions should be made by the elected government rather than by special interests groups and not by the bureaucracy. CASA should not be left to decide its own role in the aviation safety regulatory regime.

The Attorney General's Department needs to seriously consider the negative outcomes when aviation safety legislation is not written to benefit or enhance the understanding of industry participants.

Participation in aviation activities for profit is not free. The debate about what costs are reasonable in an efficient 'user-pays' system is a political rather than a technical debate.

The terms of reference

"Maintaining, enhancing and promoting" the safety of civil aviation cannot be achieved with legislation that is so complex and so voluminous that the underlying structure of a national aviation safety plan is indiscernible. The drafting of the law should not prevent those who are bound by it from understanding what is actually required.

There is some danger in the continual overlay of economic considerations on Australia's aviation safety framework. Fostering or developing civil aviation is an economic mandate that, if not carefully managed, is very likely to conflict with the mandate to curb unsafe behaviour, which frequently is born of misplaced economic drivers for profit. The balancing act for government is in avoiding unproductive business and compliance costs while ensuring that the economic consequences do not overshadow the task of properly mitigating the identified risks.

We should not regulate GA as if each participant was running an international airline. The costs and outcomes of the safety regulation of recreational aviation by RAAus should be compared with that of the non-air transport sector in GA with a view to revamping the GA regulatory paradigm.

There is no consistent and defensible mechanism to protect the public interest when either CASA or DITRDC fails to maintain the safety of the aviation system. The Committee needs to identify what protections should be in place to protect the public interest when CASA gives bad "safety" advice to other agencies or when it fails to correct other agency decisions that impact on aviation system safety.

Bad regulatory decisions can act as detriment multipliers when imposed on financially precarious businesses. However, it seems likely that the GA industry signed up for significant economic disruption simply by pursuing the "holy grail" of adopting the US FARs or an Australian facsimile. While the industry was pursuing the US-style light touch for GA, the door was open for well-meaning 'experts' to tighten the screws on their perceptions of existing and emerging risks.

Given the high levels of social, economic and compliance stress endured so far, there can be no rational contemplation of imposing even greater systemic stress, particularly in GA, by abandoning the current RRP. We believe that we have no choice but to proceed, albeit much more wisely and with much greater care.

CASA cannot maintain or sustain or ensure industry viability and it should not compromise safety through any misconception of its ability to do those things. All CASA can do is minimise the impact of what it must do to rectify identified risks within the aviation system.

CASA has made significant attempts to improve their consultation with the general public.

CASA decisions do have a market impact, most obviously on the supply side, but the extent of that impact would seem to require significant economic research. Any proposals to improve the health of GA, an outcome which we most assuredly support, must be found in other parts of the Transport portfolio and, most likely, in other portfolios. Accessibility does not seem to be a good fit with safety regulation – it is a matter of economic policy at the highest levels of government.

Any related matters

Our interactions with CASA and other aviation-related agencies are invariably frustrated by a lack of transparent decision-making and many examples of what we see as active avoidance of public scrutiny, either under administrative law provisions or by Parliamentary scrutiny.

We believe that there is an absence of risk management competence, training and procedures within CASA. CASA (and DITRDC) accept so-called safety cases and risk assessment with glaring deficiencies, some of which do not even identify obvious risks, apparently as if they are just a 'tick and flick' compliance activity. The likely

characterisation left with us is of bureaucratic indifference in an environment where there is little likelihood of any one person being held to account.

The Committee should consider making a recommendation that the Government should seek more balanced advice, both for the Minister and for the DAS, on aviation safety policy by ensuring that our umbrella body AusALPA has a seat at the table. There can be no balance when the voice of the last line of defence, Australia's pilots, is suppressed.

A close eye is required on our migration policy. It would be anathema to be further undermining the future employment prospects of current and future Australian pilots by importing overseas pilots, especially as the recovery of all aviation activity in Australia is going to be painfully slow for at least the medium term.

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AIPA SUBMISSION TO THE SENATE REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE INQUIRY INTO THE CURRENT STATE OF AUSTRALIA'S GENERAL AVIATION INDUSTRY

Introduction

The Australian and International Pilots' Association (AIPA) is one of the largest Associations of professional airline pilots in Australia. We represent nearly all Qantas pilots and a significant percentage of pilots flying for the Qantas subsidiaries (including Jetstar Airways Pty Ltd). AIPA represents around 2,400 professional airline transport category flight crew and we are a key member of the International Federation of Airline Pilot Associations (IFALPA) which represents over 100,000 pilots in 100 countries.

AIPA maintains a dedicated Safety and Technical organisation, committed to protecting and advancing Australia's aviation safety standards and operations. We strive to ensure that the views of Australia's professional airline pilots are considered in important safety and technical matters. Many of our members have GA backgrounds or provide vital connections to rural, regional and remote Australia.

We are grateful for the opportunity to contribute to the essential work done by the Rural and Regional Affairs and Transport References Committee, particularly in regard to the current state of Australia's general aviation industry.

In formulating this submission, we have chosen to make a range of more general comments that seek to describe the nature and broader influences of the aviation system of which general aviation (GA) is a part, before specifically addressing the Terms of Reference (ToRs) for this Inquiry.

REALITIES OF THE MARKETPLACE

It is abundantly clear that the ToRs are focused on the impact of aviation safety regulation in Australia on the well-being of GA. However, as the Committee is aware, regulatory impact does not occur in an economic vacuum and gauging the extent of that impact can only properly be measured against the reality of the markets that support GA both pre- and post COVID-19.

Importantly, the traditional bundle of activities considered to be GA is not stagnant. Defining the scope of GA too narrowly runs the risk of ignoring how the health of GA is inextricably linked with all other aspects of the Australian aviation industry, as well as international supply chains and the global economic environment.

Similarly, sentimentality often delays the acceptance of reality. Much of the discussion about GA emphasises the generally conservative nature of the participants and considerable nostalgia for the glory days of previous unacknowledged economic cycles. In some parts of GA, that nostalgia merely hides a lack of capacity to adjust to current economic cycles that, notwithstanding the impact of safety regulation, requires new business models and/or abandoning historical models.

What is GA?

The Aviation Safety Regulation Review (ASRR) of 2014 reflected the most recently accepted breakdown of the industry in that it considered that GA covers those aviation activities that are not Regular Public Transport (RPT), sport and recreational aviation or relevantly related businesses. While that breakdown reflects the regulatory regime and the current industry structure, it wasn't always the case. Historically, many would also

consider that low capacity RPT in small aeroplanes was also part of GA, while high capacity charter operations in jets conducted by independent operators should perhaps always have been considered more like RPT than GA.

In any event, AIPA suggests that a dominant influence in today's rather more constrained GA activities has been quantum shifts in the very nature of RPT, large aircraft charter and the sports/recreational aviation sectors, exacerbated by significant improvements in the state of Australia's road network.

Changes in the RPT sector

In the days of the Two Airline Policy and in the early days of CAA/CASA, there was a thriving rural and regional RPT sector that co-existed comfortably with the major airlines, whose focus was predominantly on high-capacity operations between the capital cities. While the major airlines had low-capacity subsidiaries, they were found more on the routes that supported their larger aircraft of around 30 seats, either as a consequence of various government subsidies or through market demand. Below that part of the RPT scene, there were many operators providing rural and regional RPT services in either 19 seat or 7-10 seat aircraft.

Fairly typically, the smaller low-capacity RPT operators also provided charter services in the same or similar aircraft, creating some diversification through increased aircraft usage. The quality of other transport modes ensured a fairly healthy charter market.

Route viability

However, it is inevitable that changes in population, infrastructure and business practices provide more opportunities for larger RPT operators. Threats to small RPT and charter operators are further complicated by the availability of more efficient larger aircraft for those with the required capital as well as the absence of manufacturers of replacement smaller aircraft for thin markets. As a result, more rural and regional routes became viable for the bigger operators with whom the smaller local operators could not compete, simultaneously killing off demand for charter services as well as RPT services in their small and older aircraft.

Airline training

The Committee's 2010 Inquiry elicited considerable feedback on the shift in airline training models. While much of the evidence related to safety concerns, the now well-established shift towards operator-specific cadet schemes has had a significant impact on GA flying schools that rely on the general pilot training market in the absence of an arrangement with an airline.

Those flying schools that were able to provide the scale, facilities and required quality of training to attract a sponsoring airline have enjoyed far greater financial certainty than they previously had in the general market. Those schools that lacked the required attributes lost an important part of likely demand for their services. At the same time, employment opportunities in GA (another demand driver) declined in response to decreasing demand for charter services generally, patchy domestic tourism, drought effects on aerial agriculture and shifts in both supply and demand for recreational flying.

Pilot – an aspirational occupation?

The 2010 Inquiry also highlighted the shift in cost allocation for flying training from operators to individual pilots. AIPA maintains our position, as then, that saddling cadets with debts of around $200,000 for the cost of their operator-specific training, matched with bonds and the financial handcuffs of repayment schedules, serves only

to make the piloting profession unattractive to all but the well-heeled or financially reckless.

The remuneration rates for entry level pilots in most operations compare quite unfavourably with a range of alternative employment options, some of which require no vocational or tertiary training. Those factors, plus the demands of semi-annual proficiency tests and annual medicals, all combine to deter all but the most dedicated applicants. The supposed financial carrot of the oft-touted remuneration of international Captains is available only to a very small part of the aviation community after many years of service and the modern generation of young people quickly weigh up the paths of substantially lower resistance and commitment.

