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Committee Secretary

Senate Standing Committees on Rural and Regional Affairs and Transport

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Submission to the Inquiry into Provision of Rescue and Firefighting and Emergency response at Australian Airports

Introduction

I welcome the opportunity to provide this submission to the Senate. I am a Fire Commander with Airservices Australia (AA) currently serving at Hamilton Island. I have 23 years' experience with AA serving majority of this time at Brisbane Airport.

Prior to AA I had 10 years' experience with the New Zealand Fire Service based at various stations in South Auckland.

Background

My concerns relate to issues which I have been involved with over recent years following a meeting in 2016 at Brisbane, where the Senior Operational Leadership Team announced plans to reduce staffing levels at Brisbane and Perth airports.

I was tasked with researching and drafting a formal response on behalf of the United Firefighters Union Aviation Branch. The result was a written response followed up with a meeting in Canberra, where amongst other things the following requests were made¹.

1. Before any staffing cuts are made a Task and Resource Analysis (TRA) needs to be conducted in line with the latest amendment to ICAO annex 14.
2. A review of Compressed Air Breathing Apparatus (CABA) procedures be conducted to address issues raised following the first-generation workshops Post

¹ Copies of the correspondence and minutes of the subsequent meeting are available if required.

Implementation Review (PIR) finding that ARFFS was not efficient in complex CABA operations.²

3. That a procedure known as the “Cylinder Change Procedure” be suspended subject to a safety review.³

To date none of these recommendations have been implemented, however a CABA review is underway.

The TRA is an extremely important issue for operational commanders. The provision of sufficient, well trained firefighters is fundamental to conducting safe and efficient fire ground operations⁴. I would suggest that ICAO have recognised this and responded with the above amendment.

Task and Resource Analysis

The TRA is an excellent tool for Fire Services endeavouring to confirm staffing resources are adequate to ensure safe and effective operations and compliance with the organisations Procedures. It is an inexpensive process centred around a table top exercise designed to identify “pinch points” in operations where staffing resources may be deficient.

In 2014 ICAO amended Annex 14 and the Airport services manual and introduced the requirement for ARFFS to justify staffing numbers for category by way of a TRA. The model adopted by ICAO is that of the NFPA⁵.

Despite requests to conduct the TRA ARFFS decided not to comply with the ICAO recommendation. No rationale or justification was given.

It is a requirement of the Manual of Standards (MOS) that differences from the ICAO standards, Recommended Practices and Procedures are to be published in the Aeronautical Information Publication (AIP)⁶.

The justification stated in the AIP for noncompliance with ICAO 9.2.45 is “*Legislation does not specifically identify that a task resource analysis should be completed to determine staffing numbers*”.

It is my submission that this is a simplistic and subjective interpretation of the legislation. In line with the discussion below, the legislation operates to incorporate treaty requirements into domestic legislation and is only limited to the extent of any inconsistency with the domestic regulations. The fact that there is no specific reference to staff justification in the legislation indicates there can be no inconsistency with the ICAO amendment.⁷

² A copy of the PIR is available if required.

³ (It was identified that the introduction of extended CABA operations into ARFFS training resulted in the use of “Cylinder Change Procedure” for rotation of CABA wearers. This procedure requires the firefighters to complete multiple CABA operations without the ability to hydrate or dress down to accommodate cooling. This procedure is so far outside an acceptable standard it is concerning and not surprising that a number of CIRRIS (internal OH&S occurrence reports) resulted due to heat related issues.)

⁴ This is also fundamental towards assuring a safe work system under health and Safety legislation.

⁵ NFPA is a well-recognised advisory body and often benchmarked internationally by various organisations including AA.

⁶ This can be viewed on the AA website publications section. MOS 1.1.4

⁷ See CASR 1998 139.760

I would respectfully ask the Committee to inquire as to what level this decision was made and is it consistent with Airservices Act s 9 (3) discussed below.

Incorporating Treaties into Domestic Law.

One of the most important questions posed by this submission is how binding are the requirements of the ICAO treaty on administrative decision makers within Airservices and CASA.

I have recently read an article in the “Melbourne Journal of International Law” which offers a very good insight into this area.⁸ The article discusses methodology used by government to incorporate treaties and includes discussion on findings from subsequent judicial review by the High Court on the status of certain provisions.

Of particular interest is the examination of the government intent behind identical provisions in both the Airservices Act 1995 at section 9 (3) and the Civil Aviation Act 1998 section 11.

