

Rural Affairs and Transport Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Supplementary Estimates October 2010

Infrastructure and Transport

Question No.: CASA 01

Division/Agency: Civil Aviation Safety Authority

Topic: Delegations for marketing Automatic Activation Devices for parachuting

Hansard Page/s: 99 (21/10/10)

Senator Boyce asked:

Senator BOYCE—Is it the case that no-one could market an AAD in Australia without the approval of the delegates, or a delegate body?

Mr McCormick—That would be my understanding, but to confirm that I will have to take that question on notice.

Answer:

The use of a particular Automatic Activation Devices (AAD) in an authorised parachute descent in Australia would require that the device be approved for use by the self-administering body responsible for overseeing those activities.

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Question No.: CASA 02

Division/Agency: Civil Aviation Safety Authority

Topic: Possible conflict of interest in Australian Parachuting Federation

Hansard Page/s: 99 (21/10/10)

Senator Boyce asked:

Senator BOYCE—Apart from my raising the issue here, what processes do you have in place to try and ensure there are not conflicts of interest?

Mr McCormick—Commercial conflicts of interest are not in our remit. The technical standards, of course, we agree with the Australian Parachute Federation or international standards. The actual oversight or what happens between commercial entities is not an area where, traditionally, CASA has been involved. But as I say, we will take—

Senator BOYCE—But there is quite a serious potential for conflict of interest if, in fact, someone who profits from a particular product is also the gatekeeper for competing product, isn't there?

Mr McCormick—As I said, I think sitting here I can see how that could be seen as a conflict of interest, yes.

Senator Carr—Where does the senator take her complaint? Can I just clarify.

Mr McCormick—We will take that on notice and we will get back to you with what the details of that are.

Answer:

Concerns and complaints about the purely commercial implications of an alleged conflict of interest on the part of a manager or officer of a self-administering organisation responsible for overseeing recreational parachuting in Australia are not matters over which CASA has any control, authority or jurisdiction.

Where such a conflict or apparent conflict may have demonstrable safety-related implications, however, to the extent those issues may not effectively be addressed under the rules and procedures governing the operation of the organisation itself, those demonstrably safety-related concerns should be brought to CASA's attention.

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Question No.: CASA 03

Division/Agency: Civil Aviation Safety Authority

Topic: CASA involvement in ATSB interviews

Hansard Page/s: 105-106 (21/10/10)

Senator Xenophon asked:

Senator XENOPHON—For instance, where an interview is taking place, or any part of an investigation, even if it is in the initial fact-finding stage, a CASA officer may be able to sit in.

Mr McCormick—I will defer to Dr Aleck, who will give you a better answer on that.

Dr Aleck—The option is available but it is rarely exercised—certainly sitting in an interview—the reason being that the information that is conveyed in the course of that interview for ATSB purposes is protected. It puts CASA officers in a potentially invidious position if they hear something that they cannot then report back for regulatory purposes. They are obliged, when they do participate—and they do participate in aspects of an investigation—to operate under the ATSB rules, which means that they cannot convey back to CASA information which is protected under the ATSB rules.

Senator XENOPHON—But it is awkward, isn't it? It can be potentially awkward?

Dr Aleck—It is, but we now conduct parallel investigations, and I must say that in the last 18 months or so our arrangements with the ATSB have become much more effective. Nobody is in any doubt about the fact that they do not have to be interviewed by us; they have to be interviewed by the ATSB.

Senator XENOPHON—I understand. Perhaps on notice you could give me an indication of how widespread this is.

Dr Aleck—Absolutely.

Answer:

Civil Aviation Safety Authority (CASA) staff do not sit in on interviews conducted by the Australian Transport Safety Bureau (ATSB). CASA officers may be seconded to the ATSB as subject matter experts to assist in ATSB investigations. In that capacity, they may be present at the initial fact finding stage and may give appropriate advice to the ATSB on various technical and operational matters. Secondments of this kind have occurred twice in the last two years.

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Question No.: CASA 04

Division/Agency: Civil Aviation Safety Authority

Topic: Hart resignation letter

Hansard Page/s: 110 (21/10/10)

Senator Abetz asked:

Senator ABETZ—Did you get a letter of resignation from Mr Hart?

Mr McCormick—I do not actually have a recollection of what we have in our systems. I will have to take that on notice and see what we do have.

Answer:

The Civil Aviation Safety Authority (CASA) personnel records include a signed letter dated 16 October 2009 from Mr Michael Hart advising of his resignation.

