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AND TRANSPORT

Reference: Administration of the Civil Aviation Safety Authority

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**SENATE STANDING COMMITTEE ON
RURAL AND REGIONAL AFFAIRS AND TRANSPORT**

Thursday, 3 July 2008

Members: Senator Sterle (*Chair*), Senator Siewert (*Deputy Chair*), Senators Heffernan, Hutchins, Hurley, McGauran, Nash and O'Brien

Participating members: Senators Abetz, Adams, Allison, Barnett, Bernardi, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, George Campbell, Chapman, Colbeck, Collins, Coonan, Cormann, Crossin, Eggleston, Ellison, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Hogg, Humphries, Johnston, Joyce, Kemp, Kirk, Lightfoot, Lundy, Ian Macdonald, Sandy Macdonald, McEwen, McLucas, Marshall, Mason, Milne, Minchin, Moore, Murray, Nettle, Parry, Patterson, Payne, Polley, Ronaldson, Scullion, Stephens, Troeth, Trood, Watson, Webber and Wortley

Senators in attendance: Senators Fisher, Heffernan, O'Brien and Sterle

Terms of reference for the inquiry:

To inquire into and report on:

The administration of CASA and related matters:

- to assess the effectiveness of administrative reforms undertaken by CASA's management since 2003;
- to examine the effectiveness of CASA's governance structure; and
- to consider ways to strengthen CASA's relations with industry and ensure CASA meets community expectations of a firm safety regulator.

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Committee met at 9.02 am

CHAIR (Senator Sterle)—I declare open this public hearing of the Senate Standing Committee on Rural and Regional Affairs and Transport. The committee is hearing evidence on the committee's inquiry into the Civil Aviation Safety Authority and related matters. I welcome you all here today. This is a public hearing and a *Hansard* transcript of the proceedings is being made. Before the committee starts taking evidence, I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. The committee prefers all evidence to be given in public, but under the Senate's resolutions, witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may of course also be made at any other time. I would also ask witnesses to remain behind for a few minutes at the conclusion of their evidence in case the Hansard staff need to clarify any terms or references. I remind people in the hearing room to ensure that their mobile phones are either switched off or switched to silent. Finally, on behalf of the committee I would like to thank all those who have made submissions and sent representatives here today for their cooperation in this inquiry.

[9.03 am]

HURST, Mr Phillip Raymond, Chief Executive Officer, Aerial Agricultural Association of Australia Ltd

CHAIR—Welcome. Do you wish to make a brief opening statement before we go to questions?

Mr Hurst—Yes, if I may. I would like to start by saying what our submission is not. The submission is not another attack on CASA; it is a genuine effort to assist the regulator recover from a pathological culture and a lack of policy and leadership over decades that have led to a range of symptoms that work against aviation safety. Our submission is not an attack on the staff of CASA, many of whom are committed to aviation safety and to the industry they regulate. In fact, AAAA recently awarded our highest honour, the Ray Mackay award, to a CASA employee, Mr Aussie Pratt, because of his long-term assistance to the industry while maintaining his independence and the higher standards of safety oversight. There are many in CASA who work well with industry and support improved safety outcomes, but they generally achieve this in spite of the culture in which they operate and without the clear support of senior management through clear policy.

However, there are still some individuals who perpetuate the pathological culture, seemingly without accountability. Our view is that CASA does not have aviation problems, it has management problems. And the problems have been compounded in recent years by an apparent lack of accountability to the minister, to parliament, to the community and to industry, by a lack of clear and enforced policy driving regulation enforcement and work practices, and by a lack of high-level consultation with industry to establish strategic priorities for aviation safety, not just regulatory reform.

Our view is that CASA is changing very, very slowly, and it is this pace of change that is the challenge. We feel that CASA has forgotten how to win. It makes even its simple processes complicated and it has difficulty grasping obvious opportunities, which we call the low-hanging fruit. The essential evolution of CASA need not be so slow if it were fuelled by sound management and a strong policy process that involved industry. I would like to state for the record that industry, at least our sector of it, fully supports the role of CASA as an independent policeman. Apart from safety being fundamental to our clients as well as our staff and pilots, industry wants a level playing field to enable fair competition. The role of the safety regulator in ensuring that all operators are meeting minimum standards is fundamental to achieving a level playing field, and without CASA policing rogue operators that want to take shortcuts and potentially jeopardise safety, then industry as a whole suffers. Again, we fully support CASA's safety oversight role. That concludes my opening statement.

CHAIR—Never a truer statement. Thank you very much, Mr Hurst.

Senator O'BRIEN—I guess you are talking about timidity of management in implementing change. Is that what you are suggesting?

Mr Hurst—What we have witnessed over a long period of time—my involvement with CASA in this instance has been 10 years, but previously I had an interest in policy development working in this place and others—and I refer to the CEO's evidence yesterday to the committee, is almost a delinking of what is presented as the way things are done and what we see at the grassroots level. Industry has been concerned for a long time that the rhetoric is good, and we agree with the rhetoric; we agree with what Mr Byron says about—

Senator O'BRIEN—So what we were being told yesterday is not how things really are in the field. Is that what you are saying?

Mr Hurst—It may be how the CEO is seeing things develop, but the difficulty is at the coalface. Whilst there has been some improvement, we are still seeing some of the same pathological symptoms that we have seen over the years. For example, where flying operations inspectors take the law into their own hands. Their default setting, driven by their culture, is 'I know best' regardless of referring to central policy or anything else. Their gut reaction is, 'This is how I was taught therefore this is how it's going to be.' We have had recent examples of that with, for example, chief pilots being failed in their interviews because they did not understand density altitude or were not able to explain density altitude. Do not get me wrong, that is an important part of being a pilot, but when you put it in the context of risk management, that pilot was being interviewed for an agricultural operation that seldom operates above 500 feet and with a load that could be jettisoned. So there seems to be this delinking, in our view, between the talk at the top, which we fully support, and what we experience at the grassroots level.

Senator O'BRIEN—Do you know why that would be?

Mr Hurst—I think part of the problem is that CASA has not developed the management systems to enforce the will of senior managers on to the rest of the organisation. In our submission, we make reference to the number of subcultures that operate within CASA. Sometimes it is difficult to work out if you are talking to one organisation or many. The subculture seems to drive a lot of the difficulties that management has in enforcing their will. My take on it is that the only way they will get that position, which I am sure the CEO is trying to do, is to do it by establishing systems that remove a lot of the discretion of junior staff.

Senator HEFFERNAN—We have heard evidence that CASA has had a 50 per cent turnover of staff, a change in culture and a change in management, but that it might be becoming deskilled. We have had evidence that people who have authority to inspect at a certain level are really not qualified to do so; they are working above their capacity. Do you think that, given that there may be circumstances—and I am not saying that there are—where the person who is doing the inspecting might feel insecure in the way that they are doing their job, they might react with a personality thing as their authority rather than their intellectual authority?

Mr Hurst—I think that you are on the right track. We have had instances of flying operations inspectors coming to our businesses and asking for advice on what they should be looking for because they have never operated in the agriculture industry before. They do not know what they are looking for and to be honest, most of the staff in CASA, as I said, are just trying to get through the day and do a good job. A lot of the guys that we work with are diligent and trying to be helpful. There are still a few amongst them who have what I would call a pathological

approach to safety—that is, they will go out of their way to play a gotcha game, a technical breach game, whilst perhaps missing the larger safety picture.

Senator HEFFERNAN—Part of the driver of that may well be their own insecurity. I mean, this is a real issue that could be a real threat to air safety. If you take a bloke like my old mate—and I declare an interest, Mr Chair—Col Adams, who is an aerial agriculture operator—

Mr Hurst—He would claim that he is not that old, senator!

Senator HEFFERNAN—Yes, I know. He is not, but he has a young son, which shows it up, you see! But he has been there for as long as I can remember—30 or 40 years. These fellas can land a plane in amongst a mob of cattle but would probably have difficulty landing at Mascot—it is a different skills set. They survive diving under power lines and around trees; they know what they are doing. That actually happens, Senator O'Brien.

Senator O'BRIEN—I know things like that happen. I was talking to someone whose brother was doing his own agricultural spraying and died because he did not duck under the powerlines.

Senator HEFFERNAN—All human endeavour has some human failure and mechanical things do break down. But you can imagine that, if you are a little insecure in your knowledge base and working above your capacity, you may react in a certain way. We have lots of evidence that people feel intimidated by some of these officers. They give us in camera submissions saying 'Please don't let them know that I told you this sort of stuff.' So there is a cultural problem.

Mr Hurst—The problem that you allude to is very real. The de-skilling of CASA has been going on for decades. One of the difficulties that you have with that de-skilling is that at some point you need to manage the fact that you do not have a lot of skilled staff by having superior systems. What we consistently see is that there is no system in place to manage whatever the interaction is, whether it is an audit or a rectification notice or whatever. There is not a system in place that says, 'This is how we are going to develop a policy. If there is a shortcoming, X, Y and Z will happen in the same way every time.' What we end up doing is treating these individual problems as individual problems rather than saying, 'Well that just fits into the system and let's just get on with the job.' The real problem is if you have staff that may not be that experienced in an area. They are going to be looking and relying more on a systems based approach which, in the case of CASA, we simply do not see evidence of. That brings up the broader issue of risk management. One of the good things that has come out of CASA recently has been the classification of activities, which in my view really just gives effect to previous letters from the minister saying 'Focus on fare-paying passengers.' When you take that risk based approach of asking where the most risk is, the most risk to the most people is going to be with fare paying passengers. If you try and put meat on the bones of that policy, you really begin to wonder why CASA is spending the resources that they are—for example, in aerial work and private aviation—rather than shifting those resources into a concentration on fare-paying passengers.

As I said at the beginning, we fully support the role of CASA as an independent policeman. We do not want to see that being eroded. But if you do not have the skill set and you have for example, in the case of aerial application, a competent association with a proven track record of

delivering safety outcomes, why wouldn't you work with them to get them to do some of the activities that you might otherwise do? We have been having quite good discussions with CASA on that front.

Senator HEFFERNAN—But are you saying that there should be an element of self-policing?

Mr Hurst—The term we are using is 'self-administration', because it is not self-regulation. The role of the regulator remains untouched. But there are some things that four As, the AAAA, can do. For example, we already have a standard operations manual that we have negotiated with CASA. It means that instead of approving every single manual times 130 AAC holders, which is what we have in agriculture, they now only have to approve one manual and it accounts for, at the moment, about 84 operators. That is the sort of efficiency that we can drive. It is not skirting around regulation or anything else—it is just a more efficient way of administering things.

Senator HEFFERNAN—Are you familiar with the incident in which that young bloke got killed out the back of the Bethungra hills while firefighting?

Mr Hurst—Yes, I am.

Senator HEFFERNAN—I am reliably informed that that plane was working outside its limits with its load and whatever.

Mr Hurst—As is the case for all accidents, I refer to the ATSB and wait until their final report.

Senator HEFFERNAN—Is that still an ongoing investigation?

Mr Hurst—There was a recent report on that which did not identify any problems with the aircraft. Our take on that as an association is that if you are going to look at anything the ATSB raised you would look at the actual hours on type. But that is the sort of example where it is better to deal with the science and with what the regulation is telling us. To the best of our knowledge, that aircraft operates under a full approved STC. That is not necessarily the area that we are talking about with better administration. You cannot take shortcuts with engineering necessarily, because physics is physics.