The AA provision reads,

AA must perform its functions in a manner that is consistent with Australia’s obligations under;

- (a) The Chicago Convention; and*
- (b) Any other agreement between Australia and any other country or countries relating to the safety of air navigation.*

The provision in the ACT is the first stage of incorporation of the requirements of a treaty into domestic law. The intention is to confine the discretion of administrative decision makers and is used as a means of **shaping, confining and structuring executive discretion**. The administrative decision makers are then charged with the drafting and applying of subordinate legislation and requirements within the limits of that discretion and this process can potentially be supervised by the courts.

It is interesting to note that the government uses this method on two levels, one requires **consistency** with the treaty where the lesser level only requires administrators to “**have regard to the treaty**”. In the case of AA and CASA the more restrictive category is used to confine discretion.

The question often arises on whether the ICAO treaty is incorporated in its entirety or is there a distinction between the standards and recommended practices. This issue was raised in 2005 during the remission factor debate. I have read correspondence between the CASA deputy CEO and AA general Manager at the time⁹. In this correspondence it is made clear that in line with government policy CASA was tasked with developing CASR part 139H to ensure compliance with ICAO **standards and recommended practices** as stated in part 139 H Regulation Impact Statement 2001.

CASA’s interpretation is consistent with the incorporating provisions of both acts. The meaning to *Chicago Convention* is defined in both Acts and includes;

⁸ Edgar, Andrew; Thwaites, Rayner---“implementing Treaties in Domestic Law: Translation, Enforcement and Administrative Law” [2018] 19(1) Melbourne Journal of International Law 24

⁹ Letter dated 7 April 2005

(c) *The annexes to that convention relating to international standards and recommended practices, being annexes adopted in accordance with the convention.*¹⁰

The effect of the incorporating provision in the Civil Aviation Act is quite evident in the construction of the Civil Aviation Safety Regulations 1998 and the MOS. Looking specifically at subpart 139 H ARFFS there are numerous references to ICAO standards and recommended practices (SARPS). Some examples are as follows;

It begins with the introduction note which explains that *Australia is obliged to require as part of its domestic law that certain classes of airport providing ARFFS must do so to an adequate standard, see generally section 9.2 of chapter 9 of Annex 14 to the Chicago Convention.*

Further reference is made to ICAO standards and requirements at 139.755 it defines applicable standards for providers as being those set out in;

(i) *Chapter 9 of Annex 14 to the Chicago Convention and*

(ii) *the Manual of Standards*

As the required standard is drawn from two separate documents 139.760 addresses inconsistencies between Manual and Chapter 9 of Annex 14.

If a requirement of the Manual of Standards as it applies to a particular aerodrome, is inconsistent with a requirement of chapter 9 of Annex 14 to the Chicago Convention, as it applies to that aerodrome, the requirement of the manual prevails to the extent of the inconsistency.

I would like to submit the following questions to the committee.

1. Is the decision to refuse to implement the TRA amendment within the confined discretionary power imposed by the Act that AA must perform its functions in a manner consistent with the treaty obligations?
2. Is the decision to refuse to conduct the TRA outside of the requirements of CASR and the MOS.
3. Is the Senate comfortable with the construction of the AirServices Regulations given that the power granted under the Airservices Act is subject to the same discretionary provision as CASA in that the functions must be performed in a manner consistent with obligations under the treaty?

The point I make is how can this provision of the Airservices Act be satisfied given that the AA regulations, in contrast to CASR, have no reference to the treaty requirements at all? Should the onus be on AA to ensure in its own regulatory suite provides the detail on how it will perform its functions in accordance with s 9(3) of the Act at first instance and not be reliant on CASA.

If the Senate could provide clarity on the power of administrative decision makers, this may prevent future delays in the implementation of ICAO amendment's which are not inconsistent with specific requirements within the CASR or MOS. It may also result in AA constructing more descriptive regulations to ensure compliance with S 9 (3) of the Airservices Act at first instance.

Best Practice and international standards

¹⁰ See s 3 Interpretation of both AA Act and CA Act.

Irrespective of the binding nature of ICAO with regard to TRA, is it incumbent on AA management to complete the analysis as part of best practice given the following circumstances?

- I cannot recall in my time a comprehensive TRA being conducted across all categories and locations. It is long overdue.
- The deficiencies in CABA operations could potentially indicate staff resourcing issues.
- The importance that the courts place on compliance with procedures in fulfilling a safe system of work for firefighters.
- It is consistent with International practice.
- Possibly the most important trigger is the discrepancy of minimum staffing numbers recommended by the NFPA and ARFFS current staffing numbers.