GA flying does not attract good rates of pay and the conditions soon dispel any romantic notions of the "good old days". The GA flying training sector has faced the double whammy of declining supply and demand for many years, if not decades.

The long term impact on the viability of airlines and aviation service to remote communities is seriously undermined if young people do not choose to take up a career as a pilot.

AIPA strongly suggests that any examination of the fault lines and adverse pressures on the GA industry must not overlook the negative influence of the airlines. It doesn't matter whether one considers route viability, operator consolidation, attracting the GA industry's pilots or making the occupation financially unattractive, there are very few stones that a GA David could use to hurt an airline Goliath.

Changes in the sports/recreational aviation sector

AIPA believes that a critical disruptor for traditional flight training schools and aero clubs has been the emergence of Light Sport Aircraft (LSA) from the world of ultralights to become a separate aircraft certification category with a more formalised self-regulation structure. The peak body in Australia responsible for administering ultralight, recreational and Light Sport Aircraft (LSA) operations is Recreational Aviation Australia (RAAus), previously known as the Australian Ultralight Federation.

The availability of a range of light two-seater aircraft with purchase costs of about 30% of typical GA light aircraft and matching low operating and maintenance costs significantly impacted the financial viability of the traditional GA training sector. There are quite a few manufacturers, unlike for Part 23 aeroplanes, and it appears that the FAA is considering a weight increase for the Light Sport Aircraft category beyond 650kg – a move that will put pressure on other regulators as well as encroach further into the Part 23 training and pleasure market.

RAAus certifies pilots (among others) separately from CASA. In September 2014, CASA introduced the Recreational Pilots Licence (RPL), effectively as a replacement for the previous post-GFPT student pilots licence (SPL), which was a staged version of the CASA-regulated Private Pilots Licence (PPL). CASA accepted the need for a purely recreational mainstream licence and now offers a relatively simple transition into the formal RPL licencing system by recognising certain RAAus flying experience. Under the RAAus arrangements, a pilot can access essentially similar recreational flying for about one third of the cost of gaining a CASA PPL.

The growth of recreational aviation has been phenomenal. AIPA believes that much of that growth has been entirely at the expense of the traditional flight training schools and aero clubs. Perhaps this is best demonstrated by the following extract from the "About Us" page of the RAAus website:

> We train and certify pilots (almost 10,000 members), flying instructors and maintainers, register a fleet of almost 3,500 aircraft, oversee the operations of 174 Flight Training Schools throughout the country and support almost 50 Aero Clubs.
>
> Our Organisation is also responsible for the development and promotion of flying safety standards and for advocating on behalf of our 10,000 members. We are one of nine Recreational Aviation Administration Organisations (RAAOs) authorised to self-administer sport and recreational flying activities on behalf of the Commonwealth Government's Civil Aviation Safety Authority. Since The Civil Aviation Regulations 1988 don't regulate this class of aircraft or activities, RAAus operates via exemptions and delegations.
>
> Recreational Aviation Australia continues to experience sustained growth, and has been successful in securing enhanced operating privileges for its members. Our not-for-profit organisation is governed by an elected board of volunteer Directors, supported by a small team of dedicated staff who are committed to helping you realise your dream of safe, accessible, fun, enjoyable aviation.

In short, we believe that the traditional flight training schools and aero clubs who rely on the general market for pilot training demand are not cost-competitive on almost all fronts. Importantly, the cost imbalances between self-regulation under the not-for-profit RAAus and mainstream regulation under CASA would always be significant, even 15-20 years ago, and shouldn't be ignored.

Australia's roads

Compounding the pincer effects of RPT consolidation and the expansion of sport and recreational aviation, the significant spending on Australia's road infrastructure has lessened the time and comfort advantages of small charter operations in rural and regional areas over road travel[1]. It also seems likely that reduced charter activities due to road improvements have a collateral effect on the viability of country aerodromes.

The current state of GA

AIPA is often a strident critic of CASA decision-making and regulatory activities. We are committed to achieving significant improvements in both these areas, both on behalf of our members and of the wider aviation community. However, we also recognise that much of the more publicised criticism from the GA sector is not always well conceived or based on realistic acceptance of economic reality.

Consequently, to the extent to which we have considered economic impacts, we have framed that consideration around the additional costs under current regulatory arrangements that might otherwise have been avoided but for the recent changes.

THE LEGISLATIVE AND REGULATORY FRAMEWORK

The legislative and regulatory framework underpinning CASA's aviation safety management functions is more than just the application of the *Civil Aviation Act 1988* and the Civil Aviation Safety Regulations 1998. Not only are there a number of other pieces of legislation that empower or involve CASA in government decision-making, but also a range of other agencies that affect the way CASA goes about its role.

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1 For example, see https://minister.infrastructure.gov.au/buchholz/media-release/future-rosi-australias-key-road-corridors; https://minister.infrastructure.gov.au/buchholz/media-release/north-queensland-benefit-730-million-road-funding

Understandably, many submissions raise the issue of broader government and legal functions and the appropriateness of CASA's positioning within the machinery of government. Some also complain about the consequences of CASA's actions without acknowledging at the same time that CASA is also bound to comply with a range of general government policies that have, or have the potential to generate less than desirable outcomes from a pure safety perspective.

Consequently, any examination of CASA's performance must be undertaken as a system of systems approach in order to properly assess the strengths and weaknesses of aviation safety regulation in Australia.

Is the CASA model different?

It appears to us that there are a number of threshold questions:

- what is an appropriate model for a government regulator?
- does the regulatory focus change that model?
- is aviation safety different?

While AIPA does not propose to do more than raise these questions, it is clear to us that a considered examination of them may well underpin a proper understanding of why such a significant part of the aviation industry believes the system is inexorably, if not irretrievably, broken.

It is fairly clear that the government and the industry do not share the same mental model for aviation safety regulation. Of itself, that is a major obstacle in the pursuit of safe aviation for all Australians.

CASA as "judge, jury and executioner"

AIPA considers that the frequent recommendations in submissions to separate standards setting, entry control[2] and enforcement action among other agencies or departments are matters that have application to government agencies more generally, rather than being unique to CASA. We note that the ASRR did not make any recommendation to hive off the current CASA functions to other agencies.

From our own interactions with government agencies in the transport space, it remains entirely unclear to us how shifting certain functions between other bureaucracies with far from unblemished performance records will achieve the changes that many expect. For example, what particular experience, knowledge and regulatory behaviour could be drawn upon to establish that aviation standards should preferably reside with the Department of Infrastructure, Transport, Regional Development and Communications (DITRDC)? Should such a shift be undertaken, it is highly likely that the very same people would simply shift from CASA to DITRDC to continue doing the same tasks under new senior managers operating in an environment focused on much broader economic issues rather than specific safety considerations.

However, that fundamental structural question might best be more appropriately considered by the Senate Finance and Public Administration References Committee, since the principle applies more broadly to a range of government regulatory agencies. It is an important issue that we believe is worthy of more fulsome examination as a matter of good governance as well as good government.

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2 Common term used to describe the process to assess an applicant, for the purposes of issuing a permission to undertake a particular aviation activity.

The politics of aviation safety regulation

In his submissions[3] to this and other Inquiries, Clinton McKenzie makes a number of statements about the characterisation of safety regulation decisions with which we agree. In particular, he makes the point that:

> …the setting of the standards to be enforced by the regulator in the first place is essentially a political decision, not a technical decision…

AIPA considers that characterisation to be as valid now as it was when made to the ASRR.

It often seems to AIPA that Ministers in governments of all persuasion strenuously avoid any direct involvement in safety-related decision-making on the apparent basis that such involvement is open to criticism of political interference with an independent technically-expert agency. It seems to us that DITRDC has displayed similar symptoms to the various Ministers, although we cannot determine whether that is as the chicken or the egg. Unfortunately, the unpalatability of greater political involvement with aviation safety policy setting invariably results in the emergence of a relatively unrestrained technocracy. This 'independence' is a double-edged sword: on one hand, the Minister is largely insulated from CASA's activities, while on the other, CASA is largely isolated from political support.

The insulation is aided by a preference for seeking multi-layered advice. Apart from the traditional source of advice from DITRDC, the Minister has industry advisory panels as well as the CASA Board. The Director of Aviation Safety (DAS) also has his Aviation Safety Advisory Panel (ASAP) and the related Technical Working Groups (TWGs). However, the isolation aspect comes from the legislated empowerment of the DAS alone – a responsibility that no amount of advice or delegation can diffuse.

The biggest problem from these advisory structures is the implied power and thus the endemic political pressure that comes with them. That political pressure is distinctly different from the politics of elected representatives, in that it is the politics of special interest groups. It would be more tolerable if all parts of the aviation industry had relevant input, but unfortunately each advisory structure is wholly or predominantly representative of vested commercial interests with minimal balance from those in the front line who are directly conducting the very aviation activities that we want to remain safe.

AIPA firmly reiterates that it is a complete misapprehension for anyone involved in aviation safety to believe that the commercial entities involved in aviation properly represent the interests of their workforces. There is abundant evidence, particularly in the fatigue management space, of the risks that those commercial entities are prepared to tolerate in order to protect their profit margins.

In many ways, the most direct special-interest political pressure applied to the DAS comes from the CASA Board. It is not clear to us what specific value having a Board is supposed to bring to CASA, at least in the normal sense of corporate governance, since it is incapable of making the political decisions required of government and seems to have failed to prevent the excesses of regulatory overreach or the imposition of unnecessary costs.

In any event, it has been suggested that the Board harbours two main dangers: one, the potential for the Chair to attempt to usurp the DAS' authority; and two, the number

[3] See submissions 5 and 5.1 to this Inquiry

of Board members at various times who have held senior positions or are otherwise affiliated with the RAAA.