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Question No.: CASA 05

Division/Agency: Civil Aviation Safety Authority

Topic: Removal of biography of former Industry Complaints Commissioner from
CASA Annual Report

Hansard Page/s: 110 (21/10/10)

Senator Abetz asked:

Senator ABETZ—Is it correct that, in publishing the CASA annual reports of 2006-07 and 2008-09, there was an outline of Mr Hart's biography published in those reports?

Mr McCormick—That is before my time.

Senator ABETZ—Can somebody with a longer corporate memory confirm that for me?

Mr McCormick—Perhaps if you would like to—

Senator ABETZ—All right, take that on notice. Then can I be advised why his biography was removed prior to the publication of the 2008-09 annual report?

Mr McCormick—Again, I will have to take that on notice. We will check with people who were around at the time to see what was in there.

Answer:

The *Annual Report* of the Civil Aviation Safety Authority (CASA) for 2007-2008 included biographies of all Senior Executive staff including Mr Hart. The 2008-2009 *CASA Annual Report* only included biographies of the top-level of Senior Executives, namely the Director of Aviation Safety/Chief Executive Officer and the Deputy Chief Executive Officers (Operations and Strategy & Support). Neither Mr Hart's biography nor the biographies of any other senior CASA officers were included in the 2008-2009 *CASA Annual Report*.

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Question No.: CASA 06

Division/Agency: Civil Aviation Safety Authority

Topic: Action on Hart Recommendations

Hansard Page/s: 117-118 (21/10/10)

Senator Macdonald asked:

Senator IAN MACDONALD—I just want to go back to the May 2010 estimates and the answers that you have given to me to questions taken on notice. Thank you for them. We were talking about Mr Hart's reports, of which he tells me he completed 28 during his term from 4 June 2007 until 31 December 2009, as the Industry Complaints Commissioner. He did 28 reports which contained 108 recommendations and you have given me a summary of those recommendations.

Mr McCormick—Is that question 4 that you are looking at?

Senator IAN MACDONALD—Yes, it is. Of those 108 recommendations, how many were actioned?

Mr McCormick—I would have to take that on notice.

Senator IAN MACDONALD—Was it most of them or a few or them?

Mr McCormick—Because they go back some considerable time now, I would have to take that on notice. I have no idea at this stage.

Senator IAN MACDONALD—You told me the reports of Mr Hart were not suitable for tabling in this committee because they contained confidential material that is inappropriate for general publication. What do you mean by that? I asked for a couple of reports and said, 'Please delete names. Just give us the idea of what they are about without naming names.' Would they still be inappropriate for general publication if there were no names mentioned?

Mr McCormick—I am looking at the bottom of 4 there. The ICC receives and reports on information that is confidential from a commercial and/or privacy perspective, and all reports contain references to named persons.

Senator IAN MACDONALD—Yes, but if you remove the references to the named persons, it would at least allow the committee to get some idea of the nature of the recommendations in his reports.

Mr McCormick—We can certainly look at that—how it would be if it was an FOI request but with perhaps a bit more detail for the Senate.

Senator IAN MACDONALD—Yes.

Mr McCormick—As to the reports themselves, again if there are any in particular that you wish an answer on, we can take that on notice. Otherwise, we will review what we have there.

Answer:

Between March 2009 (when Mr McCormick commenced as Director of Aviation Safety) and Mr Hart's departure in December 2009, Mr Hart prepared six reports as Industry Complaints Commissioner (ICC). The status of the recommendations from these six reports is provided below. Where the name of an individual is involved, this has been omitted for the purposes of this response.

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ICC number 948 (Name Omitted): Two of the recommendations reflected CASA's current position and no action was required. Two recommendations were not supported by the Ethics and Conduct Committee. Three recommendations were referred to the relevant policy area. Of those recommendations, two have not been implemented as the recommendations are not consistent with CASA's broader direction in relation to the issues. One recommendation was implemented as part of CASA's regular process of staff review.

ICC number 422 (Name Omitted): Four of the five recommendations have been fully implemented. One recommendation has been incorporated into the Ageing Aircraft Management Program.

ICC number 1270 (Name Omitted): There were no recommendations in this Report.

ICC number 1130 (Name Omitted): The local Council and helicopter operator agreed to implement the recommendations relating to changes to the Helicopter Landing Site. Most of the changes (including signage, fencing and the removal of lighting) have been completed. The railway tracks will be removed when the operator has sold the helicopter.