NFPA 403

ICAO has adopted the NFPA TRA model¹¹. The NFPA panel have conducted an initial assessment of staff resource requirements for each category¹². It is then recommended that a TRA is conducted to determine additional staffing requirements¹³.

The NFPA emphasise the meaning of minimum staff numbers as follows,

Under no circumstances shall the minimum required staffing be less than those values appearing in table 8.1.2.1

Below is a comparison of staffing levels under the NFPA and ARFFS OPS-005.

Airport Category	NFPA staffing table 8.1.2.1	ARFFS staffing OPS-005
6	9	5
7	9*	6
8	12	8
9	15	10
10	15	14

*This figure has just been reviewed back down to 9 in 2018 edition. Prior to that it was 12.

This disparity is staggering, especially at the lower category levels. The issue was raised with ARFF management in 2016¹⁴ and to date no explanation or action from ARFFS to explore or explain the significant difference in numbers.

The NFPA numbers were ascertained by an expert panel using a model now adopted by ICAO. I would respectfully ask the Committee to view the documentation relating to ARFFS justification process and determine if it is consistent with the standard set down by NFPA/ICAO.

It is also important to note that the largest disparity is at the lower Category levels. In Australia this is compounded by the fact that these stations do not receive the same level of outside support within the same timeframes as the larger city airports.

¹¹ NFPA 403 annex D

¹² NFPA 8.1.2.1

¹³ NFPA 8.1.2.2

¹⁴ Copies of correspondence can be provided if required.

I would submit that the disparity is based partially on the fact that the NFPA has considered realistic staffing numbers for safe CABA operations and staffing required for agent application on both internal and external fires within set down response times.

ARFFS have no policy guidelines on flow rates and application timeframes for internal fire attack.

The NFPA guidelines are at table 5.3.1(b). The internal flow rates vary depending on category as the heat release rate will increase with the size of aircraft. Category 6 and 7 flow rates are 475L/min which can be achieved with a single hose line. Category 8 and above require flow rates in excess of that achievable with one line and will involve deployment of multiple lines.

The NFPA timeframe for initiating internal fire attack is 4 minutes after arrival time of first vehicle or 7 minutes into the incident (NFPA have 3 minute response).

ARFFS will need enough staff to support external and internal operations until responding resources arrive. This will require at least one rotation of CABA crews.

CABA Operations

This is not the forum for a full discussion regarding the status of CABA operations in ARFFS, however I would like to submit the following main points.

I would welcome the opportunity to discuss further any of the points outlined below.

- ARFFS identified issues with CABA operations in 2016 following generation 1 workshops.
- The use of cylinder change procedure for crew rotation is outside of any international standard or practice that I know of, including ARFFS own procedures.
- The use of cylinder change procedure has now lead to another unsafe practice occurring where single operators are entering and exiting a fuselage or structure. This is also outside of any standard or practice I know off including ARFFS own procedures.
- We are now 3 years down the track with no changes implemented. There has for some reason been a resistance by ARFFS management to support positive safety driven changes.

Internal CABA procedures involve more risk to firefighters than any other task. This is why Fire services around the world are diligent and meticulous with regards to CABA procedures and compliance.

Since this issue has been on going there is a trail of documentation emails and CIRRIS (hazard reports) available should the committee wish to view them.

It also important to note that the CIRRIS brought to the attention of management the recent court proceedings following a tragic Line of Duty Death in Scotland. The responsible fire Service pleaded guilty to the charge of criminal level negligence. Two of the causal links with regard to CABA operations was the failure to provide sufficient training for CABA operations and specifically the failure to adequately train staff in maintaining CABA team integrity¹⁵.

Is the response by ARFFS to the above concerns proportionate and adequate?

¹⁵ HMA V Scottish Fire and Rescue Service.

Conclusion

It is my opinion based on experience that ARFFS is under resourced in respect to staffing levels across all locations. The problems we are experiencing procedurally are a result of this and to some extent deficiencies in guidance and training.

As a minimum response ARFFS should be required to conduct a comprehensive TRA process and in a timely manner as we are already 4 years on from the amendment.

It would also be beneficial if the committee could review the operational accountabilities of Senior Operational positions balanced against performance based contracts. Does this model take away a strong operational voice at the policy making level? Does it inadvertently create a potential conflict of interest?

Any guidance the Committee can offer regards legislative interpretation for both CASA and AA would be beneficial for the implementation of future ICAO amendments.

Thank you for considering this submission.

Respectfully

Andy Hanson