CHAIR—You mentioned the regulator being independent. Does your membership believe that the regulator is independent?

Mr Hurst—Independent from the industry?

CHAIR—Yes.

Mr Hurst—Absolutely.

CHAIR—You do not think that it is too close in certain sectors?

Mr Hurst—Closeness to the regulator—

CHAIR—Submissions have said that CASA is a little bit close to certain segments of the industry.

Mr Hurst—I would have to say that our experience is the opposite of that.

CHAIR—They are not close to your industry. Is that what you are saying?

Mr Hurst—They are not close to our industry. In fact, what we experience in those few cases where we have FOIs who want to go out and make a name for themselves is the opposite. They do not have the skill set to understand aerial application. They may have a barebones agricultural rating, but they have never fired a shot in anger in the industry. That is the problem that we have. They may have the paper qualifications, but they have no experience to fall back on.

CHAIR—A common theme coming through all the submissions is the negativity to the abolition of the board of CASA. I notice that on page 15 of your submission you touch on that as well.

Mr Hurst—We perhaps take a longer term view than others in the industry. I have been in this job for 10 years, and in that period of time CASA has had a board and operated without a board. We have not seen a significant difference in the outcomes. We are an organisation that focuses on outcomes, not process. We have seen no change, whether there has been a board or not. As we say in our submission, we are ambivalent about whether there should be a board introduced or not.

If a board were to be introduced, however, there would be a couple of advantages. The first is that it might fix the problem of a lack of high-level strategic consultation with industry as long as peak associations, including us, get a chance at being on the board. It is a little like the comment yesterday that everyone says that they want small working groups as long as they are on them. You can put us down as a 'me, too' on that. A board may also have the advantage of being able to provide broader guidance to a CEO. I work with a board and I value the role of the board, because they provide to me a much wider perspective on life than what I am able to bring.

Senator HEFFERNAN—It will tell you what you do not want to hear sometimes.

Mr Hurst—That is all part and parcel of learning. I do not resile from that in anyway.

Senator HEFFERNAN—That is a good thing—that is what I mean.

Mr Hurst—Absolutely. The problem with CASA is that what we have seen over the years are a number of different structures under a number of different government arrangements. To be honest, from the perspective of industry, where you are looking at outcomes, none of them have worked. We are beginning to see a little of it. In fact, the best time that we have had with CASA in terms of outcomes is when they have simply managed to put a competent, experienced person on the job—whether it be rewriting regulations, like part 137; or whether it be establishing a small unit called the agricultural unit, which in a matter of months changed the interrelationship between CASA and the industry for the better and which led to a number of efficiencies. The real issue with CASA lies in what stomach management has for rapid change. That is at the heart of the issue, not so much the governance arrangements.

Senator FISHER—Does that agricultural unit still exist?

Mr Hurst—When I made reference to CASA's ability, they seem to have forgotten how to win. One of the things that they did in recent years was to abolish the agricultural unit and we were very fortunate to maintain one of the people from that unit, Aussie Pratt, who was previously based in Tamworth and who is now in Brisbane, as a liaison to the industry in an informal way. What we found is that by having a central contact point for our sector it removed a lot of the conflicting advice that we were getting from the regions. It was always the case when I first came that if you went to one region you would get one answer and if you went to another region with exactly the same problem you would get a different answer.

Senator FISHER—So that liaison officer is employed by CASA, is he?

Mr Hurst—Yes.

Senator FISHER—For how long did this agricultural unit run?

Mr Hurst—From 18 months to two years.

Senator O'BRIEN—On the issue of the standardisation of approach with industry, clearly what you are saying in your submission—and I do not disagree—is that you need to have direction for your field officers as to the appropriate procedures and the philosophy and principles that need to be applied to the role of the regulator. That is, as I understand it, what you are saying.

Mr Hurst—Absolutely.

Senator O'BRIEN—You are not saying that these—and correct me if I am wrong—field officers are simply automatons with a clipboard and a bit of paper who are just ticking boxes. You would expect, as I would, them to use some initiative, to think outside the square at times and to make judgements on things—for example, if there are things that appear to be going all right but which emerge as a threat to the safety of the operation or the general public.

Mr Hurst—I agree entirely. The difficulty is that if you have people in those positions who have no experience in that sector it is very difficult for them to understand. In the same way, when Senator Heffernan talked about flying under powerlines, I could see a number of senators flinch at the concept. The principle remains the same: the pilots are highly trained in exactly that skill. They undergo a very rigorous process of training in risk management and in inspection of the powerlines and in a range of other things. What on the face of it looks quite difficult and complicated is safer than flying over the powerlines as long as you can fit, and they are trained in how to assess that.

Senator O'BRIEN—You are going to have difficulty convincing me that it is a particularly safe operation, I have to tell you.

Mr Hurst—I invite all senators to come out to one of our bases and inspect it. I would love to take you through the processes that go into it. What Australia does with agricultural flying leads the world. That is not recognised.

Senator FISHER—Perhaps Mr Hurst could convince you, Senator, that it is not unsafe, given the circumstances and the purpose.

Mr Hurst—Exactly.

Senator O'BRIEN—Perhaps.

Mr Hurst—It comes back to straight risk management.

CHAIR—The committee might like to send Senator Fisher out there for a trial run, and she can report back to us.

Mr Hurst—In answer to Senator O'Brien, one of the key issues with the FOIs and the way that they operate—and the air worthiness inspectors—is the role of delegations. The way that the delegations are currently structured and handled is that once they have that delegation they then individually have to fulfil the role of being the person who deems that CASA is satisfied. A lot of the regulations have as part of them that CASA must be satisfied. In putting them into that position, you are really delivering to them an enormous amount of power with very little accountability, because there have been no systems backing them up until recently. My argument would be that a key issue to be addressed is the role of delegations.

My view would be that all delegations should be pulled back into a central area and that the FOIs and AWIs remain the eyes and ears—the experienced people in the field—who have to report through a system which then puts some quality assurance into the surveillance. If there is an immediate and obvious threat to safety, obviously they can act or the system can be developed to act quickly. But the real issue at the moment is that those delegations operate in direct conflict with the concepts of quality assurance, a consistent approach and a transparent approach to doing business. You see that in the Administrative Appeals Tribunal, where the role of individual FOIs has been challenged by the AAT. In some cases, the AAT has made in my view some quite significant criticisms. One FOI in a particular case was described as being unhelpfully over muscular, which in the language of the law is quite a strong criticism. What we are seeing is a systemic conflict.

Senator O'BRIEN—I assume that that was not a physical description.

Mr Hurst—It was a description of his attitude. The problem that we run into is that the system—the process—sets up a conflict. The system and policies should be used to drive much better quality assurance.

Senator O'BRIEN—The nub of your submission is not that these people should not use initiative but that they should be better trained and better equipped with standards and guidelines to allow them to do their job and that there should be some oversight of their discretion. Is that what you are saying?

Mr Hurst—Absolutely.

Senator O'BRIEN—I would not want a field officer to be so constrained that they were frightened to take action that they thought was necessary.

Mr Hurst—As I said earlier, when we gave our Ray Mackay Award to Aussie Pratt, the issue was not that we were trying to capture him. The issue was that at all times he has been an excellent example of a person who has been able to maintain his independence—be fiercely independent and critical of operators when he goes to do an audit—but to do his job in the interest of improving safety. The job is not done in the interest of saying: ‘Aha! Gotcha! Now I’m going to make your life a misery.’ It is a cultural aspect to the way that people approach their job. Because the culture has to be broken down, the best way to do that—in our view—is through policy development and policy driving a series of systems which do not remove the discretion but certainly inform the FOIs and AWIs about how they should be doing their jobs in a responsible and cooperative manner.

Senator FISHER—In addition to the things that Senator O’Brien suggested that you would be seeking change in respect of, would you not also add, at the very least, some liaison point between your association and CASA, given the particular flying circumstances and needs of aerial agriculture, which are rather unique and which differ from those of other sectors of the flying industry? So would you not also be seeking a continued liaison point with CASA?

Mr Hurst—Absolutely. When you lay over that the classification of operations policy that CASA has and look at that from a risk management point of view, the real risk to the wider public and the fare-paying passenger is not in the aerial work and private operations; it is in fare-paying RPTs and charters. Once you start to inform that policy and put some meat on the bones, it would then be quite easy to say that we will take a different enforcement approach where there is a lesser risk. Part of that enforcement approach could be a liaison officer or a small unit to manage that sector. What we are talking about is not revolutionary; this is the same sort of case and sectorial management approach that most other government agencies use.

Senator FISHER—It is debatable whether it is lesser or greater risk, but it is certainly a different risk, which needs specific attention.

Mr Hurst—Correct. Our job has an element of risk in it. It is well managed. But that risk is a risk to one occupant—the pilot—and potentially someone in the paddock. That is distinct from the risks to fare-paying passengers, who have a different set of expectations and no ability to manage their risk. They pay the ticket price and get on the plane, and that is the management of their risk.

Senator FISHER—Or indeed if he is not doing his job properly the chemical goes elsewhere, so there is a risk to others as well. So it is a very different—

Mr Hurst—But with the chemical risk—as I keep referring to CASA—(a) CASA has little jurisdiction over it and (b) it is extremely tightly regulated by the chemical control of use legislation at the state level and by the Australian Pesticides and Veterinary Medicines Authority through chemical labels.

Senator FISHER—Absolutely.

CHAIR—Thank you very much, Mr Hurst, for your assistance to the committee.

[9.30 am]

TULLY, Mr Joseph Austin, Private capacity

CHAIR—Welcome. Would you like to make a brief opening statement.

Mr Tully—Thank you for giving me the opportunity to appear before you today to present my submission into the administration of the Civil Aviation Safety Authority. I was employed by CASA for almost 21 years. My submission discusses four problems that I believe affect CASA: CASA's HR management standards; CASA's ability to effectively comply with its obligation under the act to set, and seek compliance with, safety standards; CASA's relationship with industry organisations and individuals; and CASA's management of staff concerns. I guess points 3 and 4 are very closely aligned.

I am not sure how the committee wishes to proceed from here. My submission comes from personal experience from my time at CASA as well as from discussions that I have had with current and former CASA staff. My submission could identify current CASA staff and I am just wondering how the committee wishes me proceed. Do you want to hear this in camera or do you want to leave it in the public forum?

ACTING CHAIR (Senator O'Brien)—If you want us to consider that we will. We would prefer as much of your evidence as possible to be given in public if you can address matters without identifying people, if that is a concern. If there are matters that you want to put to us that ought to be in camera we will consider that. We do have limited time.

Senator HEFFERNAN—What would be the driver behind your thinking that you might want to go in camera?

Mr Tully—I am just thinking about repercussions for current staff. There is certainly an environment within CASA of some degree of punishment of staff who bring up issues.

ACTING CHAIR—Okay. Let us do what we can in public.

Senator HEFFERNAN—My view would be that unless you can name people it needs to be very specific, which would be helpful to us, I have to say, but once it goes in camera it is not as useful as it being out where you are now.

Mr Tully—What protections are there for the staff then?

Senator HEFFERNAN—If anyone is intimidated as a consequence of giving evidence here, at the end of the trail the person could end up in jail. We would like to think that if anyone that you know of is being intimidated you would let this committee know.