ICC number 369 (Name Omitted): On the advice of the Ethics and Conduct Committee and after review by the Executive Manager, Legal Services Division, the Director rejected the ICC's report and recommendations in relation to the complaint.

ICC number 1143 (Name Omitted): On the advice of the Ethics and Conduct Committee the Director rejected the ICC's report and recommendations in relation to the complaint.

Of the remaining sixty-nine recommendations made during the course of Mr Hart's employment as ICC, fifty-eight have been implemented (84%), eight (11.5%) were subsequently rejected by the current Director and two (2.8%) were not implemented (for example, one required an investigation into the conduct of a person who is no longer an employee). It is unclear whether the former Chief Executive Officer implemented one of the recommendations.

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Question No.: CASA 07

Division/Agency: Civil Aviation Safety Authority

Topic: Actions of CASA Board

Hansard Page/s: 124 (21/10/10)

Senator Macdonald asked:

Senator IAN MACDONALD—But it is suggested to me that the board wrote to this person. I am not sure who ‘the board’ is, whether it is the secretary of the board, the company secretary, but the suggestion to me is that the board wrote to my constituent and said, ‘Don’t raise it with us. It’s nothing to do with us if you don’t like Mr McCormick. Refer it to the minister.’ I cannot believe the board would do that. I would have thought if there were complaints that they would go to the board in the first instance and perhaps then end up with the minister. What is the process? If I did have a complaint against Mr McCormick—which I do not—would I report it to the board or to the minister?

Mr McCormick—Is it possible to see a copy of the letter from the board?

Senator IAN MACDONALD—No, it is not, because I do not have it. No, it says ‘2 July, attached’. Anyhow, my question is: could you check with the board, whoever that is—I mean, do they have a minutes secretary?—and see if they did write and advise anyone that that is where the complaint should go, to the minister rather than to the board. Could you, if need be, take on notice where complaints should be directed in the unlikely event that there would be any complaints against the director? Should they go to the board in the first instance or to the minister?

Mr McCormick—We certainly will take that on notice. Could you perhaps give us the date of that letter?

Senator IAN MACDONALD—My staff have written ‘2 July, attached’, but I am not sure that that is the date. It is since the last estimates. I imagine the number of letters the board might have written on that sort of subject would be fairly limited, so it should not be difficult, I would think, to find out whether that is correct.

Mr McCormick—Yes.

Senator IAN MACDONALD—And perhaps on notice you could tell me whether the information I have been given is a complete load of crock or whether there was some misinterpretation, or whatever.

Mr McCormick—Yes. Was your constituent’s letter sent direct to the board or to CASA? I am just trying to make sure we can track the letter correctly.

Senator IAN MACDONALD—It says:

Since I wrote to you—that is to me—I have received replies from the CASA board advising me that they fully support the leadership of Mr McCormick and that the board is not the appropriate body to which comments about the direction of CASA should be directed. I was advised the observations should be directed to the minister. It is between 2 July and 18 July this year.

Mr McCormick—Thanks.

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Answer:

The Secretary of the CASA Board has no record of any person being advised that complaints about the Director of Aviation Safety should be referred to the Minister.

The Director of Aviation Safety is an ex-officio member of the CASA Board. The CASA Board operates in accordance with the *CASA Board Governance Arrangements*. Subsection 2.6.1 of the *Board Governance Arrangements* includes the following provisions:

- Where the Chair is the subject of a complaint, the complaint should be referred to the Minister.
- A complaint against the Deputy Chair or another Board member (including the Director of Aviation Safety) should be referred to the Chair.

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Question No.: CASA 08

Division/Agency: Civil Aviation Safety Authority

Topic: Cost of regulatory reform

Hansard Page/s: 125 (21/10/10)

Senator Macdonald asked:

Senator IAN MACDONALD—Finally, CASA has been rewriting regulations for several years. According to Senate estimates, in 2007 CASA told the committee that up to that date the regulatory review program cost \$144 million. Since that time how much has been spent on the program?

Mr McCormick—We will have to take that on notice.

Answer:

The total cost, including an allocation of corporate overheads, in 2008-09 and 2009-10 was \$55 million.

These costs include costs for funding dedicated Office of Legislative Drafting and Publishing drafters, CASA technical and legal specialists, and travel and publication costs related to consultation activities.