To be very clear, AIPA has no governance concerns with the current Chair - our observation relates to past and, potentially, future Chairs. It has been suggested that at least two previous Chairs have tried inappropriately to act as if they were the DAS and we are not convinced that an activist Chair could not repeat that failure in the future.

We are concerned about the apparent regular over-representation of RAAA-affiliated members on the Board. Based on our observations of the RAAA in various CASA consultations and more generally, AIPA has come to the view that the organisation has a regressive agenda aimed at preventing any change in safety regulation that may impact on the current compliance imposts on their members. While we are opposed to the imposition of unnecessary or excessive costs, we also consider that there are some costs that are justified on safety grounds but have heretofore been avoided by the acceptance of excessive risk – a balance that we see as lacking in the RAAA representations, no more so than in the fatigue management space.

The RAAA *modus operandi* that deliberately confuses the absence of evidence as evidence of the absence of risk is most concerning. AIPA considers that an excess of political influence in support of RAAA imperatives has led to the continual deferral of the fatigue management rules published by CASA in 2013 in order to perpetuate decades-older rules that CASA confirmed as potentially unsafe. Australia's 2013 rules demonstrated a world-leading respect for fatigue science that was subsequently acknowledged by a number of international regulators as a benchmark, yet they have since been traduced by commercial interests. Additionally, CASA's reputation for political independence has been squandered by activist Boards and a compliant public service DAS.

<u>Good people generating bad outcomes</u>

Another important point made by Clinton McKenzie in his submissions is that

> a safety regulator is fundamentally conflicted if it is made or left to run the process that determines the substance of the regulator's own role in the regulatory regime it administers.[4]

AIPA agrees with that assessment in the context of the bureaucratic propensity to feed itself, noting that this conflicted role has continued unabated for many decades without any obvious signs of intervention by DITRDC as the oversight agency. However, we see CASA's ever increasing entry control activities as being an accidental by-product of that conflict, since there is little evidence in CASA's performance history that would suggest any capability to manage a conspiracy.

We also strongly support the following observation:

> The weight of evidence demonstrates that continuing to 'leave it to the professionals in CASA' will result in ever-increasing complexity with corresponding ever-increasing costs, as each incident and each exaggerated risk results in harmful regulatory overreactions, as each year and decade of the regulatory reform program rolls past and yet more pages of rules are imposed on the practically powerless.[5]

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4 Page 5 of Attachment A to submission 5.1 to this Inquiry

5 Submission 5, page 3

The imposition by government of the "user pays" requirement has the propensity to magnify the impact of well-meaning decisions to require a range of approvals, permissions, variations and the apparently endless range of statutory authorisations. AIPA has no doubt that the CASA people developing the rules have the best of intentions in trying to solve what they consider safety problems or trying to mitigate risks to existing safety standards. However, the standards development culture within CASA means that hundreds of individually developed solutions for minor problems may be thrown into a regulatory bucket so large that apparently no CASA executive can sufficiently distance themselves from it to see the enormity of the regulatory nightmare that often results.

Part 61 is a classic example.

The myth of outcomes-based legislation

AIPA supports the aspirational goal of basing our legislation on desired outcomes. The problem is that it appears that both the industry and the Attorney General's Department (AGD) can't live with that sort of legislation, preferring instead a high degree of prescription.

The commercial aviation industry representatives often believe that outcomes-based legislation will leave them free to be innovative in their search for commercial advantage over their competitors. However, it seems that the less prescriptive a piece of legislation is, the greater the debate over how to comply – what emerges in practice is that the industry prefers the certainty of prescription as a solution to, and defence against, the lack of standardisation among CASA inspectors. The operating rules TWGs have provided constant examples of industry representatives accepting greater complexity in the interests of tighter prescription[6].

On the other hand, regardless of how CASA provides drafting instructions, AGD lawyers compile the legislative drafts. AIPA is convinced that few people in GA understand that the AGD interpretation of "plain English" or "legal simplicity" is not the everyday vernacular, but rather is a complex legal language intended solely for those within the legal profession and designed to allow successful prosecution of a range of aviation minutiae without enlivening appeals or judicial review. The legislation is not written to benefit or enhance the understanding of industry participants, despite our constant insistence that it should.

The proliferation of aviation legislation, so often and justly criticised, is yet another case of good people generating bad outcomes. However, in this case it is an externality imposed on CASA by government policy on legislative drafting.

Nonetheless, it is unacceptable when the drafting of the law prevents those who are bound by it from understanding what is actually required.

A comment on costs

With few exceptions, every conversation in Australian civil aviation invariably involves complaints about the cost of participation. The ToRs for this Inquiry are written around industry economics, but in reality, the industry feedback that led to this Inquiry has always been about costs to the industry and the policy complexity of who should pay and how much.

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6 Those observations were in direct contrast with the fatigue management TWG, where the greatest flexibility was sort by avoiding prescription to the greatest extent possible. It seems likely that the latter response reflected CASA's historical lack of regulatory activity in fatigue management.

Often, the loudest voices belong to those who fail to accept that aviation participation is not a right or a free-for-all for people to indulge their dreams or fantasies. Activities in which public policy prioritises safety require precise, consistent and constrained entry control combined with a regime of continuing compliance. Under-capitalisation, inexperience, poor management and greed are all enemies of public safety – that is why we are forced to regulate aviation.

Regulation invariably costs some combination of private and public money. Industry participants rarely acknowledge that entry to the industry and the opportunity to seek various paths to commercial advantage must, at least in equitable terms, come at a cost to those participants. Those costs represent the general opportunity cost to others in the industry of tying up regulatory resources. The debate that then follows should be about what costs are reasonable in an efficient 'user-pays' system.

AIPA notes that not all regulatory costs are those levied directly by CASA – the consumption of industry resources in interpreting and understanding complex requirements and the legislative framework, as well as preparing applications for regulatory decisions is significant, as is the required training and gaining of mandatory qualifications. We think that the cost of implementation is poorly understood, let alone accurately determined. The Regulatory Impact Statement (RIS) for Part 61 stands as a stark reminder of just how badly CASA underestimated the complexity and cost of implementation of those rules.

Separately, costs are not uniform between industry sectors - aviation is not a 'one-size-fits-all' industry. Ideally, we regulate according to the risk associated with the activity, which we define as the product of the social and economic cost of a significant aviation event (the 'consequence') with the chance of that event occurring (the 'likelihood'). Therefore, where the impact on public safety of aviation activities is reduced, the constraints and associated costs of participation can also be reduced. To be blunt, we should not regulate GA as if each participant was running an international airline.

In any event, AIPA considers that, consistent with the earlier theme, CASA is neither competent nor capable of determining the imposition of both direct and indirect regulatory costs – that is an economic and thus political decision. Unfortunately, aviation politics in Australia have historically been characterised by unbalanced advice and pressure from special interest groups on CASA, rather than by Parliamentary debate. These should not be agency level decisions, yet once again Parliament has enshrined that role conflict in the recent amendment to the *Civil Aviation Act 1988*.

Both AIPA and AFAP wrote to Senators in regard to the Civil Aviation Amendment Bill 2019 and the potential consequences of economic decisions interfering with safety decisions. We warned of the difficulties of getting the balance right and not allowing private interests to overshadow public interests:

> However, like all private interests providing public economic benefit, such as banks, insurers, toll road operators, etc., the profitability requirements of private interests do not automatically generate public benefit when it comes to risk. Aviation has been, and will continue to be, a system that requires a high level of regulation to ensure that public risk is as low as reasonable practicable. Participation in that system is accompanied by significant compliance costs, so it is far from unexpected that the private interests will always resist those costs.
>
> However, that resistance by private interests cannot be allowed to control the system.
>
> The aviation safety regulator has a difficult and narrow path to tread in ensuring that the public safety interest is met without unnecessary constraint on the public economic benefit and the participating private interests. The danger to the public

> safety interest comes from a safety regulator that gets role confusion and starts to act like an economic regulator. In our view, CASA has already demonstrated a propensity to dilute the former role for a taste of the latter, particularly in the areas of fatigue management, airports and airspace protection.[7]

Under the current arrangements, CASA is still able to make largely unscrutinised decisions that may disproportionately benefit some private interests or industry sectors compared with others. Equally, as Part 61 demonstrated, CASA can disadvantage large numbers of stakeholders in trying to correct the transgressions of a few.

THE TERMS OF REFERENCE

ToR a (i): Is the legislation fit for purpose?

The obvious purpose that the legislation is intended to serve is set out in section 3A of the *Civil Aviation Act 1988*:

> **3A Main object of this Act**
>
> The main object of this Act is to establish a regulatory framework for maintaining, enhancing and promoting the safety of civil aviation, with particular emphasis on preventing aviation accidents and incidents.

The critical element to answer the fitness question is in understanding the competing purposes that various stakeholders expect the legislation to serve. AGD would be happy if the legislative package catered for every miscreant and malevolent act in such a way that administrative and judicial variability was minimised, if not removed. Most industry participants would be happy if the package allowed flexibility in compliance without too much uncertainty. Most CASA inspectors would be happy if all acceptable means of compliance were identified and if the rules supported their personal views of how compliance should be achieved. Most pilots would be happy if the legislation was simple, readable and any liability was actually within their control to manage.

Unfortunately, our evolving civil aviation safety legislation is such that no one is really happy, although those AGD drafters who may have completed their apprenticeships on the Australian Taxation Law are probably closest. Clearly, there are competing expectations that cannot be reconciled in Australia, despite some evidence that other jurisdictions have made a much better fist of it.