ACTING CHAIR—I think the difficulty is that, if they are not giving evidence, there is not the same protection. I would encourage you to give what evidence you can in public. As I said,

we would prefer as much as possible that that evidence be given in public because, as Senator Heffernan said, there is a limited way that we can use evidence that is given in private.

Mr Tully—Yes, okay.

ACTING CHAIR—So if you are happy to continue—

Mr Tully—Yes, I am happy to continue. Would you like me to present my submission?

ACTING CHAIR—Yes.

Mr Tully—I might start then with the CASA management of the—

ACTING CHAIR—You do not need to read your submission as we already have it. But if you are going to add to it that is fine.

Mr Tully—No, I am not reading the submission. The first issue I would like to raise is CASA's HR management standards. I saw a significant decline in these standards from about 2003. For an organisation to succeed, it has to put some value in its staff. I believe that the current executive management does not put that value in its staff. It says it does; there is a lot of spin about staff being an important asset to the organisation. But when you see the outcomes from some of the issues over the last three to five years, it certainly is not that way. The lowering of HR standards and an appreciative dip in morale within CASA became more apparent to me around 2005, when Bruce Byron introduced a restructure into CASA. I was the acting policy manager for the General Aviation Operations Group at that time, under Mr Rob Collins, who was the group general manager.

It was quite a turbulent time in CASA, with little or no specific information or support given to staff on the effects of this restructure. There was a significant risk during that time to aviation safety, because a lot of staff were focusing more on their tenure within CASA under the new restructure. I think it was taking their focus off their safety obligations. I spent a considerable part of my time during that period supporting staff and passing on what little information I was getting from executive management. We were getting the high-level glossy brochures on where the restructure was heading but very little specific information. It seemed to me that there was a deliberate strategy in place to keep staff in the dark about the specific restructure issue because of the redundancies that were about to take place.

I then experienced firsthand the nature of the HR area when I came to signing my own AWA with CASA. When I was initially given an AWA, I thought we were going to go through an opening gambit process. I thought we would have negotiated in good faith during this period. However, the salary component within the first AWA I was given was actually their final position. They had given me the wrong AWA. That salary component was less than what I was getting at the time in my substantive position. When I raised this with HR, they said, 'You've got the wrong one,' so they took that back and gave me another one for a lesser salary. It just turned into that type of situation. It was just duplicitous and devious the way in which they were getting these AWAs agreed to. The outcome of all that was that people's expectations of benefits were being stripped away by CASA. My AWA stripped back 62 weeks to a maximum of 52 weeks. I was told by HR that that was because of a Commonwealth government requirement. I found out

later that that was not the case and that I could have actually been negotiating that particular aspect of the AWA.

Senator HEFFERNAN—We are not an IR body. What does ‘52 instead of 62’ mean? Does that mean the term of your contract was 10 weeks shorter than what it might have been?

Mr Tully—Yes. There were a few other issues in the AWA. I do not want to get bogged down on this AWA issue. It should have been handled by the workplace.

Senator HEFFERNAN—We do not want you to either, because we are not an IR mob.

Mr Tully—I understand that. I think the point I am trying to make is that the way CASA HR have behaved in the last three to five years has lowered morale in CASA. There has been a significant dip in morale. From discussing those issues with staff who are currently employed by CASA, I do not think it has changed much.

Senator HEFFERNAN—Do you think you got the bullet?

Mr Tully—Yes, I think I did.

Senator HEFFERNAN—Why do you think you got the bullet?

Mr Tully—I think I got the bullet because of my relationship with the group general manager at the time, Mr Greg Vaughan. It is quite interesting that one of my other submissions today is on staff safety concerns that were raised with CASA. It identified about six managers—

Senator HEFFERNAN—Does this include the two blokes at Moorabbin?

Mr Tully—One bloke at Moorabbin.

Senator HEFFERNAN—Do you want to tell us anything about that?

ACTING CHAIR—Hang on, can we hear the submission and then we can ask questions. It will be dysfunctional if we do not hear the submission. We have a limited amount of time, so we need you to go through your submission, Mr Tully, and then we will ask you questions.

Mr Tully—Okay, I will just take the point there about the issues that arise between the group general manager of General Aviation Operations Group and some of the staff. It is interesting that the staff that are currently under a cloud—or as you have termed it, Senator, ‘given the bullet’—had run-ins with this particular group general manager. I raised issues about CASA staffing cuts when I was appointed to the position. They were stripping back staff in my particular area from 19 to six, and this was an area that was assessing the major reports that were coming in from the industry at that time. There were issues raised on engineering compliance by one of the staff at Moorabbin with the same group general manager and there were issues on industry delegations. One particular industry delegate’s—

Senator HEFFERNAN—Who went to Europe?

Mr Tully—yes, the one I mentioned who went to Europe—suitability for inclusion was raised by me and another CASA officer, who was part of that team that went to Europe. It was put to the project manager of the EASA group, Mr Hondo Gratton, that this person was unsuitable to go to Europe.

Senator HEFFERNAN—Did you say Hondo Gratton?

Mr Tully—Yes.

Senator HEFFERNAN—It wasn't a bad trotter.

Mr Tully—Mr Gratton put these issues to Bruce Byron and our concerns about this guy being included in the group. He came back and nothing changed.

Senator HEFFERNAN—What was the concern? That he was a cowboy? That he did not know what he was doing? He was not qualified? He had two heads? What was the issue?

Mr Tully—He was under a cloud due to an audit that had been carried out on him. There were questions over his ability to operate effectively in carrying out his duties as a delegate.

Senator HEFFERNAN—Technical skill or administrative skill?

Mr Tully—I do not think there is any question about his technical skill. I think it is just the manner in which he carried out his particular authorisation.

Senator HEFFERNAN—What, he was a sort of grumpy old bastard like me, was he?

Mr Tully—He is younger than you, Senator. It was the way he controlled the information. He had a very relaxed method of keeping records. His responsibility of reporting the work he had done to CASA was pretty ordinary.

Senator HEFFERNAN—In terms of a paper trail—

ACTING CHAIR—Can we finish Mr Tully's submission and then we will ask questions. We will not get through the material you want to put; we will end up dealing with only part of it. So can we accelerate that part of it and then go the questions?

Senator HEFFERNAN—Righto.

Mr Tully—Sure. The other point I made in my submission was CASA's relationship with industry and organisations and the weight that CASA tends to put on input from industry compared to input from their own staff. I found that specifically when I was involved with the night vision goggles project, trying to get that up and running. There were a couple of flight operations inspectors on that particular program, and I think their reputations were sullied by some of the feedback from that committee because they were standing up for—as they saw it—safety issues in relation to the approval of these night vision goggles. That was another specific area.

The other aspect within that too is the situation that you get where industry lobby CASA about certain officers. I notice that you have Mr Peter Lloyd appearing after me today. I had discussions with Peter Lloyd at one stage where he raised the issue of the suitability of some of my staff being in that regulatory policy area. I think he termed them in his latest submission 'deadwood' or 'recalcitrants'. He raised those issues with me about the suitability of those staff and whether they should be terminated. I understand from Rob Collins that he had similar discussions with Mr Rob Collins on the same two staff. Those two staff are still working with CASA, by the way.

I mention in my submission the major issue in setting safety standards and seeking compliance with those standards is the relationship between CASA and the industry. There is a lack of trust in CASA by the industry. They seem to have a view that CASA is going to be embedding hooks within the legislation that is going to trip them up. There is a very little trust in how CASA operates in writing those standards. That is why you get to the point in some of the committees where you are debating grammar and tense within the regulations. The ideal position would be to agree on the policy and let CASA get on and write the regulations and not have to keep going back to committees to review the spelling and grammar within specific regulations.

My final point was the management of CASA staff safety concerns. As you hit on before, Senator Heffernan, I am aware that staff have specifically raised safety concerns with the group general manager of the General Aviation Operations Group. I am also aware that in some cases those staff are not in CASA anymore. One guy resigned and two are currently under scrutiny by management. I believe one of them has been suspended. The safety concerns of staff are frowned on by CASA management. I know some have been counselled and threatened with termination for raising safety issues with some of the managers. I am confident that the CASA technical staff continue to seek the appropriate safety outcomes, that they do the best they can in a pretty tough environment. But I am pretty sure that if you sought the opinion of staff specifically with the protection of giving evidence, then you would get a completely different picture on the health of the organisation to what is being presented by CASA at the moment.

ACTING CHAIR—Thank you, Mr Tully. Senator Heffernan, you have questions.

Senator HEFFERNAN—We have had lots of evidence that lots of people think CASA was a hopeless organisation 10 years ago and that it is undergoing a revolution. Revolutions are always personality clashes et cetera, but I would not like to think that they are going to come out at the other end of the revolution and the safety aspects of keeping aircraft in the air are no better off. We are hearing evidence that, as part of the revolution, a lot of the skill base is diminished and a lot of the intricacies and technological skills are growing because the planes are smarter et cetera. I personally cannot see anything wrong with someone in the industry complaining about an officer in CASA to the management of CASA. I feel out of it unless every six months, at least, someone calls for my resignation because they think I am a horrible bit of gear. It is sooky to worry about that sort of stuff. If you are worried about people who are not used to being criticised being criticised, then that is—

Mr Tully—I think criticism comes with the game in CASA. It is staffed by adults. I do not think you have been through any of the consultative committees that CASA has set up to have a look at how the proceedings are driven, but I think you will find there are very few sooks in CASA. I think the major reason is the undue influence in place by—

Senator HEFFERNAN—What I would be concerned about is that legitimate complaints have in the background an intimidation of your job. I think that is pretty unhealthy. My understanding of the Moorabbin exercise was that the operator thought there was a witch hunt by a former employee who went to CASA. Is that your summary of it?

Mr Tully—I am really not on top of that particular detail. I am aware that—

Senator HEFFERNAN—Were you a licensed aircraft inspector in your former life?

Mr Tully—I was in the Navy—didn't you read my submission?

Senator HEFFERNAN—I did; you were in the Navy for 20 years but you did not actually spell out what you did, whether you were an engine man, an airframe man—what were you?

Mr Tully—Engine/airframe.

Senator HEFFERNAN—From that experience, do you think that some of the people in CASA who are inspectors of airframes and engines are working above their qualifications and capacities?

Mr Tully—I think there has been a paucity of training in CASA for years. I think that, in some cases, they are employing highly qualified and experienced individuals from either the military or the industry. They have the capability to become good regulators but CASA has not really trained its staff to be regulators.

Senator HEFFERNAN—That is not answering the question. Do you think there are people doing jobs that they are not qualified to do?

Mr Tully—That is what I am getting to. The role of the CASA staff member is to be a regulator. It is not to be a pilot or an engineer. It is good to have those technical skills behind you, but your role is a regulator. You are out there to seek compliance with the regulations. You utilise your skills in carrying out that role.

Senator HEFFERNAN—Hang on. CASA is the regulator; I accept that.

Mr Tully—Yes.

Senator HEFFERNAN—CASA employs people to carry out the instrument of the regulation.

Mr Tully—Yes.

Senator HEFFERNAN—Do you think the people carrying out the instrument in some circumstances are not qualified or are working above their capacity?

Mr Tully—From a technical perspective? I do not know—

Senator HEFFERNAN—I would like to think that, when a jumbo takes off from Sydney, the bloke who gave it a tick to go knows what he is talking about.

Mr Tully—The guy who gave it a tick to go would be a licensed aircraft maintenance engineer.

Senator HEFFERNAN—We have heard evidence that you are not supporting. That is fair enough.