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Question No.: CASA 09

Division/Agency: Civil Aviation Safety Authority

Topic: Pilot Training

Hansard Page/s: Written Question

Senator Heffernan asked:

- 1) There is some concern about commercial pilot training being provided by third parties and simulation centres and not directly by the airlines.
 - a) Of the commercial pilots in Australia currently flying domestic routes, are you able to provide figures for the number who have received their initial pilot's training by third-party providers as opposed to airlines?
 - b) Of the pilots who have passed this training in the past 12 months, how many were trained by these third party providers as opposed to the airlines?
- 2) The Jetstar incident in July 2007 and the Qantaslink incident in Darwin in February 2008 showed that inadequate third party training for the pilot was a factor.
 - a) Which third-party training provider provided the training for these particular pilots of these incidents?
 - b) How many pilots have received training from these particular providers in the past ten years?
- 3) CASA has advised it wants to draft tougher rules for third-party training providers in the wake of these incidents and recent media reports indicate they hope to have these done by the end of the year.
 - a) Can a specific date be given of when these new rules will be drafted?
 - b) Why has it taken more than three years since the Jetstar incident for something to be finally looked at?
 - c) Can CASA give an example of proposed new regulations they are considering in the drafting of these new rules?
 - d) How will these regulations make the third party providers more accountable?
- 4) Is CASA aware of reports from pilots that third party training providers are helping some pilots to pass their initial training, hoping that later training from the airline will compensate them for insufficient endorsement training?
- 5) Many pilots are now required to pay for their own training up front, costing tens of thousands of dollars.
 - a) To what extent is the domestic airline price war contributing to airlines cutting back on pilot training?
 - b) How much do airlines claim to save by outsourcing this training?
 - c) How much would it affect costs for training to be done internally at the airlines by CASA regulated instructors?
- 6) The United States has recently announced that commercial pilots will need 1500 hours training before flying, which is in contrast to new pilots at Qantaslink only needing 200 hours.
 - a) Are greater training hours needed for pilots to increase overall airline safety?
 - b) Are similar proposals being considered for Australian commercial pilots to those that have been introduced in the US?
 - c) If so, what impact would this have on Australian domestic airlines?

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Answer:

1 a) and b) The Civil Aviation Safety Authority does not hold this information.

2 a) Alteon Training Australia Pty Ltd.
b) CASA does not hold information providing these details.

In respect of the Jetstar incident in July 2007, the Australian Transport Safety Bureau (ATSB) report into this incident does not identify the training carried out by the third-party training provider as a contributing safety factor in this incident.

In respect of the Qantaslink incident in Darwin in February 2008, the ATSB report does not identify the training carried out by the third-party training provider as a contributing safety factor in this incident.

3 a) A consultation draft of Civil Aviation Safety Regulation (CASR) Part 142 that addresses training and checking operators was provided to CASA by the Attorney-General's Department on 1 November 2010. CASA intends to conduct consultation on the draft over the next few months, with a view to having the regulation finalised in mid 2011.

b) The ATSB report on the Jetstar incident does not identify the training carried out by the third-party training provider involved as a contributing safety factor in this incident.

c) Proposed CASR Part 142 will require training and checking operators to hold an Air Operator's Certificate (AOC), when training and checking is conducted in an aircraft, or an appropriate authorisation issued by CASA when training and checking is conducted in a flight simulator, on behalf of another contracting operator. Training for a flight crew licence or rating will have to be conducted by a CASR Part 141 Flight Training Operator, who must also hold an AOC or an appropriate authorisation issued by CASA.

d) Part 142 operators will only be permitted to conduct training and checking in accordance with the relevant contracting operator's specifications. Flight examiners employed by Part 142 operators will have to be approved by the contracting operator's head of training and checking and authorised by CASA.

4 No. CASA has not received such reports.

5 a) CASA approvals to conduct pilot training are provided only if CASA is satisfied that the training programs airlines employ to ensure their pilots achieve and maintain necessary skills and competencies, meet or exceed applicable safety standards.

b) and c) This is a question for the airlines. CASA has no information on this matter.

6 (a), (b) and (c) This matter is addressed in detail in CASA's submission to the Senate Rural Affairs and Transport Committee inquiry into pilot training and airline safety.