AIPA believes that “maintaining, enhancing and promoting” the safety of civil aviation cannot be achieved with legislation that is so complex and so voluminous that any serious attempt to read and understand the underlying structure of a national aviation safety plan is best equated with a form of psychological torture.

We are on record in many forums decrying the excessive reliance on strict liability provisions, particularly in a demanding high risk space such as aviation where human factors predominate. That type of legislation does not encourage safe behaviours – instead it emphasises compliance and, where it is used to avoid proving intent or the practicality of gaining admissible evidence, it can perversely encourage reduced integrity and collusive behaviours in hiding errors. Many existing provisions do not readily draw an inquiring mind to the underlying risk that the particular rule is purported to address and the attendant penalty provisions uniformly conflate inconsequential administrative compliance with highly risk outcomes.

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[7] AIPA Letter to Senators *AIPA Concerns about the Civil Aviation Amendment Bill 2019* 10 July 2019, page 2

It is important that the Committee recognise that broader government regulatory policy is as much to blame for the unfitness of the aviation legislation as CASA may be for its unconscious desire to wrap the industry in a regulatory straitjacket.

ToR a (ii): Safety, economics and relative risks

Safety

There is a natural tendency among people drawn to regulatory roles to control everything that does or may happen in the belief that increasing certainty and removing variability will reduce risk and thereby increase safety. However, this sledge hammer approach obscures the fact that, for many parts of what is a very complex system, unnecessary constraints and costs are imposed with no positive effect on safety. Moreover, the unintended result may be a reduction in safety due to attitudinal pushback from those aggrieved in the process.

Without effective leadership and oversight within CASA, it is simply too easy for standards developers to respond to imagined or exaggerated risks with what an objective observer (if there are such things in civil aviation) would consider to be regulatory overreach. If the target audience does not share similar perceptions of those risks, they will not accept the constraints and, instead, will feel, rightly or wrongly, "oppressed" or otherwise dispossessed of a perceived "right" or freedom.

AIPA believes that safety is a natural product of safe behaviours rather than of regulatory constraints. Aviation safety will be preserved and enhanced by the people actually conducting the activity, i.e. operators generally and their employees and contractors specifically, and shaping their knowledge, skills and behaviour should be the regulator's goal. In our view, that will require a far better analysis of the actual risk and of the options to mitigate that risk in accordance with the Government's policy:

> The Government's rigorous approach to policy making seeks to ensure that regulation is never adopted as the default solution, but rather introduced as a means of last resort.
>
> Regulation can have benefits, but businesses, community organisations and families pay the price of poor regulation.
>
> Regulation can't eliminate every risk, nor should it. We therefore seek better regulation, not more regulation. Policy makers must seek practical solutions, balancing risk with the need for regulatory frameworks that support a stronger, more productive and diverse economy where innovation, investment and jobs are created.[8]

Economics

As discussed in our earlier general commentary, there is some danger in the continual overlay of economic considerations on Australia's aviation safety framework. The debate seems to have shifted to the point where the industry, most particularly the GA sector, has self-generated an expectation that the consideration of economic and cost impacts will somehow be elevated to the level of the safety imperative and that CASA has now been forced into a FAA-style requirement to "foster" or "develop" civil aviation.

The Civil Aviation Amendment Act 2019 inserted subsection 9A(3):

> (3) Subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9(1)(c), CASA must:

[8] See https://www.pmc.gov.au/resource-centre/regulation/australian-government-guide-regulatory-impact-analysis

(a) consider the economic and cost impact on individuals, businesses and the community of the standards; and

(b) take into account the differing risks associated with different industry sectors

That amendment codified the final expectation of those listed in the Minister's April 2015 Statement of Expectations (SoE) for the CASA Board. Legally, the duty imposed is simply to consider or to take into account – there is no compulsion to act. Arguably, paragraph 3(a) merely reflects the principle underlying the RIS. However, unlike the RIS process (when applied), there is no transparency requirement in paragraph 3(a) to allow either Parliamentary or public scrutiny of how such considerations affected any outcomes.

Even though the RIS process has a significant resource of guidance notes and assessment tools[9], AIPA does not believe that CASA has a rational, objective and transparent mechanism to comply with identifying the economic and cost impacts of regulatory activity in aviation. In reviewing available CASA RISs, we consider that they more often than not reflect mandatory compliance with the RIS requirement as distinct from a record of a well-considered balancing of alternative approaches to a well-defined risk.

The balancing act for government is in avoiding unproductive business and compliance costs while ensuring that the economic consequences do not overshadow the task of properly mitigating the identified risks.

For those in the industry who are strident advocates of the FAA mandate, AIPA strongly believes that fostering or developing civil aviation is an economic mandate that, if not carefully managed, is very likely to conflict with the mandate to curb unsafe behaviour, which frequently is born of misplaced economic drivers for profit. The various inquiries surrounding the certification of the Boeing 737 Max aircraft will undoubtedly examine the consequences within the FAA of trying to satisfy those competing mandates, as well as the long-standing allegations of "regulatory capture".[10]

In our view, economic consequences are an appropriate and necessary consideration, but should always be subservient to achieving proper safety outcomes.

Relative risk

AIPA has consistently expressed the view that broadly based compliance requirements often adversely affect parts of the aviation industry that are not high risk and for which the relative burden of compliance cost is too high for the risk supposedly being mitigated. Properly considering those impacts is appropriate and necessary.

It would make no sense to us to regulate the aircraft and pilots engaged in recreational aviation to the same standard as we apply to international airlines. The risks being undertaken in recreational aviation may well reflect higher likelihoods, but the consequences although personally dire are starkly different from a public policy perspective. The consequences will still involve death or injury, direct financial loss and indirect social costs, but only for a few individuals who are generally well-informed of, and largely control, the overall risk. At the other end of the scale, 500 people boarding an A380 are, by choice or ignorance, largely unaware of the real risks inherent in complex systems and rely on government to manage the risk on their

9 See https://www.pmc.gov.au/regulation/guidance-policymakers

10 See https://www.latimes.com/business/la-fi-faa-ntsb-boeing-737-crash-20190322-story.html

behalf. An accident in that case would clearly involve large scale consequence, with economic and political costs of great significance.

Considerations of relative risk have always informed the safety regulation of civil aviation, albeit focused on mass transport by air. The problem that arises is invariably the challenge for the regulator in "letting go" – making sure that the air transport mentality does not 'sledge hammer' the GA nut. It seems abundantly clear that CASA has failed to adequately moderate the power of its regulatory standards development mandate, given the pushback from the GA community.

As mentioned earlier, we should not regulate GA as if each participant was running an international airline.

It may well be worthwhile for the Committee to compare the costs and outcomes of the safety regulation of recreational aviation by RAAus with that of the non-air transport sector in GA with a view to revamping the GA regulatory paradigm. In making this suggestion, AIPA accepts that there may be irreconcilable differences in such things as enforcement, passenger liability insurance, equitable access to airspace and infrastructure, etc. We claim no familiarity with the RAAus model, other than it appears to be the one case where there is sufficient similarity to allow useful comparisons.

ToR a (iii): Intra-government engagement

Prima facie, examining the engagement of CASA with other relevant Australian Government agencies is beyond our resources and, given the ubiquitous and determined opacity of decision-making and engagement by agencies within the transport portfolio, is for the most part beyond our reach. We will comment later on CASA's engagement with the Parliament in the legislative instruments space.

Notwithstanding, our attempts to achieve sensible and measured outcomes in matters related to aerodromes and airspace, the regulation of which involves both CASA and DITRDC, reveals that both parties regularly contribute to systemic failures that increase risk, often as a consequence of two things: maintaining bureaucratic silos; and the inherent tension between safety regulation and economic 'fostering'.

A classic example arose in the context of building-induced turbulence near runways. A DITRDC consultant misquoted/misapplied research that both agencies adopted as best practice – the consultant could not explain the error and made no attempt to suggest that their significantly smaller assessment zone was justified by any scientific measure. However, once CASA accepted the consultant's erroneous figure, they refused to review their decision even after AIPA clearly demonstrated that it was not attributable to the original or any subsequent research, did not reflect operational reality and was potentially unsafe. DITRDC informally accepted that an error had been made, but took the position that they could not amend the national benchmark without CASA advising them to do so. The CASA position was that there is no evidence to suggest that the reduced assessment zone is a problem – a classic failure of logic and risk analysis because CASA is treating the absence of evidence as evidence of absence of risk. It is even more ridiculous when one considers that there will be no evidence because no one conducts windshear and turbulence analysis in the missing assessment zone to identify potential problems and because we have yet to have a real life significant event on landing.

There are more examples of systemic failures due to the demarcation of advice silos where neither agency calls out the other in the interests of safety. The seemingly endless proliferation of airspace penetrations approved by DITRDC is a classic case – there is little, if any transparency of the decisions made because the usual government

(of both persuasions) stance is that economic development is preferable in all circumstances where the measure of public risk is difficult to determine or unlikely to attract criticism.

The most frustrating part for AIPA is that there is no consistent and defensible mechanism to protect the public interest when either CASA or DITRDC fails to maintain the safety of the aviation system. Both agencies are driven by the cultural need to avoid facing appeals in the AAT or in the Federal Court and both agencies have an apparent preference for using the cloak of "commercial-in-confidence" themes as a means to hide decisions from any real scrutiny.

A real conundrum for the Committee is to identify what protections should be in place to protect the public interest when CASA gives bad "safety" advice to other agencies or when it fails to correct other agency decisions that impact on aviation system safety.