Mr Tully—That I am not supporting?

Senator HEFFERNAN—We have heard evidence that there is a gradual diminution of the capacity of some inspection staff, not only with their qualifications but also with their capacity to do their job. In other words, they are not smart enough, qualified enough or energetic enough.

Mr Tully—No, I think they are skilled enough to carry out their role.

Senator HEFFERNAN—That is the question.

Mr Tully—What I am saying is that the background and technical skills are one aspect of the role of the inspector.

Senator HEFFERNAN—So you think everything is all right technically?

Mr Tully—Technically, when they join CASA they are hired on the basis of their qualifications at that time. As I said before, CASA got rid of its training centre in about 1988 or 1990.

Senator HEFFERNAN—You do not think the people CASA employs have been deskilled technically?

Mr Tully—There is very little ongoing training within CASA. There is for pilots, but the airworthiness aspects and the engineering aspects have very little specific training.

Senator HEFFERNAN—So is the end result of that going to be that they are going to run out of capacity?

Mr Tully—I think they will eventually if they do not introduce specific ongoing training for staff, but a major aspect, as I said before, is the regulatory side of the role, for which there is very little training.

Senator O'BRIEN—In your submission, you make reference to the state of the maintenance regulations.

Mr Tully—Yes.

Senator O'BRIEN—What I think you were suggesting was a breakdown of the process many years ago, which leaves us in an inadequate situation in that regard at the moment. Is that fair?

Mr Tully—My point was that we have gone through so many changes in trying to get these maintenance regulations completed. I came back from Melbourne in 1995 to start on what was called the RSVP, the regulatory structure validation project, which was to look at the regs that we had in Australia and measure them up for suitability. At that time the Civil Aviation Orders were a mixture of advisory material plus mandatory requirements. The suite of legislation was quite untidy. So the RSVP was putting that together to try to streamline it. That then evolved into the regulatory framework project. As I said in my submission, I think that in about 2000 we just about had it finished. The notice of proposed rule makings had gone out, we had the responses back and apart from a small group of industry I would say that there was majority support for those regulations. Then, out of the blue, in 2000 we decided to can that because we had not consulted enough. We started the ball rolling again. CASA just never—

Senator HEFFERNAN—Who was in charge then?

Senator O'BRIEN—Come on. It does not matter who was in charge then. Can I finish my questions because we have very limited time? I have had it put to me that the state of the maintenance regulations and CASA's situation in that regard has had an impact on its relationship with the FAA, with regard to certain projects that the FAA is involved in. Do you know anything about that.

Mr Tully—I am not aware of that.

Senator O'BRIEN—In terms of relationships with industry organisations and individuals, you say in your submission that you would be happy to expand on matters contained in your submission. To the extent you have not already done so, is there anything else you wish to put in that regard to the committee? It is under the heading 'CASA's relationship with industry organisations and individuals'.

Mr Tully—I think the point I would make there is that we have become more of a partner than a regulator in the last few years or so. You hear very little about the public interest aspects of safety regulation. In the back of my mind all the time was a view of a person strapping themselves into an aircraft seat and flying somewhere. That was why CASA was there: to protect the fare-paying public. I think that element of the equation has diminished over the years. It is more of this: 'We have got to be a partner with industry.' I think that one of the objectives of CASA is to have a lower public profile. The less CASA is in the press the better.

Senator HEFFERNAN—So are you saying that familiarity breeds contempt, as it were, within the industry. I mean, if you are a copper you should not drink with the crims, as it were. That is fair enough.

Mr Tully—I think you have got to keep a professional distance when you are a regulator. If you are going to carry out an audit of an organisation, you walk in, you identify yourself, you explain what you are going to do and you get on with it. Give them a time frame and a picture of what is going to happen in that particular audit.

Senator HEFFERNAN—Do you think it is the difficulty of an officer of CASA imposing their authority on the industry?

Mr Tully—No, I think it is the relationship, as I said before.

Senator HEFFERNAN—Okay.

Senator FISHER—I want to explore a bit more your concerns about CASA's relationship with industry. I restate that my father operates a private aeroplane. To the extent that you are saying that CASA is too close to industry, can you give more detail about how you would characterise that in respect of the private aviation sector as opposed to the commercial sector. Are you including that sector of the industry in your criticism of CASA's relationship with industry?

Mr Tully—I think that was a generic term I was using to say that the message coming out from CASA, the spin is always the partnership: 'We are not the regulator.' 'We are not the nanny regulator anymore,' as the CEO has said, when in fact CASA is a regulator. You cannot get away from that fact. The act puts a responsibility on CASA to seek compliance with those standards that it establishes. But the spin coming out is, 'Yeah, we're in a partnership mode with industry'—rather than standing fast and saying, 'We are here to ensure aviation safety.'

Senator FISHER—To put the question in another way, do you think that means they are genuinely in partnership with the private aircraft operator?

Mr Tully—I think that is the message.

Senator FISHER—Okay. Thank you.

Senator HEFFERNAN—I think you're a dead ringer for Gough Whitlam.

Mr Tully—Is that a compliment or an insult?

Senator HEFFERNAN—It is a compliment. If I were to take a photo of you sitting there, I would think, 'That's young Gough there.' You're a dead ringer.

Senator O'BRIEN—Mr Tully, just on your statement about what you perceive as the direction that CASA takes in terms of industry partnership, what gives you that view specifically? Is it because that is what you were told when you were there or because you have heard it from others or because you have read it somewhere?

Mr Tully—I think it is the experience that you gain when you deal with and are on committees with industry, when you are writing the regulations. You get to a point of disagreement where rather than taking the hard decisions and saying, 'I am sorry, the line in the sand is there, this is a safety issue,' we tend to go one step further and keep negotiating—

Senator O'BRIEN—Compromising?

Mr Tully—In some cases I have seen compromise in some of the regulations that have been developed. That is not to say that there has been a drastic reduction in safety by the compromise, but it just gets to the stage where it keeps going round and round in circles. It is nearly impossible to get regulations finished in some instances.

Senator HEFFERNAN—Do you think it has to do with the prior links in the industry?

Mr Tully—I daresay there are people who still have a link with industry. I guess you are still linked to the bush, even though you are sitting in Canberra.

Senator HEFFERNAN—That is self-evident.

Mr Tully—It is self-evident, Senator.

CHAIR—We have run out of time. We do thank you for your assistance.

[10.02 am]

ILYK, Mr Peter, Private capacity

CHAIR—I welcome Mr Peter Ilyk. I invite you to make a brief opening statement before we go to questions.

Mr Ilyk—Excuse me, I have a bit of a cold, so I might be a bit hard to hear. Given the length of my submission I think it probably useful if I spend five or so minutes going through the issues I have.

In 2003 the governance arrangements for CASA were changed. The board was abolished and responsibility for managing CASA and setting its strategic direction was entrusted to a single individual. As a result of that change, in my view, the checks and balances which were in place up to that time were removed. No longer would changes to CASA's strategic direction have to run the gamut of a critical review by a board, which was established to ensure that CASA remained focused on discharging its responsibilities to the public. Under the changed arrangements, the new director could impose his personal vision on the organisation without any effective review.

The immediate effect of this change was to move to a partnership policy with industry. There was little or no engagement with CASA staff or those with extensive experience in regulatory issues on this new direction. New strategic advisers were appointed and the focus was on establishing a new relationship with industry—a relationship where industry criticism was anathema and had to be prevented at all costs, even if it meant subordinating CASA's regulatory responsibility to placate industry. As mentioned by the CEO himself, on joining his priority was to reduce burdens on the aviation industry and to improve relationships with industry. The lessons from the Monarch, Seaview and Senate inquiries were dismissed as being unsophisticated, were trivialised and were said to represent the blinkered view of the regulator's role. Industry was to be viewed as CASA's partner. Derogatory expressions were used to downplay CASA's traditional role. CASA could not be seen to be a nanny regulator. Rather than enforcing safety rules, CASA's new role was to encourage compliance.

Those in the organisation who held the view that CASA had a public duty to regulate were removed or counselled and ostracised by management. Even in submissions today CASA's supporters vilify dedicated and professional staff as 'recalcitrants' who must be dismissed. Much of this was done under the guise of restructuring and market testing. However, this was essentially a sham with a predetermined outcome. My own experience bears this out. The market testing report for OLC was so flawed and full of errors and unsubstantiated generalisations that I was compelled to provide the deputy CEO with a 20-page report pointing out all the errors. But that was obviously ignored, because the consultant's report provided the desired predetermined outcome. I have no doubt whatsoever that most of the other market testing reports were equally flawed.

In setting its new partnership policy it is interesting that CASA uses exactly the same justifications that have been used by the FAA in support of its cosy partnership programs with

the airlines which have been rejected by the US congressional transportation committee. The FAA argued, as CASA now argues, that safety is the primary responsibility of the industry. The FAA, like CASA, downplays its responsibility for safety regulation. When criticised for its approach to safety, the FAA was unwilling to embrace the criticism and, like CASA, would say that there is no safety issue. The US congressional committee did not accept such justifications—and hopefully this committee will also reject this rationalisation.

What the FAA and CASA approach fails to recognise is that CASA is a government agency that was expressly established in the wake of two tragic accidents with the objective of regulating the aviation industry. It was not set up to be a partner with industry. It was not set up to promote industry. It was not set up to bow to industry pressure. CASA was set up to regulate the industry and enforce the safety rules. However, it is not surprising that CASA should adopt the same tactics as the FAA because, as the CEO admitted during estimates on 26 May 2006, he has based his philosophical approach on the FAA model, which has now been found to be wanting. The chairman of the congressional committee investigating the FAA made the following telling comments about the partnership approach of the FAA:

Doubtless some will argue that these compliance violations offered no serious threat to the flying public. No crash happened, no one died. But that is an irresponsible argument. It would be consistent with the ‘tombstone mentality’ that I have been fighting in the FAA and other agencies my entire career. The fundamental reason our air transportation industry is so safe today is that we have, historically, been obsessive about compliance with the federal aviation regulations. We insist on wide margins of safety. Non-compliance with these regulations erodes margins, and makes air travel less safe.

Compare that attitude with CASA’s approach that compliance with the regulations is almost irrelevant and a blinkered view. Whose view do you think an informed public would be more comfortable with? As the House of Representatives committee reviewing the establishment of CASA emphasised, CASA must be accountable to the parliament, to the minister and to the courts—and to no-one else. If it becomes accountable to the industry, it will be captured. In my view this is exactly what has occurred.

If CASA is to be a partner with industry rather than an independent regulator then that needs to be reflected in the act establishing CASA through proper parliamentary debate. It should not be the prerogative of a single individual to impose this approach on the regulator because, as he himself has said, ‘This is something that has been dear to my heart for some time.’ One of the points I make in my submission is that captured regulators use particular techniques to justify their approach. One of these techniques is to run PR articles claiming a course of continuous improvement. CASA’S spin-doctoring before Senate estimates and its press release bears this out. They say that wonderful progress has been made on all fronts, but if you actually speak with the staff you will find a totally different picture. Staff are demoralised, fear for their jobs and are afraid to raise their concerns. Staff and former managers with whom I have been in contact have expressed the same view. Obviously CASA management is not going to admit that. But suddenly we have all sorts of new specialists who will fix the safety problems.