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Question No.: CASA 10

Division/Agency: Civil Aviation Safety Authority

Topic: Legal proceedings, the Regulatory Review Program, reporting and fatigue management

Hansard Page/s: Written Question

Senator Heffernan asked:

- 1) There are at least two current matters in the Federal Court in which CASA and individual employees are being sued. How much has this cost CASA in legal fees and what is the nature of the cases?
- 2) Recently, CASA has been at 3 separate AAT hearings in Sydney. How many separate cases relating to CASA has the AAT heard over the past three years? How much has this cost in legal fees over the past three years and what is the nature of these matters?
- 3) CASA has been rewriting regulations for several years. According to Senate Estimates in 2007, CASA told the committee that up to that date, the Regulatory Review Program (RRP) cost \$144 million. Since that time, how much has been spent on the program?
- 4) What action has CASA Director John McCormick taken to ensure that executives managing the Regulatory Review Program cease drafting legislation in formats that do not comply with a series of directions and guidelines?
 - a) Directions and guidelines refer to: the RRP's published guidelines, the repeated instructions of successive Ministers and Directors, the Commonwealth's Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers.
- 5) How many reports have been received under the Aviation Self Reporting Scheme (ASRS) over the past 2 years?
- 6) Does CASA consider the division of reporting between the ASRS and the mandatory and confidential reporting guidelines in the ATSB appropriate, and is it working?
- 7) How is the database of human factor supposed to work? Is there a requirement to report accidents? If so, what is the procedure?
- 8) Does CASA believe current rules adequately manage pilot fatigue?
- 9) Does CASA have an expert group of staff dedicated to fatigue management issues?
- 10) Given the issuing of Fatigue Risk Management Scheme (FMRS) standards by the Civil Aviation Organisation (CAO, international body), will CASA be able to oversee widespread introduction of FRMS in Australia?

Answer:

- 1) There are two current proceedings in the Federal Court. The Civil Aviation Safety Authority (CASA) has not paid any legal fees for its representation in these cases, as these costs are borne by Comcover, CASA's insurer.
- 2) Over the past 3 financial years, there have been 26 matters heard by the Administrative Appeals Tribunal. A large percentage of these related to decisions to cancel or refuse to issue medical certificates, with the remainder being decisions to cancel or refuse to issue pilot or aircraft maintenance engineer licences, air operator certificates or certificates of

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approval. There was also a freedom of information review application made in 2008 and determined in 2010. CASA paid a total of \$344,552.41 in legal fees in respect of these proceedings.

- 3) Refer to CASA 08
- 4) CASA provides drafting instructions on the policy content of the regulations to the Office of Legislative Drafting and Publishing (OLDP) in the Attorney General's Department. CASA has regard to applicable directions and guidelines when it develops its policy instructions. OLDP is responsible for framing CASA's instructions as regulations. While questions on legislative drafting standards as such should be referred to the Attorney General's Department, CASA considers that its legislation is drafted in a manner consistent with the relevant guidelines.
- 5) CASA's records indicate that three Aviation Self Reporting Scheme reports have been received from the Australian Transport Safety Bureau (ATSB) since November 2008.
- 6) CASA considers the division of reporting is appropriate as each scheme deals with separate matters and has a different purpose.
- 7) The ATSB manages the national data base on aviation accidents, serious incidents and incidents (collectively referred to as transport safety matters). Questions should be referred to the ATSB.
- 8) Yes.
- 9) CASA has several staff members with appropriate knowledge and expertise involved with the development of fatigue management policies, regulations, system approvals and oversight.
- 10) Yes.

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Question No.: CASA 11

Division/Agency: Civil Aviation Safety Authority

Topic: Review of the Civil Aviation Amendment (Relationship with Anti-discrimination Legislation) Bill 2004

Hansard Page/s: Written Question

Senator Cash asked:

Has there been any review into the consequences and impact of The Civil Aviation Amendment (Relationship with Anti-discrimination Legislation) Bill 2004", on the Civil Aviation Act 1988, from a regulatory standpoint, the standpoint of the experiences of disabled travellers, and policy changes airlines may or may not have implemented as a result?

Answer:

There has been no review into the consequences and impact of the Civil Aviation Amendment (Relationship with Anti-discrimination Legislation) Bill 2004 (the Bill). The Bill received royal assent on 6 July 2005 and may be cited as the *Civil Aviation Amendment Act 2005*.

The Aviation Access Working Group (AAWG) has been established to provide advice to the Australian Government on disability access policy, the relevant legislative framework and practical measures that can be taken to improve the access to air services for people with a disability. A representative from the Civil Aviation Safety Authority participates in the AAWG.