SOCIAL AND ECONOMIC IMPACTS OF CASA DECISIONS

The ToR refers to decisions generally, rather than just regulatory changes. Again, with the singular exception of the Fatigue Risk Management System (FRMS) provisions (which we will revisit later), most CASA decisions are subject to appropriate AAT or Federal Court review by person affected by those decisions. AIPA is not aware of any disproportionate impacts on GA of CASA administrative decisions.

On the other hand, in regard to more strategic safety regulation decisions, we are not aware of any specific proposals to reduce compliance obligations and costs for GA, although as we have suggested earlier, we believe that there is scope to do so.

The immediate dilemma springs from the short and long-term social and economic impacts of CASA decisions within the Regulatory Reform Program (RRP) and the current suite of regulations and supporting material.

ToR b: Social and economic impacts

AIPA expects that the Committee will be inundated with anecdotes and allegations of "how CASA sent me broke". Sorting through that type and quantity of feedback will be challenging, simply because, as we said in our initial comments, there is much more affecting GA than just the Regulatory Reform Program (RRP). By the same token, we are not ignoring the co-dependencies within our aviation system, nor are we excusing the fact that bad regulatory decisions can act as detriment multipliers when imposed on financially precarious businesses.

<u>The United States Federal Aviation Regulations</u>

In many ways, history is likely to show that the RRP was driven in the mid-90s largely by the desire of the GA industry to pursue their goal of Australia adopting the United States Federal Aviation Regulations (FARs). There was and still is little difference in how airlines are regulated around the world, but GA in the US is a very light touch arrangement compared to Australia. The greatest concern came from the increasing influence of the regulatory approach of the European Union, which appears to many to have legislated its GA industry into the ground. The greatest danger for both sides of the debate was the potential failure to properly identify the significant differences in the geopolitical environment between the EU, Australia and the US in formulating any new rules.

AIPA is not entirely convinced that the zealous pursuit of adopting the FARs was as well researched by the industry as it should have been, since the regulations are part of

a quite different legal system and, although almost universally considered by Australian GA proponents to be a complete statement of standards, are supported by a plethora of supplementary documents in many different formats and forms.

In our view, the greatest failing in both proposing and implementing the RRP was the failure to separate the regulatory format of the FARs, which was adopted by the EU for standardisation, from the content and context of the FARs. The latter characteristics were never transferable to the EU or, in large measure, to Australia. It is highly likely that we would have had a far better outcome if we had pursued each characteristic separately, since we do not seem to have recovered from the experience of trying to change the format and the content (and rarely the context) in the one omnibus undertaking.

The consequences of that approach of wholesale change have been unnecessarily amplified by a failure by CASA to properly map out the project by identifying:

- how amenable was the existing legislation and supporting material to being reformatted in the FAR style;
- what needed to be changed from a risk management perspective;
- how little change was needed to adequately address the risk; and
- what were the barriers to achieving those outcomes?

We recognise the simplistic nature of that framework given the complex interactions with the industry and government, but it is very clear that the ability of the industry to absorb the very scale of change that has ensued was totally overestimated and/or the economic impact was as equally underestimated.

Perhaps the Committee might consider the following questions:

- If there were no changes to the actual compliance requirements, what costs would the reformatting of the regulations impose?
- How much time and money would each operator need to allocate to understanding the new format, re-establishing links to the supporting material, training employees, updating operations manual and related documentation and updating the compliance statement?
- What would the overall economic cost to the government and the industry be just for a reformatting exercise?

We raise this issue for balance in the debate, since it seems likely that the GA industry signed up for significant economic disruption, perhaps at the behest of a few well-heeled aviation amateurs, simply by pursuing the “holy grail” of adopting the US FARs or an Australian facsimile.

AIPA is not entirely convinced that the other aspirational goals of simplicity and plain English would ever have survived the sacrificial altar in the temple of black letter law, AGD, even if they had acquiesced to actually facilitating rather than crippling the reformatting of our existing rules to a US FAR style presentation.

We believe that the adoption of the US FAR style regulatory format was always going to be an economic and personal stressor that would have much greater impact on marginal businesses. AIPA also believes that the greatest impact by far would fall on the GA sector, even if there were no changes to compliance requirements.

<u>Imposing new compliance requirements</u>

We believe that any analysis of the social and economic impact of regulatory change should recognise that the greatest danger in any sort of program such as the RRP is

that it becomes a Trojan horse for a range of competing interests, both positive and negative. While the industry was pursuing the US-style light touch for GA, the door was open for well-meaning 'experts' to tighten the screws on their perceptions of existing and emerging risks.

The now infamous Part 61 was constructed by some very experienced and well-intentioned CASA officers who had extensive exposure to GA. While that exposure to GA would have included a range of good to quite bad experiences, we do not believe that at any stage those individuals intended to create the monster that Part 61 became. While AIPA participated in many flight standards sub-committees and working groups, our members do not recall the regulatory developmental work being driven by any form of risk register or other product of a risk management process. Even if such a register existed, which we strongly doubt, it would nevertheless have been quite easy to address each risk in isolation without proceeding to an holistic overview of the combined impacts of the separate mitigators/controls on individuals conducting complex operations or exercising multiple approvals. That lack of overview, specifically to prevent regulatory excess or the increasingly popular pejorative regulatory "overreach", was and probably still is a failure of leadership with CASA.

Part 61 is a convenient example also because it is a framework that spans all industry sectors from GA to the airlines. It does not easily lend itself to proportionate regulation according to sector risk and it has to deal with subject matter that is complicated by defective industry structures.

Those structural defects arise from the quality of training achievable with the standard of aircraft, infrastructure and instructor experience. Each of those things is a cost to the business and therefore profit driven. For example, in GA, a newly licensed commercial pilot with a few hundred hours will often complete an instructor rating as soon as possible in order to gain the necessary flight hours to qualify for the airlines or better GA jobs. However, neither the airlines nor the military (mostly) favour using such inexperienced pilots as instructors and instead provide much greater tutelage and supervision of their own instructors to protect the standard of training. The irony is that many airlines, given their propensity to avoid additional training costs, conveniently ignore the likelihood that the training of candidate GA pilots is best characterised as the "blind being led by the vision-impaired" and fail to allocate resources to remediate any basic training deficiencies.

AIPA is quite empathetic to how easy it would be for CASA standards developers to consciously or otherwise impose higher standards or increased prerequisites on individual pilots to try to compensate for perceived deficiencies in the training system. However, it is very clear to us that contextually the individuals are not the appropriate target. Perversely, those hoped-for higher standards and the increased prerequisites have resulted in a reduction in an already under-supplied resource as people choose not to continue or not to begin in key training roles.

More generally, other operational parts of the regulations have featured increased compliance burdens. With the singular exception of CASA's disgraceful weakening of the fatigue management rules, AIPA participants in CASA TWGs report minimal easing or removal of compliance requirements. In any event, imposing additional compliance requirements (the opposite of what the GA industry sought) clearly has an economic and social impact at all levels of the industry, but a disproportionate impact on GA.

<u>Abandoning the RRP is not an option</u>

Given the high levels of social, economic and compliance stress endured so far, there can be no rational contemplation of imposing even greater systemic stress, particularly

in GA, by abandoning the current program. AIPA believes that we have no choice but to proceed, albeit much more wisely and with much greater care.

CASA'S PROCESSES AND FUNCTIONS

In broad measure, CASA's remit as a safety regulator is consistent with the functions identified in the ICAO model. However, AIPA has considerable difficulty in seeing the detail of how CASA goes about those functions. As we often point out, most recently to the Senate Standing Committee for the Scrutiny of Delegated Legislation (SDLC), CASA is the antithesis of open government and regulatory accountability. There appears to be a corporate culture of reversing the intentions of the 'open government' administrative law provisions, instead using them as a shield from public scrutiny as well as making the process of seeking internal review almost impossible. CASA still steadfastly refuses to publish an organisational chart that allows supervisor enquiries, despite the lead shown by DITRDC, forcing industry engagement up the managerial chain where, more likely or not, the response time will exceed the practical life of the problem.

Against that background, if our commentary is later shown to be inadequately informed, it will not be through lack of attempted engagement.

ToR c (i): An efficient and sustainable Australian aviation industry

At the risk of being repetitive, CASA's processes and functions were never designed to maintain, sustain or ensure viability of any Australian aviation sector. However, there can be no doubt that, following the debacle of the introduction of Part 61, as well as Parts 64, 141 and 142, that CASA was on the back foot about totally misreading the economic impact of those regulations and the apparent failure to manage what needed to be changed from a risk management perspective and how little change was actually needed to adequately address the actually risks.

As we noted earlier, the Minister's SoE for the CASA Board first introduced in 2015 the very sensible considerations of economic impact and sector risk. It ostensibly was never aimed at usurping the primacy of the 'safety first' object of the *Civil Aviation Act 1988*, as was later made abundantly clear in the Explanatory Memorandum for the Civil Aviation Amendment Bill 2019. Nonetheless, CASA was under considerable political pressure to do no more economic damage to the industry, particularly GA. It was, and remains, that very political pressure that causes AIPA great concern.

We have already alluded to the challenge for CASA in getting the balance right, but our experience thus far suggests that the regulatory pendulum can often overswing in the wrong spaces. Critically, there appears to be no middle management level internal process specifically intended to identify and moderate the regulatory balance. Arguably, the ASAP provides advice to the DAS along those lines, but it exists at the very top of the organisation and therefore at the greatest distance from the 'scene of the crime'. We will specifically address the ASAP under 'related matters'.