However, I think we need to stop and consider this in a bit more detail. What is CASA’S main role? It is to regulate aviation safety. What experience do these new specialists have in regulatory matters? What experience have they in compliance and enforcement or in interpreting and applying the aviation safety legislation? They are provided no training in these fundamental regulatory activities and we are expected to believe that somehow they will acquire this

experience through osmosis. The problem of course is that those who had this background in the agency have been removed so there is nowhere to get that understanding.

It should come as no surprise to anyone that regulatory staff in an agency that is charged with administering complex and detailed legislation should have access to legal counsel to assist them in their duties, particularly new staff who have no background in such matters and receive no training. However, under the new CASA, the role of legal counsel has been undermined and managers are actively discouraged from seeking legal advice. According to the CEO in a speech to the Australian and New Zealand Aviation Law Association, managers should manage and not seek to avoid responsibility by passing it on to others. It is difficult to understand how seeking legal advice on the exercise of CASA's regulatory powers should be so problematic to CASA management. In most regulatory organisations a failure to seek such advice would be the problem. However, this approach is driven by industry complainants who view CASA's legal area as having an enforcement mentality. Of course such industry criticisms must be avoided at all cost. I was continually accused of this during my time as general counsel—however, I am happy to accept such criticism as a compliment.

An interesting facet of CASA's new regulatory philosophy is to ask what the taxpayer receives for funding CASA to the tune of \$113 million per year. CASA has made it clear that it has devolved responsibility for sports aviation and warbirds. It has embarked on a vigorous campaign to devolve responsibility for GA—they talk about 'self-administration'; it is actually self-regulation—and let GA self-regulate. It has made it clear that it does not believe it has responsibility for aviation safety and that a new CASA will return responsibility for safety to the industry. So what is there left for CASA to do? The public and this committee should be alarmed at these developments.

This then leads to CASA's major failure in the regulatory reform program. In the past five years CASA has managed to achieve basically nothing in regulatory development. I urge all members of the committee to carefully read attachment 4 to my submission, which provides a documented history of failure. After five years at the helm the CEO will be able to walk away without anything of substance to show for his stewardship of this program.

Just as an example, take the new maintenance suite of regulations. In February 2006 these regulations were promised to be finalised during 2006. This date came and went. In February 2007 a CASA media release announced that the new regulations would be completed by the end of 2007. This was confirmed by the CEO in May 2007. Then in November 2007 the project manager announced that the complete package 'may' be available around March 2008. It is now July 2008 and nothing has been released.

The problem is that this same sort of unaccountability applies to the whole reform program, not just the maintenance regulations. Senator O'Brien will no doubt remember the debate during estimates several years ago about classification of operations and the issues relating to parachuting operations, flying training in sports aircraft, and cargo-only operation in aircraft below 5,700 kilograms. They were all going to be fixed—soon. Nothing has changed. I had a very quick scan of the CASA submission last night. It is interesting that they can seriously try to spin-doctor it as a success. If the RRP is a measure of their success, then I suggest that the committee give the same weight to their statements about all of the other successes of the new CASA as detailed in their submission. The fact is that the RRP is a monumental failure.

The underlying issue with the reform program is that CASA has no managers in place who actually understand the regulatory development or the legislative process or have any relevant background or experience in this important area. From what I was able to see during my time, appointments were made on the basis of agreement with the CEO's particular philosophy rather than on the basis of appropriate experience and background. It should be no surprise that development of legislation requires significant legal input, but the new CASA has avoided allowing legal staff any meaningful role in the reform program. Those who did understand the process have been removed, and of course it does not help when you set up a consultative process that empowers vocal minorities. How on earth can an organisation make a decision when your industry consultative body, the SCC, has, according to CASA's own website, a combined total of over 200 CASA and industry participants in the SCC and its six subcommittees? No wonder no decisions are made.

On this same issue, the committee would be aware that, when CASA's new enforcement regime commenced in 2004, there was a commitment to review the new procedures within 12 months. A detailed review was completed in July 2005. It is three years later and the review seems to have gone the way of the regulatory reform program.

As a final point, I would like to lend my support to the comments made by Mr Tully about CASA's HR practices. However, my point here is different. It is that the failures of the HR area to act with any procedural fairness and, in some cases, questionable legality in the treatment of CASA staff are simply a reflection of the attitude taken by CASA management to its regulatory responsibility.

When you have a management culture that allows its senior managers free reign to ignore legal constraints and protections in relation to its own staff then you have an organisation that will inevitably ignore the legal responsibilities placed on it under the act in relation to regulation. In such a culture, the law and legal restraints are mere obstructions and annoyances. Getting results is all that is important—never mind the way the results are achieved. These are clear governance failures which have been allowed to flourish under the new arrangements. During my time as general counsel, I brought these matters to the attention of the CEO but they were simply ignored.

Not long after raising my concerns, I was also terminated. However, I have to stress to the committee that my termination was a relief rather than a matter of concern as it was clear to me that my 'unsophisticated' approach to governance and regulatory issues had no place in the new CASA. I clearly belonged in the world of the 'nanny-regulator' with a 'blinkered view' about CASA's regulatory responsibilities.

Mr Chairman, if I could crave your indulgence for one minute, there is one issue that I did not raise in my submission—

Senator O'BRIEN—Mr Ilyk, being ironic on the record will not appear ironic, which I think is what you are being. Hansard does not record irony. Do I understand that last passage to be an ironic statement?

Mr Ilyk—Indeed, it was ironic.

CHAIR—Please continue, Mr Ilyk.

Mr Ilyk—There is one issue that I did not raise in my submission but I believe it is extremely important and I would just like to briefly raise it here in case the opportunity does not arise later. The issue is insurance. After the Monarch and Seaview accidents, the government of the day, under Laurie Brereton, realised that it would be incompatible for the new regulatory agency to have to obtain commercial insurance for its regulatory functions as this would compromise how the authority responded to coronial and other inquiries. The government, therefore, indemnified CASA. CASA still paid the premium, but that premium for the insurance was paid to the Commonwealth for its indemnity.

In 1998, for some reason the department of transport insisted that CASA should once again obtain commercial insurance. This was subsequently put in place, despite objections from the CASA director. The inevitable result is that, in coronial inquiries, it is generally the insurer who is responsible for legal costs as well as running the case and determining how the case will be run. The lessons from Seaview and Monarch and the insurance arrangements, which were put in place to avoid this sort of conflict and allow the government to determine the best public interest approach to dealing with coronials, were simply ignored. In my view, the committee should look at this issue as part of its inquiry. I am surprised that this issue has not been raised by either CASA or the department as it is a fundamental governance issue for CASA.

CHAIR—Because that was a very passionate opening statement, with a lot of information and accusations, I am going to ask senators to show some restraint. I will give the call to senators, and I would urge them to let their colleagues follow with their questions so that each one has a chance to ask the questions. Senator Heffernan, have you a list of questions or is that a brief statement?

Senator HEFFERNAN—I have a question on that last point. Mr Ilyk, are you saying that the driver in a coronial inquiry is really the financial interests of the insurers rather than the adventure of the truth?

Mr Ilyk—That is exactly what I am saying. The fact is that the insurer has an interest in making sure that CASA has no blame, because, if it does, there will be litigation. Litigation will mean that the insurers will have to pay out. That was the whole problem with the Seaview and Monarch accidents. That is why at that time the government said, ‘If you make the regulatory authority subject to commercial insurance arrangements, that will be the inevitable result.’ That is actually what happened in Monarch. As a result of that, the government decided to indemnify CASA so that it could determine whether or not in any coronial there was a public interest to take a particular view as to how respond to that coronial.

Senator HEFFERNAN—You are a lawyer, I take it.

Mr Ilyk—Yes.

Senator HEFFERNAN—My difficulty with the process is that you do not necessarily seek the truth in a court. At a coronial inquiry, if there is a financial driver, it is an incentive to further exacerbate the problem, because you use a good lawyer not to tell a lie but to avoid the truth.

Mr Ilyk—I hope everyone tells the truth.

Senator HEFFERNAN—The reward or incentive to do that is ever so much greater because it is in direct relation to a financial outcome.

Mr Ilyk—Was that a question, Senator?

Senator HEFFERNAN—Yes. Do you think that is right?

Mr Ilyk—I think there certainly is an interest. The insurer has an interest to protect its—

Senator HEFFERNAN—Client.

Mr Ilyk—Its money—itself. It is the insurer, so it is the one that has to pay out. So it will raise particular arguments in order to make sure that there is no liability attributed to its client, which, in this case, happens to be the regulator. That was what was found to be the problem with the CAA response to the Monarch coronial inquiry.

Senator HEFFERNAN—Are you saying that there would be a different outcome if the insurer were not the respondent?

Mr Ilyk—There might very well have been. There might not have been the continual legal battles to try and avoid liability at all costs. The government might, in fact, have said: ‘We are at fault. The regulator is at fault. Maybe it didn’t do its job.’

Senator HEFFERNAN—I hear what you are saying. That is why I would get rid of two out of three lawyers.

Senator O’BRIEN—Following that, does it follow then that, at the coronial inquiry into the Lockhart River crash, the directions for the conduct of CASA’s case were necessarily made by the insurer rather than by CASA?

Mr Ilyk—I was not involved, but given that the—

Senator O’BRIEN—Is that your experience of what happened in previous cases?

Mr Ilyk—Yes.

Senator O’BRIEN—So you can say that, while you were general counsel for CASA, when there were coronial inquiries the case on behalf of CASA was conducted by, or at the direction of, the insurer.

Mr Ilyk—We had to notify the insurers that there was an accident and that a coronial inquiry was coming up. The insurers determine who will represent the insurer and CASA. Those lawyers then work with the insurer to work out what strategy to use in the particular coronial inquiry. So it is driven by that. CASA obviously has some say in it, but it is the insurer’s interests and their money, so they are actually running the case.

Senator O'BRIEN—What is the consequence of CASA not cooperating? Voiding the insurance?

Mr Ilyk—As with any commercial insurance, if you do not do what the insurer says then the insurer says, 'Well, we're not paying up,' if there is some sort of litigation and you have not cooperated. You have a duty to the insurer, and that is the issue. The duty to the insurer is to protect the insurer's interests. That is generally what happens.

Senator O'BRIEN—So that was your experience as general counsel for CASA.

Mr Ilyk—Yes.

Senator O'BRIEN—You ceased to be general counsel in 2006?

Mr Ilyk—I was general counsel from 1995 to 2006.

Senator O'BRIEN—What point in 2006?

Mr Ilyk—May 2006.

Senator O'BRIEN—What was the situation then for Lockhart? When did that process start, and were you in any way involved in it?

Mr Ilyk—I was not involved in the coronial inquiry. That happened in 2005. The coronial inquiry did not start till after I had left. I had no involvement in that.

Senator O'BRIEN—But the insurer would have been notified.

Mr Ilyk—Absolutely.

Senator O'BRIEN—There would have been a process that commenced while you were there.

Mr Ilyk—They had been notified.

Senator O'BRIEN—So the process, so far as you are aware, started on Lockhart River in the same way as it started on all of the other matters.

Mr Ilyk—Absolutely.

Senator O'BRIEN—Do you know whether the insurer had particular counsel that they wanted engaged regularly in other matters?

Mr Ilyk—No. I know who was involved, but I have no idea of what basis it was on. It was a matter for the coroner to choose who he wanted as his counsel, and it was a matter for the insurers and CASA to decide which counsel they would use. I was not involved in that. That occurred after I had left.