<u>The required balance</u>

CASA cannot maintain or sustain or ensure industry viability and it should not compromise safety through any misconception of its ability to do those things. All CASA can do is minimise the impact of what it must do to rectify identified risks within the aviation system. That is the required balance.

ToR c (ii): Efficacy of its engagement

Again, the Part 61 implementation is most instructive. CASA did not develop Part 61 in a consultative vacuum. There was a consultative mechanism previously in place, the Flight Crew Licensing sub-committee of the Standards Consultative Committee (SCC), but it was never an holistic overview process with any authority or real role in the standards development process.

As a form of disaster recovery, the Part 61 Solutions Taskforce involved several significant features that greatly assisted in repairing or ameliorating the damage:

> It was identified that the regulatory implementation was not just about implementing regulations, but also about the approach to how the new rules would be implemented. While there were technical solutions, the Taskforce was cognisant of the need to understand the human elements associated with regulatory change.
>
> The Taskforce placed significant emphasis on collaboration, recognising that internal collaboration and external stakeholder engagement were critical to its success. Its composition was purposely cross-divisional to ensure a balanced representation of concerns, ideas, and expertise. CASA staff were seconded full-time to the Taskforce, and the IAP and the Thought Leadership Advisory Group were established within weeks of the Taskforce's establishment.
>
> The solutions delivered by the Taskforce were developed in an integrated, holistic manner and tested by CASA staff and the aviation community to achieve the best outcomes for both. Solutions were delivered incrementally and staff returned to their normal teams on completion of the work they had been allocated to undertake.[11]

Unlike the previously tokenistic consultation with the Flight Crew Licensing sub-committee of the SCC, the Industry Advisory Panel (IAP) was a key part of the process:

> The establishment of the IAP represented CASA's commitment to engaging with the aviation community in a new, more collaborative way.
>
> The IAP played a vital role in the resolution of the issues associated with the flight crew licensing regulations. It provided advice to the Taskforce on the priorities and the solutions.
>
> The success of the Taskforce and the solutions that were developed and implemented was, in large part, because of the productive and professional working relationship between IAP members and Taskforce staff. The IAP demonstrated significant commitment and energy to assisting CASA deliver solutions to the identified issues.[12]

That more successful model has survived and is continued in the TWGs.

The other internal advisory panel was the Thought Leadership Advisory Group (TLAG). It was established to provide advice to Taskforce managers on matters relating to policy, key changes, prioritisation and resourcing. The TLAG comprised 11 senior managers from within CASA. AIPA sees that panel as critical to getting the required internal focus to drive the sort of holistic approach that we have been espousing. It should have been capable of minimising the amount of regulatory change to address the identified risks. Of itself, however, it would have been incapable of properly considering the economic impact of the proposed regulatory Part.

Despite its apparent usefulness, we don't know whether the TLAG approach continues as an internal CASA process.

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11 Part 61 Solutions Taskforce Closure Report, December 2016, page 7

12 Ibid., page 7

The loudest voices

While the IAP process worked particularly well, it was conducted, in effect, under crisis conditions where CASA needed to be rescued. The TWGs are now much more of a normal business process and the dynamics are somewhat different. The experience of AIPA representatives at the CASA TWGs has been mixed. In some cases, there has been significant pushback from CASA attendees against industry advice to revise previously consulted or settled drafts, while in other cases, mere token resistance from CASA in undoing rules already made into law.

The approach of some industry representatives has been instructive about how the opportunity provided by the TWG process has been viewed. In the Fatigue TWG, Qantas chose to be represented by a corporate lawyer and, together with the REX representative and led by the RAAA CEO, opposed any changes that would advance pilot fatigue management beyond the policies in place in the 1990s. The remaining operator representatives eschewed that blatant industrial approach and provided some balance to the discussions, but they were not the loudest voices. Despite some unashamed misrepresentation of the science and the evidence, CASA acquiesced to the choice of commercial interests over some unknown increases in risk.

Public consultation

CASA has clearly made significant attempts to improve their consultation with the general public. Their Consultation Hub still has its flaws, particularly as it acts to constrain the interaction to CASA-selected questions and is not friendly to expanded submissions. However, it is a positive step forward. Although much more could be done, it provides some much needed transparency to the consultation process.

Unfortunately, the Hub is not as well used as one might hope. It is not entirely clear to us why many industry participants do not avail themselves of the opportunity to participate, but regulatory change fatigue, combined with voluminous and complex material as well as a pervasive feeling that any input will be ineffective or ignored are most likely top of the list.

ToR c (iii): Ability to broaden accessibility

AIPA considers that accessibility to regional aviation across Australia is market-driven, as we noted in our introductory commentary. We do think that CASA decisions have a market impact, most obviously on the supply side, but gauging the extent of that impact would seem to require significant economic research that is far beyond our capability.

In addressing this ToR, the Committee might wish to consider two things:

- If the aviation law had been frozen in 1995 and the cost of regulatory transactions was indexed to CPI, would the GA industry look decidedly more healthy than the current state; and
- If the aviation law reverted to the 1995 rules and the cost of regulatory transactions was indexed to CPI from then, would the current GA industry change markedly?

Ignoring the obvious implementation issues, our best guess is that any changes would be modest. If that is likely to be the case, then any proposals to improve the health of GA, an outcome which we most assuredly support, must be found in other parts of the Transport portfolio and, most likely, in other portfolios. Accessibility does not seem to be a good fit with safety regulation – it is a matter of economic policy at the highest levels of government.

ANY RELATED MATTERS

Transparency and open government

All sectors of the Australian aviation industry are affected by the way in which government agencies conduct themselves. Our interactions with CASA and other aviation-related agencies are invariably frustrated by a lack of transparent decision-making and many examples of what we see as active avoidance of public scrutiny, either under administrative law provisions or by Parliamentary scrutiny. It is difficult to accept that this widespread and repetitive behaviour is accidental.

Parliamentary scrutiny

As noted earlier, our umbrella association AusALPA recently engaged with the SDLC on this issue. In part, it said:

> AusALPA is concerned that the Commonwealth aviation-related agencies are using the framework of the *Legislation Act 2003* to frustrate rather than further the aims of that Act and of the administrative law framework.
>
> In Parliamentary Research Paper 13 of 2000 (part of the Vision in Hindsight project), John McMillan wrote about *Parliament and Administrative Law*. He dealt with the Parliament's move towards more open government and the significant legislation that provided greater public scrutiny of executive actions, such as the *AAT Act 1975*, the *AD(JR) Act 1977*, the *Ombudsman Act 1976*, the *Freedom of Information Act 1982* and the *Privacy Act 1988*. He foreshadowed the passing of the Legislative Instruments Bill 1994 as part of the transparency movement.
>
> He wrote that we had established a system underpinned by three broad principles:
>
> - *administrative justice*, which at its core is a philosophy that in administrative decision-making the rights and interests of individuals should be properly safeguarded;
> - *executive accountability*, which is the aim of ensuring that those who exercise the executive (and coercive) powers of the state can be called on to explain and to justify the way in which they have gone about that task; and
> - *good administration*, which is the principle that administrative decision-making should conform to universally accepted standards, such as rationality, fairness, consistency, and transparency.
>
> AusALPA, in exposing to the Committee just one of many examples, that of the development and approval of Fatigue Risk Management Systems (FRMS) in aviation, contends that CASA has misapplied or ignored all three of these broad principles. Furthermore, we believe that CASA has thwarted the spirit, if not the letter, of the *Legislation Act 2003* with the demonstrated lack of transparency and sufficient engagement, keeping stakeholders unaware of its activities in regard to the implementation of FRMS, one of the major planks of aviation safety.
>
> While we understand that this [SDLC] Inquiry is focused on the currently permissible Exemptions under the Act, we cannot precisely sever the exemption provisions from the more general operation of the Act. Importantly, AusALPA faces the same dilemma as the Committee in that it is impossible to form a view or to adjudicate, as may be the case, on the mechanisms being employed to avoid scrutiny when the actions of the Executive are hidden from view and the very basis of that concealment is unstated or unknown.

That submission was somewhat technical and will become available after appropriate consideration by the SDLC. One of our main concerns was that Appendix 7 of Civil Aviation Order 48.1 Instrument 2019 (the "2019 Instrument") is best characterised as "blank cheque" legislation in that there is no transparency of FRMS approvals granted

under its terms. A related concern arises in relation to the application of subsection 5A *Approval of non-compliance* of the 2019 Instrument.

Blank Cheques

In describing so-called 'blank cheque' legislation, the Clerk of the Senate said:

> If exemption from disallowance is coupled with a legislative scheme that established only a framework and a broad power to lay down the details of the scheme in delegated legislation, it might be thought that Parliament was largely abdicating its legislative role.[13]

For the absence of doubt, AusALPA member associations recognise the need for FRMS as an operation-specific safety mechanism. We also recognise that FRMS is based on achieving a risk outcome that cannot be prescribed other than as a process and a set of principles as Appendix 7 does. Importantly, that legislative structure meant that the SDLC was precluded from scrutinising Appendix 7 outcomes, in stark contrast to the remainder of the otherwise disallowable 2019 Instrument. This frustration of the Parliamentary scrutiny process meant that CASA was inadvertently, and in our strong view inappropriately, given a 'blank cheque'.

We believe that the dangers of a 'blank cheque' provision or exemption must be very precisely constrained such that the essential elements of the otherwise applicable legislative scheme can only be varied or set aside in tightly controlled circumstances. AusALPA was advised by the Secretary of the SDLC that the Committee would normally approach the legislation with a view to implementing suitable constraints.