Senator O'BRIEN—There have been certain comments made about counsel assisting the inquiry in relationship with CASA. Is there any connection, to your knowledge, between that legal practitioner and previous insurance cases?

Mr Ilyk—You are talking about Mr Harvey?

Senator O'BRIEN—Yes.

Mr Ilyk—Mr Harvey certainly represented CASA on a number of occasions and for the insurers, yes.

Senator O'BRIEN—For the insurers?

Mr Ilyk—Yes. Generally, most coronials were funded by the insurer.

Senator O'BRIEN—So the insurer chose the counsel in previous cases—

Mr Ilyk—Yes.

Senator O'BRIEN—and chose Mr Harvey?

Mr Ilyk—They chose him. Obviously, on some occasions they were chosen on the basis of what CASA wanted. I recommended Mr Harvey on a number of occasions; sometimes the insurer accepted it and sometimes it did not. It ultimately made its own decision.

Senator O'BRIEN—Thank you for that. In terms of your situation, one might expect that as a defence to matters that you raise it might be said that you have an axe to grind.

Mr Ilyk—I have no axe to grind. The best thing that ever happened to me, I can tell you, is being terminated. My life is much better since I left CASA. I have no problems, no qualms about what happened to me, but I am concerned about what has happened to other staff, how it has happened and the direction the authority has taken.

Senator O'BRIEN—What we were led to believe in evidence from CASA was that, despite statements by Mr Byron about partnership with industry, in fact CASA had a dedication to enforcing regulation.

Mr Ilyk—Senator, I think you just have—

Senator O'BRIEN—I have read your submission and I know you have related a number of occasions where the issue of partnership was regularly referred to by Mr Byron. You also referred to job advertisements and statements in other documents. How recent are they?

Mr Ilyk—That is an interesting question, because I very briefly watched the Senate committee yesterday where CASA seemed not to know about this. I went back onto the website and googled it.

Senator O'BRIEN—This is the CASA website?

Mr Ilyk—I just went to Google, and there you go. This says:

CASA works to be a valued partner with the aviation industry ...

Senator O'BRIEN—That was last night?

Mr Ilyk—Yes, that was last night.

CHAIR—Could you table that for us, Mr Ilyk?

Mr Ilyk—Yes.

Senator O'BRIEN—I guess what you are telling us in your submission is that in your experience, from what you have heard from people who still work for CASA and from its public pronouncements, it has not abandoned this concept of partnership with industry?

Mr Ilyk—I do not think it has abandoned it at all. If you look at some of the submissions in support from some of the industry, it is quite clear that that is the case. The idea is: why would you change that partnership, because it is good for you. I do not think it has been abandoned at all.

Senator HEFFERNAN—What does 'good for you' mean?

Mr Ilyk—I will put it this way. Look at Qantas. It is a large organisation; it has lots of people. Do you think that in the last 10, 15, 20 years it has contravened no safety regulation? None at all? Have a look at what action CASA has taken in relation to Qantas. None. Not even an infringement notice. Now I recall when I was at CASA issues did come up and I always thought: 'If this happened to a smaller operator, CASA would do something. Why hasn't any action ever been taken against Qantas?' The answer was always: 'We don't want to upset Qantas. We want to make sure we have a collaborative approach with them because they may not speak to us.'

Senator HEFFERNAN—Does that apply to Kendall and Rex and Hazelton?

Senator O'BRIEN—It did to Ansett.

Mr Ilyk—I think it applies to all of the majors. I will ask the common question—

CHAIR—When you say 'the majors', who are the majors?

Mr Ilyk—Virgin, Qantas and all of the major RPTs—they are the main two.

Senator O'BRIEN—You have said that this partnership position, in your belief, is current, and you no doubt are aware that CASA sought to downplay that in their evidence.

Mr Ilyk—In my view, that is the case. I do not think much has changed. I think it is continuing down that direction.

Senator O'BRIEN—You talked about the regulatory development and its impact. We heard yesterday that 32 out of 60 regulations had been promulgated, a number were awaiting drafting and there were a number that were yet to be done. How does that align itself with your submission about failure in the regulatory development process?

Mr Ilyk—I simply ask where they are. After five years, where are they? Where are the maintenance regulations that were promised in 2006? Where is part 91? Where is part 61? Where is part 121? There is nothing.

Senator O'BRIEN—What are those parts?

Mr Ilyk—Part 91 is general operating rules, 121 is for large aircraft and part 61 is for licensing pilots. Where are they? It is five years since this process started. It was five years before that. One of the issues, of course, is that back in 1996 we totally restructured the regulations. They were about 80 or 95 per cent complete. A new minister came in, was lobbied by industry, and all of that was dropped. Since then, basically nothing has happened—although we did have parts 21 to 35.

Senator O'BRIEN—What are they?

Mr Ilyk—They are the airworthiness provisions from the FAA. But I am just focusing on the last five years. There has been promise after promise after promise. You just have to look at attachment 4 to see what those promises are; there is nothing there.

Senator O'BRIEN—I have read attachment 4. When we received evidence that there were 32 regulations promulgated—

Mr Ilyk—They did release part 137. If you go through all the submissions, suddenly we were going to have press releases and there would be a new two-tier format. Well, that has come and gone. We are now issuing civil aviation orders again. That was all meant to go but the rationale is: 'Well, we can't actually change the regulations; it takes too long. So let's just go back to issuing civil aviation orders.' I am not criticising that; that may be a good thing. All I am saying is—

Senator O'BRIEN—That is the easy solution?

Mr Ilyk—Yes.

Senator O'BRIEN—Issue civil aviation orders because you cannot formulate regulations.

Mr Ilyk—Absolutely, especially when you have indicated through your media releases that that is not going to occur.

Senator O'BRIEN—You have spoken about Qantas, another longstanding matter. In terms of the relevance of industry's influence in CASA in your time in CASA—up to 2006—what can you tell us has been the nature of industry's influence since 2003?

Mr Ilyk—I think there was a lot of industry pressure to get rid of particular people. If you happened to criticise industry or took a tough stance, the inevitable result was that there would be complaints made to a CEO, and the first reaction was, 'Well, industry complained; CASA must be wrong.' I was continually being asked to justify why we did particular things. There was no: 'Well, is that right? Is that wrong?' It was always: 'There's a complaint. You're wrong. Why have you done this?'

Senator O'BRIEN—That is your personal experience?

Mr Ilyk—That is my personal experience.

Senator HEFFERNAN—Did you take a bullet? Did they shoot you?

Mr Ilyk—Yes.

Senator HEFFERNAN—Why do you think they shot you?

Mr Ilyk—If you read all of the statements made about me by industry, the whole legal area was seen to have this enforcement mentality. We were seen as obstructionist to any progress that industry wanted to make. We were seen to be stepping in the way. We were accused of stopping regulatory development when, in fact, we had very little to do with regulatory development. The legal council was actually taken out of the regulatory development role, but we were being criticised for stopping regulatory development. It is simply untrue. In fact, I remember that back in 2005 I posted a response to those accusations on the SCC website which addressed all of those things and which basically indicated all of the statements that were being made by industry about the whole regulatory process and how it was totally misunderstood. They did not even know what they were talking about most of the time. I am happy to provide that to you.

Senator O'BRIEN—Perhaps I missed something in what you were saying, because there was some noise from outside. But you are very clearly saying that you came under pressure in relation to your role because of complaint from industry.

Mr Ilyk—Yes. I have no doubt about that.

Senator O'BRIEN—For, in your view, doing your job.

Mr Ilyk—For doing my job. Towards the end of my career, the CEO simply ignored all of my emails. I never got a response to anything. I sent minutes to him detailing what I believed were significant governance failures. There were no responses to any of those.

Senator HEFFERNAN—Do you have a piece of paper that would be evidence of the fact that you might have got the bullet because you were seen to be doing your job? Did someone complain and say, 'This bastard's too hard on us'?

Mr Ilyk—That is a whole separate area of inquiry that it would be useful for the committee to look at. I do not make any comments about that.

Senator HEFFERNAN—Do you think that the partnership between CASA and the industry—and you are talking about the bigger players—is putting lives at risk?

Mr Ilyk—If you simply have a look at what happened in the FAA and the relationship there, that is exactly what the committee was saying.

Senator HEFFERNAN—Are you saying that something similar to the case of the FAA and that southern airline which had several planes in the air that were not being inspected is going on in Australia?

Mr Ilyk—I am not saying that at all. What I am saying is that there is this notion that CASA does not have any real responsibility for safety regulation and that that is the responsibility of the industry, rather than acknowledgment that CASA is set up to regulate aviation safety and the regulations have some relevance to aviation safety. That, in the view of the current CASA, is simply not the case. That is a blinkered view. It is an unsophisticated view that the responsibility for aviation safety rests only with the industry.

Senator HEFFERNAN—Do you think that the air safety situation in Australia of 10 years ago, when everyone agrees to some extent that CASA was a bloody shambles, has improved today?

Mr Ilyk—That is a subjective judgement. I do not know that I can make that judgement. There have been no major accidents. Obviously, Qantas has not crashed. There have been a few misses.

Senator O'BRIEN—There have.

Mr Ilyk—For major RBTs, there certainly has been a major accident, with 15 people dead.

Senator HEFFERNAN—I heard a few things in the car. Accidents happen.

Mr Ilyk—The point to be made is the same point that Mr Oberstar made in the FAA. The fact that there have not been any accidents and the fact that people have not died does not mean that there is no safety problem.

Senator HEFFERNAN—I hear that. Obviously, speed cameras work. I slow down when I see the speed camera. If you have not got oversight, you might cut corners because of cost pressures. If you cut too much of the corner, eventually you will run off the road.

Senator O'BRIEN—What if you have not got a visible regulator? You are making a comparison with a speed camera.

Senator HEFFERNAN—The speed camera is visible.

Senator O'BRIEN—If you have not got a visible regulator, industry may be more inclined to cut corners than they otherwise would be.

Mr Ilyk—I think that is exactly what happened in Seaview, Monarch and ARCAS. Those coronial inquiries and the royal commission looked at all those things and made the point very clear: if you start going down the partnership route suddenly the industry is your customer. The customer is always right, so what do you do? You work to please your customer.

Senator O'BRIEN—Indeed, you mentioned ARCAS and, as I recall, it was a matter that was before this committee for some time. One of the allegations was that there was a closeness between the management of ARCAS and a key officer with CASA.

Mr Ilyk—Indeed.

Senator O'BRIEN—And that officer, shortly after the inquiry, ceased to be with CASA.

Mr Ilyk—That is correct. One of the recommendations of ARCAS was that CASA recommit itself to a vigorous enforcement policy. The board of the day did exactly that. That is gone.

Senator HEFFERNAN—We had evidence of a Mr Purdy. Do you know who Mr Purdy is?

Mr Ilyk—Yes, I do.

Senator HEFFERNAN—Did he have a close relationship with some people in CASA?

Mr Ilyk—He was an officer in CASA.

Senator HEFFERNAN—Sorry—I didn't mean CASA. My take of the evidence was that there were some instructions issued through CASA that were not followed up. Did Mr Purdy issue the instructions?

Mr Ilyk—As I recall, at that time Mr Purdy was responsible for the airline office based in Brisbane. I am not sure what to say next.