Administrative law review

To be fair, the SDLC was most unlikely to realise or reasonably predict that CASA effectively can disregard all of the principles and other limits set out in the 2019 Instrument, as well as its own policy document (the FRMS Handbook), in granting FRMS approvals without the likelihood of counterbalancing administrative law scrutiny. Yet that is exactly what CASA did when approving the Qantas FRMS.

CASA considers the only parties to an FRMS approval are CASA and the applicant, who they happily point out is unlikely to complain if successful. They may risk some pushback from an unsuccessful applicant, but that would be a very brave applicant if they had any intention of further seeking CASA largesse. Importantly, even though pilots are specifically compelled to comply with the terms of the FRMS approval, CASA has determined that pilots are only "indirectly affected" and have no rights to procedural fairness or administrative review. That prospect is now being challenged in the AAT and the Federal Court, but AIPA strongly believes that the need for a legal challenge should never have arisen if the SDLC process had worked as intended.

FRMS approvals have the clear potential to create commercial advantage, particularly when they are treated by CASA delegates as confidential bilateral agreements invisible to other industry participants. More broadly, CASA is still able to make decisions that may disproportionately benefit some private interests or industry sectors compared with others, but they are unlikely to be held to account by other affected parties who don't know what benefits were granted or when. The latter knowledge is critical to seeking administrative review within the statutory timeframes.

If the intent of introducing modern fatigue rules including FRMS was to reduce the risk of fatigue induced incidents, then it is clear that safety rather than secrecy is intended

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13 See page 3 of Submission 3 to the Senate Standing Committee for the Scrutiny of Delegated Legislation Inquiry into the Exemption of Delegated Legislation from Parliamentary Oversight.

as the primary objective. The aviation industry safety record is based on shared knowledge - what possible reason can exist for not sharing the details of fatigue risk management strategies approved for all operators?

Right to know

AIPA believes that the current public access arrangements are neither fair nor transparent. We maintain that both CASA and DITRDC misuse the intersection of safety and administrative law to hide behind rather than to promote openness in government. That is completely at odds with the Government's formal commitment to making the Executive accountable to the Australian public by demonstrating, through providing the evidence of their decisions and reasoning for those decisions, that they are acting in the public interest.

At the risk of drowning in the quagmire of privacy, confidentiality, trade secrets, commercially valuable information etc., and the plethora of related Inquiries, we believe that the Committee should consider these relevant questions:

- what is appropriate transparency for decisions that do, or have the potential to, create commercial advantage?
- what is appropriate transparency for decisions that do, or have the potential to, reduce safety levels?
- should procedural fairness extend to people directly affected by decisions when they are not the applicant for the decision?
- is the public interest better served by having a public register of civil aviation directions, instructions, notifications, permissions, approvals or authorities not otherwise published in Civil Aviation Orders?

AIPA maintains the strong view that it is not CASA's role to create commercial advantage for industry participants, rather it is to apply the aviation safety rules fairly, consistently and objectively. We recognise that there are often commercial sensitivities around applications and also that some material supplied in respect of an application may reasonably attract some level of privilege. However, we also believe that safety and impartiality are best served if that privilege expires with the decision. The decision itself should be available to the public without having to resort to FOI.

We also note that other agencies[14], in addition to publishing all of their decisions, comfortably deal with publishing applications by redacting commercially-sensitive or private information. A number of state agencies publish guidelines on claiming commercial confidentiality, which, in stark contrast to the Commonwealth transport portfolio agencies, default to a 'no protection' outcome. Importantly, the information protection literature is quite replete with various Information Commissioners advocating for proactive publication of decisions, a key strategic priority for the Office of the Australian Information Commissioner (OAIC)[15]. In our experience, this is clearly not the approach taken by CASA or DITRDC.

Approval of non-compliance

Subsection 5A was introduced to the 2019 Instrument by Civil Aviation Order 48.1 Amendment Instrument 2019 (No. 1), which came into effect on 18 November 2019. It gave effect to what are known as "minor variations", the control of which is subordinated to a Minor Variations Policy[16]. It is somewhat ironic that the combination

14 For example, the International Air Services Commission

15 See https://www.oaic.gov.au/freedom-of-information/information-publication-scheme/

16 CASA Minor Variations Policy – CAO 48.1 Instrument (2019), version 1.3, August 2020

of this subsection and Appendix 7 together provide CASA with the ability to potentially provide every operator in Australia with a bespoke fatigue management or fatigue risk management scheme – under current arrangements, a personalised exemption system the outcomes of which are deliberately and doggedly hidden from public view.

AIPA also notes that subsection 5A applies to all and any provision of the 2019 Instrument, including the most basic rules and FRMS, potentially constrained only by how a court or tribunal might interpret "limited or minor". We further note that paragraph 5A.4 fails to adopt the ICAO standard of:

> …a level of safety equivalent to, or better than, that achieved through the prescriptive fatigue management regulations… [emphasis added]

opting instead to merely:

> …preserve an acceptable level of aviation safety… [emphasis added]

which may, at the absolute discretion of the delegate, result in a substantial reduction from the level of safety otherwise prescribed.

Nonetheless, CASA has provided quite stringent policy guidance. Like the FRMS Handbook that preceded it, the Minor Variations Policy does contain sensible and practical guidance. However, policy documents such as these are not legally enforceable and CASA has already demonstrated in approving the Qantas and EFA FRMSs that they are happy to abandon even the key policy principles. Despite the goodwill and the best of intentions of many CASA staff, merely having a robust policy is certainly no guarantee that any subsequent decisions will actually reflect those safety-based policies.

Subsection 9A(3)

Earlier we noted that subsection 9A(3) was inserted into the *Civil Aviation Act 1988* on 07 November 2019, requiring CASA to consider the economic and cost impact on individuals, businesses and the community of the standards and to take into account the differing risks associated with different industry sectors.

We have previously made the point that, legally, the duty imposed is simply to consider or to take into account – there is no compulsion to act. Importantly, there is no transparency requirement in paragraph 3(a) to allow either Parliamentary or public scrutiny of how such considerations affected any outcomes.

AIPA suggests that the Committee might consider whether some form of compliance statement from CASA should be required, similar to the Statement of Compatibility with Human Rights in Explanatory Memoranda and Explanatory Statements.

Managing risk

Maintaining or improving aviation safety is all about managing risk to as low as reasonably practicable (ALARP). It is not about exploring "zero risk options" as some recent CASA advice about airspace protection suggested, since that will clearly only be achieved by zero aviation activity. That advice represents to us a ludicrous regulatory overswing by that section of CASA, who for the most part we criticise for not responding appropriately to excessive risk. What it highlights is a broader absence of risk management competence, training and procedures within CASA.

In recent times, we are seeing increasing use of 'risk assessments' and so-called 'safety cases' by applicants seeking regulatory relief, which, for the most part, AIPA considers to be documents that are poorly constructed, mislabelled, misused and mishandled by both applicants and by CASA.

Safety Cases

A common definition of a safety case is:

> …a structured argument, supported by a body of evidence that provides a compelling, comprehensible and valid case that a system is safe for a given application in a given environment.[17]

In theory, the safety case is developed at the beginning of the design of a system, whether that is an aircraft, a navigation aid or protection of airspace around an aerodrome. The intention is that the design is driven by the safety case to ensure that the intended use of the system is not hazardous and does not become so through the operational life of that system. In the example of airspace protection, the safety case would inform the regulator's contemplation of the consequences of approving penetrations of the protected surfaces individually and, in direct contrast to our current situation, collectively with existing penetrations.

If such a safety case existed, would it be likely that CASA and DITRDC between them would oversee the approval of several thousand DITRDC-approved penetrations of the protected airspace surfaces at Sydney Kingsford Smith Airport alone? Would the OLS manipulations and regulatory backtracking seen at Essendon persist?

In reality, many of the so-called 'safety case' applications that we do see (despite the active interference from the agencies) share the unhappy characteristics identified in the UK experience[18], such as:

- they contain assertions rather than reasoned argument;
- there are unjustified and implicit assumptions;
- some major hazards have not been identified and are therefore never studied;
- there is a poor treatment of data with uncertain pedigree, and the effect this uncertainty has on subsequent assessments; and
- they don't deal well with human factors.

The greatest disappointment is that rarely, if ever, do we see any evidence that CASA or DITRDC even recognise the glaring deficiencies, let alone demand robust arguments and proper evidence, or that they treat the process as anything more than a 'tick and flick' compliance activity.

Risk assessments

The ownership of safety cases normally resides with the owner of the system – for the most part that is effectively CASA or DITRDC. However, most applicants for regulatory relief are proposing to alter the existing system in some way and they often produce a 'risk assessment' designed to justify that relief. Unfortunately, those assessments invariably suffer from the same defects as outlined above for bad safety cases.

Recent examples such as risk assessments for increased crosswind limits for runways and increased duty times for COVID-19 relief flights invariably highlight the tendency to design the risk assessment to support the desired outcome, rather than to thoroughly assess the risks and ensure that the proposed activity does not adversely affect the pre-existing levels of risk.