Senator HEFFERNAN—Here is your big opportunity; you were the lawyer—

Mr Ilyk—All I can say is that as I sat through meeting after meeting in CASA and listened to issues involving some airlines, I always queried: 'Why are we not taking any action? We would have if it was a smaller operator.' The answer I kept getting was: 'We don't want to upset them. They won't speak to us. Therefore, it is better that we have this cooperative thing. That way we get to know what's going on.' That was the attitude.

Senator O'BRIEN—In terms of your take on the US experience and what is happening with the FAA—

Mr Ilyk—New industry?

Senator O'BRIEN—and Transport Canada, where would you put CASA in relation to those two organisations?

Mr Ilyk—About where the FAA is.

Senator O'BRIEN—CASA say that FAA regulate more than CASA.

Mr Ilyk—FAA regulate more than CASA? If that is the case then it is even worse. If FAA regulate more than CASA and the congressional inquiry has found such significant failings in the FAA then the situation in Australia must be worse than it is in the FAA. I would have put it about the same.

Senator HEFFERNAN—Why is it a common perception—whether it is a reality, I am not qualified to make a judgement—that FAA have this less than perfect work record as does, maybe, as you say, CASA? Is that because of cost pressures? Is the global population wanting to fly at less than the cost of production, as it were, for the industry? Are airfares too cheap so costs have all been pulled down to the point where they are cutting corners?

Mr Ilyk—Economics probably has a lot to do with a lot of this. If you cut corners on safety, if you do not do your safety inspections, it costs you less so obviously there is some incentive to do that. What happened in the FAA situation was that you had the carrier doing exactly that. They had a self-reporting system; they did not self-report. The individual inspectors who discovered that tried to do something about it and they were threatened with the sack and all sorts of things. It was only after the congressional inquiry got involved that suddenly the FAA saw the problems. Suddenly the FAA did all of the inspections; suddenly the FAA issued millions of dollars in fines.

Senator HEFFERNAN—Most typical developed airports in their business plan have everything but the landing aircraft as their business driver—the industry of the industrial estate, as it were, like Schiphol or Canberra or Sydney. Do you think it is a flawed business plan? If you impose the right set of conditions on safety, supervision, fuel costs, et cetera then air fares would have to be a lot higher and we are sort of flying in this false economy with aviation.

Mr Ilyk—A lot of people do make that point, and I think it is a valid point to make. You have to look at the cost of safety and the cost of compliance. You cannot go into a business like aviation and run it on a shoestring. And that is probably one of the problems: there are too many operators chasing too few dollars. That tends to be what happens.

Senator O'BRIEN—Going back to your evidence about your communication—or lack of it—with Mr Byron and presumably others, you talked about a series of memos and emails. Were any of those answered, formally or informally?

Mr Ilyk—One of the ones that I sent to the CEO at the time outlining my concerns about governance failures in CASA was never answered formally. We had a CEO meeting about three months later and the only response I got from the CEO was, 'Don't you ever send me a minute like that again.' At that point I knew I was on the slippery slope out.

Senator O'BRIEN—How long was it?

Mr Ilyk—It was not long after that that the market testing report came along. They did all of the market testing and: ‘Wow! We do not need a general counsel. We do not need legal counsel.’ That is what happens.

Senator HEFFERNAN—Have they got one now?

Mr Ilyk—No. There is no general counsel there. In fact, the idea as I read it in the CEO’s speech to the Aviation Law Association last year is, ‘We don’t need a general counsel because that suggests that legal is a core function of the authority.’ That is simply not the case. It is simply meant to be in the background, a subordinate sort of thing. You get a situation where you take away all of the regional counsel that were put in place to help CASA staff to understand their legal responsibilities and to make sure that they interpreted the legislation correctly. They were all taken out. It was tried to be centralised. Managers were discouraged from seeking legal advice because their role is to manage—they should know what they should be doing; they shouldn’t bother seeking legal advice. Yet, we are dealing with complex legislation and complex procedural enforcement strategies. All of those things require legal input. It should not be a surprise that you need to have that input, but they simply say ‘We don’t need that.’ That is one of the issues facing CASA today.

Senator O’BRIEN—Regarding the rights and powers of CASA inspectors and officers and the rights and obligations of the industry participants, you are saying that you were told that the philosophy of CASA was that you did not really need to be informing people about that. Are you saying that the new directive of CASA was that there did not need to be a detailed understanding of that or an advisory process to keep on top of that? What I want to know is: how are officers to do their jobs operating within the law?

Mr Ilyk—They probably make it up as they go along. They are discouraged from seeking legal advice on their powers.

Senator O’BRIEN—So specifically there has been some direction to officers in the field, has there?

Mr Ilyk—Have there been directions? I do not know, Senator, but have a look at Mr Byron’s speech to the Aviation Law Association where he makes it clear that, in his view, there was too much reliance placed on legal. Managers should not have to hide behind the law. They should make their own decisions and be accountable for them. Seeking advice on your regulatory powers is not hiding behind anything. That is doing your job properly, making sure that you discharge your statutory responsibilities. That is not hiding behind anything. Managers are not lawyers; they are not versed in the law; they are not versed in statutory interpretation. That is why you have a legal area to help them do their job. That has simply been discouraged and taken away.

Senator O’BRIEN—Did you raise these issues with Mr Byron in any form?

Mr Ilyk—That new policy happened after they dismantled OLC after I was terminated.

Senator O’BRIEN—Okay. So how recently was that?

Mr Ilyk—And they are the issues that I raised in my 20-page response to the market testing report, these very issues: that this is a flawed proposal and that the people who did that market testing report had absolutely no understanding of the role or responsibilities of a regulator. But they provided the convenient answer to dismantle OLC. In fact, it is interesting, if I could just mention—

Senator O'BRIEN—It is always hard to do these things on the wrong area. But if you have documents which support what you have been saying—

Mr Ilyk—Yes, Senator.

Senator O'BRIEN—I think the committee would be happy to receive them, including that document you have just mentioned, which is the response to the market testing—

Mr Ilyk—I do not think it is appropriate for me to make that public. That was legal-in-confidence.

Senator O'BRIEN—All right.

Mr Ilyk—I do not want to make that public, but I am happy to provide that to the committee on a confidential basis.

Senator O'BRIEN—Okay. I think we will consider that. I cannot make that decision for the committee.

Mr Ilyk—In fact, you could probably ask CASA for it. They have it.

Senator O'BRIEN—Okay. We will see what we can and cannot get. As for the nature of your communications with Mr Byron—I have seen somewhere there is a discussion about that—you would expect that CASA still has your written communications?

Mr Ilyk—They should have; they cannot destroy the documents. That is an offence. So they might have, but they certainly cannot destroy them.

Senator O'BRIEN—So they should have details of communications between you and Mr Byron both ways.

Mr Ilyk—Yes.

Senator O'BRIEN—On file.

Mr Ilyk—Yes. I would be surprised if they did not. I mean, they are official records.

Senator O'BRIEN—Do you have copies?

Mr Ilyk—I may have.

Senator O'BRIEN—Okay. I think you have answered my questions about the regulatory matter—that is, the making of regulations, I should say—and the FAA and the Canadian problem. In terms of your evidence about Monarch, Seaview, Arcas and Aquatic Air, to your knowledge, how many people remain at CASA who have the continuity of knowledge of those events?

Mr Ilyk—Probably one, I suspect.

Senator O'BRIEN—Is there any reason we ought to be concerned about that?

Mr Ilyk—I think the committee should be concerned about the fact that all the lessons of the past have been forgotten. They have been forgotten now. The people who were there, who did remember that, have been removed. As I said in my submission, a point of pride in this organisation is that we have got rid of all of the managers. All the people who actually understood and learnt the lessons of the past are gone; they have been removed. Now that is a point of pride. In my view, to lose that amount of experience and corporate knowledge would be a tragedy for most organisations, but here it is touted as a success. This is the success of CASA: we have got rid of all the managers who used to be there, because they are unsophisticated, because they have a blinkered view of the regulator's role.

CHAIR—Are we talking natural attrition, redundancies or moved on?

Mr Ilyk—Most of them have been moved on.

CHAIR—Okay. Sorry, Senator O'Brien.

Senator HEFFERNAN—In the time that they were the managers, though, CASA did not enjoy a spectacular success in aviation's eyes, did it?

Mr Ilyk—Well, it did not enjoy success in not being criticised by industry—

Senator HEFFERNAN—Ten years ago there were endless complaints and there still are endless complaints.

Mr Ilyk—Of course, and there always will be. My point to you would be that I would rather be criticised for being a tough regulator and be criticised by industry than to see what has happened in Lockhart River.

Senator HEFFERNAN—Do you think that is the reason they got rid of them—because they were seen to be tough regulators?

Mr Ilyk—They were gotten rid of because a lot of these people stood up and said, 'We do not agree with the way things are being done.' I point the committee to the submission from Mr Rod Bencke. He has not been called, but he has a very good understanding of what has happened. There are a lot of people who have just been moved on because they were seen as obstacles. They were seen as being supportive of regulatory development that was in the public interest.

Senator O'BRIEN—In relation to an issue that has been raised with us about the implementation of the new direction or directions—all of the new staff that are on board with CASA—what do you know about the steps that have been taken within CASA to train or equip officers to understand their roles in this reformed environment?

Mr Ilyk—Since I left I do not know very much at all, but I have received correspondence from some CASA staff that suggests that there is none. There is no training. In fact, one of the items—I cannot find it in my papers here—had the current manager saying: 'In the past, new CASA staff were given detailed training about their regulatory responsibilities, about the direction and about all of these things. That simply does not happen.' I cannot speak—I am not there. I am just relaying what I have heard from existing management.

Senator O'BRIEN—So current staff who have communicated with you are saying that they are not being provided with training.

Mr Ilyk—The new staff are not. In fact I would ask: since my departure, how many training sessions have there been for CASA staff in relation to regulations, about interpretation or about anything? Probably none. I used to do quite a significant amount of training.

Senator O'BRIEN—So you used to do training?

Mr Ilyk—I used to go around the country doing training myself. That has stopped. In fact, I went on to the CASA website the other day just to see. When I was there I issued the initiative of aviation rulings. The purpose of the aviation rulings was to explain to industry what particular regulations meant in terms of their need to comply. I had a look to see what rulings had been placed on the website since I had left. None. It is not important anymore.

Senator FISHER—I want to ask a bit more about your concerns about CASA being in a state of regulatory capture, as you put it, and about it being too close to the industry that it is supposedly regulating. I want to ask you in particular about the non-fare-paying sector of the industry. You may or may not be aware, for example, that we heard from the likes of AOPA yesterday about their concerns, which are somewhat contrary in that respect to the views that you have put. For example, AOPA's submission says:

AOPA believes CASA continues to over-resource its habitual attention to the 'nonpaying passenger' segment.

They further say:

By imposing—

for example—

airworthiness constraints above those recommended by manufacturers, AOPA believes CASA is imposing unwarranted costs—

et cetera. They essentially conclude that CASA's present regime is 'militaristic, prescriptive, and varying in approach to industry concerns'. What do you say of concerns expressed by the likes of AOPA to that end?

Mr Ilyk—I am not surprised AOPA said that. That is exactly what they have been saying for years. Have a look at what I say in my submission about what they said about Seaview and Monarch. They basically dismiss all of the lessons of that. Having said that, I think that there is a tendency in CASA to go for the easy targets, which can be those sectors that are not necessarily fare paying. It is much harder to take action against the larger airlines. It is quite easy to target the private pilot and those types of things. CASA does that, and I do not think we can deny it. If you look at the amount of regulatory action that is taken, you will see that the bulk of it is in that area. I do not know whether or not that is appropriate. All I am saying is that there may be some issues. But I do not think the fact that CASA takes action should be a concern, because that what CASA's role.