Professor Nancy Leveson provides a most useful warning:

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17 See UK Ministry of Defence Standard 00-56 *Safety Management Requirements for Defence Systems*, Part 1 Issue 7 (28 February 2017)

18 See UK Defence Safety Authority, *Manual of Air System Safety Cases (MASSC)*, June 2019

> Engineers always try to build safe systems and to verify to themselves that the system will be safe. The value that is added by system safety engineering is that it takes the opposite goal: to show that the system is unsafe. Otherwise, safety assurance becomes simply a paper exercise that repeats what the engineers are most likely to have already considered. It is for exactly this reason that Haddon-Cave recommended in the Nimrod accident report that safety cases should be relabeled "risk cases" and the goal should be "to demonstrate that the major hazards of the installation and the risks to personnel therein have been identified and appropriate controls provided" [Haddon-Cave, 2009], not to argue the system is safe.
>
> A final potential problem with safety cases, which has been criticized in the off-shore oil industry approach to safety cases and with respect to the Deepwater Horizon accident (and was also involved in the Fukushima Daichi nuclear power plant events), is not using worst-case analysis [Houck, 2010]. The analysis is often limited to what is likely or expected, not what could be catastrophic. Simply arguing that the most likely case will be safe is not adequate: Most accidents involve unlikely events, often because of wrong assumptions about what is likely to happen and about how the system will operate or be operated in practice. Effective safety analysis requires considering worst cases.[19]

Who sets the standard?

AIPA's Safety and Technical organisation is entirely motivated by safety considerations and has no commercial or political dependencies. Although we frame our activities in the context of the interests of Australia's professional pilots. those activities are entirely coincident with the public interest. It is often not that clear to us that the government agencies with whom we deal have the same clarity of purpose.

In almost every case where we have brought to the attention of CASA or DITRDC the deficiencies in the few applications that we actually get to see, nothing changes. Arguably, as the owner of those risks on behalf of the Australian public, those agencies could choose to accept what the applicant puts before them, even if the safety case or risk assessment is defective. On the other hand, there is no engagement with us that suggests that a conscious and considered decision based on the agency's knowledge of the risks is the actual basis of that apparent inaction.

The likely characterisation left with us is of bureaucratic indifference in an environment where there is little likelihood of any one person being held to account.

Aviation Safety Advisory Panel

Earlier, we referred to the ASAP in the context of getting the regulatory balance right. The ASAP[20] was formed as a consequence of the recommendation of the ASRR to review the SCC as the previous consultative mechanism. The ToRs for the ASAP state, *inter alia*:

> The purpose of the Aviation Safety Advisory Panel (ASAP) is to provide the CEO/Director of Aviation Safety (DAS) with informed, objective high-level advice from the aviation community on current, emerging and potential issues that have, or may have, significant implications for aviation safety and the way the Civil Aviation Safety Authority (CASA) performs its functions

While the purpose is laudable and, in AIPA's view, most desirable, we have had concerns about the implementation of the process since it was first proposed.

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19 Leveson, N, *White Paper on the Use of Safety Cases in Certification and Regulation*, May 2012

20 Originally called the Director's Advisory Panel (DAP)

The AusALPA member associations found the report of the SCC Working Group on this new consultative process particularly vexing. In May 2016, AusALPA wrote to the then-DAS and advised him, in part:

> We note that, to a surprising extent, it is blatantly self-serving in regard to the influence of the Working Group members and, consequently, contains some fundamental flaws.
>
> In particular, AusALPA is concerned that the proposed DAS Advisory Panel represents a particularly unbalanced concentration of advice.
>
> We strongly recommend that you include our Association as a full member of your chosen advisory mechanism, noting that full membership appropriately reflects both our consistent safety and technical contributions and the true characteristics of membership of both the recommended ASTRA and FAA advisory models.
>
> Given the wider publication of the Working Group advice, AusALPA believes that it is important to correct some key factual errors and selective research, as well as to note the unjustified but apparently philosophical bias against workforce representative associations demonstrated by a number of the Working Group members.

This latter sentiment often arises in our dealings with government on aviation matters, particularly among those who are intellectually incapable or unwilling to accept that representative bodies such as our member associations operate quite separately in the safety and industrial arenas.

Continuing refusal to engage with Australia's pilots is a matter that must be addressed, since we remain a valuable source of independent, experienced and unbiased safety advice.

Our engagement with the Parliament, through this and other Committees, and executive government on matters of aviation safety is not as industrial forums and never has been. Critically, AusALPA has no legal standing or role in any Federal or State industrial framework. Ironically, the often preferred source of advice is from those in the commercial sector who act unashamedly in their own best interests, particularly in the industrial arena. In that context, the key point we made to the then-DAS was:

> Importantly, we think it is critical that you recognise that the proposed membership of your advisory group are all representatives with vested commercial and economic interests whose safety activities are rarely characterised as timely, let alone proactive, and therefore lacks balance. In particular, you should be very alert to the fact that management representatives of operators do not, and cannot, represent the views of their pilot workforces – that is the very reason that both IATA[21] and IFALPA co-exist.

Subsequently, the then-DAS invited AusALPA to be a full member of the DAP. However, in reforming the DAP as the ASAP, the current DAS has reverted to excluding the policy advice of Australia's professional pilots. Despite several ASAP renewal opportunities, the current DAS has ensured that the ASAP is entirely populated with vested commercial interests. This is consistent with his entrenched aversion to associations such as ours and despite our singular focus on safety and technical matters. In the absence of the informed input from pilots who actually fly the aircraft and conduct the operations that CASA is regulating, the ASAP is predominantly an special interest economic rather than safety advisory panel.

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21 International Air Transport Association

AIPA suggests that it would be most appropriate for the Committee to consider making a recommendation that the Government should seek more balanced advice, both for the Minister and for the DAS, on aviation safety policy. There can be no balance when the voice of the last line of defence, Australia's pilots, is suppressed.

Migration

At various times, Qantas and other Australian operators have sought to use Australia's skilled immigration pathways to import pilots and other aviation professionals. For the most part, if not entirely, the motivation has been industrial rather than to address any purported shortage of local candidates. Despite the "Australians first" hyperbole on the government websites, the actual tests required to validate occupational shortages are essentially non-existent and there is currently no specific legislated requirement for a business to demonstrate that they have taken all reasonable steps to ameliorate the need for importing foreign workers.

Clearly, the impact of COVID-19 on Qantas, Virgin and many other operators means that demand for pilots has evaporated and there is an abundance of available highly skilled and experienced pilots. Nonetheless, it appears that pilots are still on at least the TSS 482 Visa (Temporary Skill Shortage Visa) list and potentially others.

AIPA strongly suggests that the Committee note in your report that there are only a tiny set of exceptional circumstances that could possibly justify granting foreign pilots visas to fly for Australian operators and that the required tests to justify the granting of such visas require significant upgrading.

We are also of the strong view that transparency demands that the relevant parts of any application for the granting of foreign pilots visas that seeks to establish a factual basis for an objective inability to source one or more local candidates should be made available for public scrutiny and potential challenge. While the current dilemma underlines the need for this level of scrutiny, we believe that it should be the default approach under all circumstances.

We have already recognised that part of the lifeline for GA in Australia is training pilots, particularly commercial pilots. It would be anathema to be further undermining the future employment prospects of current and future Australian pilots by importing overseas pilots, especially as the recovery of all aviation activity in Australia is going to be painfully slow for at least the medium term.

CONCLUDING COMMENTS

AIPA believes that the apparent decline in the fortunes of GA has as much to do with normal economic forces as it does with the consequences of CASA decisions and the protracted progress of the RRP. At the same time, we have no doubt that the costs imposed by the implementation of the new regulations have been significant. Those costs are largely independent of sector risk and are likely to be disproportionately expensive for vulnerable businesses, particularly in GA.

We believe that there is regulatory context for lighter touch regulation for GA activities, but not necessarily for certain training standards that are common across all industry sectors. There is value in comparing how CASA and RAAus regulate their respective flight training sectors, with a view to revamping the CASA GA regulatory paradigm.

In regard to the costs of participation, it might be useful for government to review how the 'user pays' principle is playing out in the aviation industry and whether the distribution of costs between the public purse and private interests is equitable and

economically appropriate. That is a political rather than a technical consideration and should not be left to CASA to decide.

Our aviation legislation has become voluminous and increasingly impenetrable. We tend to accept the informal advice of CASA officers that AGD is largely responsible for that undesirable outcome, although CASA is a significant contributor. In any event, we need a much better way forward to ensure that it is clear to all industry participants which safety behaviours are desirable and which are not, rather than continuing to surround each element of each aviation activity in black letter law solely designed to punish those incapable of deciphering the rules. Hiding behind strict liability will always prevent any analysis of intentional versus unintentional or otherwise innocent non-compliance.

Abandoning the RRP at this stage, despite the negative outcomes thus far, is not a rational option. We believe that we have no choice but to proceed, albeit much more wisely and with much greater care.

AIPA does not believe that fostering, developing or otherwise ensuring the viability of the aviation industry, including GA, has a place in CASA's safety regulatory functions. That is a matter for the economic agencies of the executive and general government policy.

As far as we can tell, risk management by CASA and DITRDC is mostly lip-service rather than detailed professional analysis aimed at competently identifying and reducing risk to as low as reasonably practicable. That approach is not in the public interest.

Transparency of decision-making is not only essential to good government and good governance, it is enshrined government policy. In our view, both CASA and DITRDC do not act in a manner consistent with that policy – rather, they seem to act as if public accountability is to be avoided at all costs. That is not acceptable and clearly a significant cultural change is required so that it is readily apparent that those agencies act in the public interest rather than in their own.

Policy advice to government generally and to the transport portfolio agencies in particular will never be balanced and fully informed when the voice of the last line of defence, Australia's pilots, is suppressed. Working level participation is necessary and important but not sufficient. Both the Minister and the DAS should ensure that, on aviation safety policy, our parent organisation AusALPA has a seat at the table.

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Authorised for submission to the Committee by:

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