Senator FISHER—You are suggesting the majority of action is taken in respect of the likes of Seaview and Monarch, where fares were paid, were they not—people were paying for their seats?

Mr Ilyk—Yes, of course.

Senator FISHER—To the extent that there is also a private aviation market for non-fare-paying passengers, which is the context of the AOPA criticisms of CASA that I read to you from AOPA's submission, your general observations are that CASA is guilty of regulatory capture. What would you say about the concerns expressed by the likes of AOPA that CASA is unduly focused on the non-fare-paying sector?

Mr Ilyk—I do not have much to say about that at all. The fact is CASA is meant to regulate all of the industry. That is what the act is about. So it should be taking action where it finds breaches.

Senator FISHER—Is it fair to suggest that your criticism of CASA, in respect of its being guilty of regulatory capture, is that it is focused more on the commercial aviation sector?

Mr Ilyk—No, I think that has been captured by organisations such as AOPA as well.

Senator FISHER—Thank you.

Senator HEFFERNAN—This committee is concerned and governments of all persuasions for many years have been concerned that CASA might be dying the death of a thousand cuts. Part of the death by a thousand cuts is that you do not really notice it as it is happening, but it happens. I think the previous witness, Mr Tully, was trying to tell us that. Part of that, from the evidence we have received, is that you can, without really recognising it, deskill an organisation. Part of that is that if you are brought into CASA as a pilot but you are about to become a regulator you need to learn that you are no longer a pilot and that you are a regulator, and you need to have a course that sets that out for you. Do you think that is a flaw in the system at present?

Mr Ilyk—Absolutely.

Senator HEFFERNAN—Thanks.

CHAIR—Mr Ilyk, thank you very much.

Proceedings suspended from 11.03 am to 11.17 am

LLOYD, Mr George Alfred (Peter), AO, OBE, MiD, Private capacity

CHAIR—I welcome Mr Peter Lloyd.

Mr Lloyd—Thank you. I appear in my own capacity, but I think it is fair to say that I have something of a reputation around the world in aviation as someone who knows a bit about aviation safety and a bit about the way safety regulations thereto are administered in a wide range of countries. I do not appear in my role as the executive chairman of Safeski International Aviation Conferences, which have become—as I make a note somewhere—probably the world’s most respected aviation safety conferences, and certainly the most important aviation conference in Australasia. I am abroad at the moment, so I cannot speak for them as I have not been cleared by the board.

CHAIR—Sure, Mr Lloyd. I invite you to make a brief opening statement before we go to questions.

Mr Lloyd—Before I do so, may I ask that one small addition to my written work be noted? It is under item 2 of page 3: ‘To examine the effectiveness of CASA’s governance structures’. Immediately before No. 3 in my paper, with respect, I would like to see added after the exclamation mark: ‘This highlights a fundamental fact that although it must note the ministerial suggestions, the board must choose the CEO’.

CHAIR—Okay.

Mr Lloyd—It is a bit self-evident following what I said before. I think that it is just wise to say that because, as I have said before, they have got to be able to sack him.

CHAIR—No worries, Mr Lloyd. Now would you like to make your brief opening statement?

Mr Lloyd—In the final paragraph of what I have written, I state there that I am here to be helpful, and I hope what I have written is helpful. I do not quite know the full meaning of the word ‘evidence’, but what I have put are my sincere opinions and I hope they are relevant to the terms of reference. I will skip the next bit, because you have already asked me what I am here for and who I am. I have credence in the world of aviation as a person with some real knowledge of air safety and how it should be regulated. I am convinced that a regulator in disarray leads to accidents. I am unable to say that that disarray caused that accident. This is a view that I have held over many years of experience flying little aeroplanes in some 100 different countries, and it is a view that is very widely held by airline operators and pilots and by a vast number of regulators. If their operations are in a mess for an inexplicable reason, accidents tend to happen and proliferate. To eliminate that, in the past, now and in the future, I want to do all I can to help, and I have tried to do that.

I have spelled out in my submission the incredibly difficult situation Mr Byron faced when he accepted the job to take over what a very important air marshal referred to as a poisoned chalice. They were words that were then freely used about CASA for quite a long while before Byron’s appointment. As I have said, I believe that CASA is on the right track. In assessing the role of a

regulator, we must remember this is Australia and we are the country that made that murdering so-and-so Ned Kelly into something of an icon. So regulations that do not really ring a bell with those who are being regulated in this country become very difficult to enforce; therefore, I am a great protagonist and supporter of the concept of you do best by consultation and cooperation to get those being regulated on side so that they are happy to conform to the regulations. I do stress we have made an icon of Ned Kelly and that reflects itself in some people.

To that I would add this: I have yet to meet a pilot with a death wish. The final test of safety is right there in the cockpit. Regulators sometimes tend to forget that. One of the great hazards—I will just mention this and then I will get on with whatever you want me to do—is there is a small band of pilots mostly flying the small regional airlines who believe that regulators mean that they are flying in a cocoon of safety. That is a situation that CASA is redressing, that people like me are addressing, and it has to be clearly understood by those people flying those regional airlines that because regulations are made that they like, it does not necessarily mean that the fellow out there really understands it or is going to do much about it. Therefore, there is no substitute for the pilot being fully conscious that he is responsible. There is an old saying in aviation, and perhaps Senator Heffernan knows it as well as I do: the most useless thing in the world is sky above you or runway behind you if you don't do something about it.

CHAIR—Before I go to Senator O'Brien, I noticed on page 3 of your submission—it is a common theme coming through—the idea of the reintroduction of a board at CASA. I did read your submission with interest because you are not the first one to touch on that. When the decision to dismantle the board or do away with the board was first made, did you have any thoughts about that?

Mr Lloyd—I thought that it was a very proper decision. Mr Anderson, who was the chairman and who came out of the maritime world, decided to recommend that and the government of the day took his advice. The reasons were twofold: there has been a very bad habit—as I see it as a businessman—in Canberra of creating boards, with people who are not suitable to sit on them. I have said elsewhere that I believe that no significant board under this government should fail to have at least two people who have genuine public company board experience. I have been on both ends of the receiving end of shareholders. When you make a profit they are quite nice; when you do not they are even more positive than some of the people you will hear at today's meeting. But it does set a standard of behaviour in the boardroom that so often is lacking. I believe the time had come to get rid of the CASA board. It was the right decision. Since then, governments and oppositions have thought that a board is a better solution, and I am happy to go along with that provided that real care is given to the selection of the board and that, secondly, the people who sit on it, while they do not have to be competent in aviation, are competent as people and competent as directors. They can get plenty of outside advice, if they need it, on aviation in particular.

I think an excellent example of a board that is in the right place is the board of Air Services Australia. They had a bad board that caused a lot of trouble by leaking things all over the place, talking to people that they should not talk to and encouraging others way down the line of command to talk to them. That meant that they had a disruptive board that was not getting them anywhere. The change of that board structure and its reappointment now means that they have a first-class board that would stand up to any test of any public company. That is what I would like to see with CASA.

CHAIR—I do take note that in your opinion the CASA board had become a dumping ground for political favourites. So it is not so much that you are against a board as such but the people who were on it. But in your view, with your vast experience, do you believe that the board should have people who have aviation industry experience?

Mr Lloyd—I think that it is desirable to have someone of about the level of a chief pilot who can translate what is being said elsewhere as it would be seen by a pilot body. It may be a good idea to have someone out of general aviation; that is less important.

CHAIR—I was going to ask you that next.

Mr Lloyd—It is less important but there are some very good people out there with a wide range of knowledge who could make a big contribution. But I think that the main test is that a member of a board of this nature has to be a person who is trained within the board framework to ask the hard questions and demand the proper answers. Also, if he has faith in the CEO he should let him know, but if he has not got faith in the CEO, he should do something about it.

CHAIR—So it really becomes an issue of good governance.

Mr Lloyd—Exactly.

CHAIR—Thank you, Mr Lloyd. I do appreciate that.

Senator O'BRIEN—I do have to say in relation to your comments about pilots that, given the outcomes of a number of coronial inquiries, pilots are not without failings and some pilots operate without proper regard to safety. You would agree with that, wouldn't you?

Mr Lloyd—I find that very difficult to agree with in any broad sense.

Senator O'BRIEN—I am not asking you to generalise about pilots, but there are pilots—some who are still living but some who are now dead—who have behaved in a cavalier fashion in relation to aviation safety.

Mr Lloyd—Undoubtedly there are some. As I say, I have yet to meet a pilot with a death wish. To be facetious for a second, I do happen to know a kamikaze pilot who never got a job. I think he probably had a death wish at some stage! But other than that, I have never met anyone who really felt that way.

Senator O'BRIEN—I can think of two people—who you probably did not meet—in two crashes where people were killed. I will not talk about the Lockhart crash, in which definite statements about the pilot were made during the coronial inquest, but there was also a crash in the snowfields. A pilot took a plane with passengers into an area and at the same time the regular public transport flight that was to go into that area was cancelled because of weather conditions. It was subsequently established that this pilot followed very unusual procedures to find his way to land through bad weather conditions into this area but, on this occasion, crashed and killed himself and his passengers. That was a case where the pilot probably did not have a death wish but was cavalier about his responsibilities to his passengers.

Mr Lloyd—I think there is another way to look at it. That pilot believed that what he was doing was the best thing to do for the circumstances that he was facing. I would like to hope that if I had a problem in the Snowy Rivers—and I have flown over that country a lot—and was facing that situation, I would have the guts to go back and say to the passengers, ‘Sorry, people; not going to do it today.’ I would think that he was probably a vastly more experienced pilot than I am, despite my 11,000-odd hours, and he thought he knew the country well and could do it well.

Senator O’BRIEN—I would encourage you to look up that coronial inquiry report and the ATSB report on that incident. If you need help, I am happy to try and get the references for you. It seems to me that the reason we have a regulator is that there are people who are less responsible about their safety obligations, and that is why we need a regulator, to make sure that that occurs—that they do abide by their safety obligations to the extent that one can.

Mr Lloyd—I agree. That is a very proper definition of one of the roles of a regulator. The inevitable fact in any country is that there are cowboys out there who act like cowboys and who are, frankly, dangerous. It is also the regulator’s business to pounce on them. I am trying to make the point that, if a regulator sees something like that and is aware of something like that, he has a real duty in the interest of public safety, not only for the people in the air, but also for the people who put money into it on the ground to do something about it. It is very similar to a policeman who sees a car careering down the road, suspects the bloke is either drunk or mad or sick, and pulls him up. That is a regulator’s definite function in our system, and I support that 100 per cent.

Senator O’BRIEN—Or the policeman hears that someone regularly leaves the pub drunk and, because of the information that he receives from the community, he waits for that person and tests them to see if that is true.

Mr Lloyd—I think that is a good idea, too. As far as aviation is concerned, I am aware of cases, in all my years, where people have got a bit of a reputation like that and the regulator has sent someone to talk to them. In a number of cases they have successfully converted that person into a responsible pilot. That is also, I believe, a worthwhile function, and that is a function that CASA is addressing very carefully at the present time.

Senator O’BRIEN—There has always been a process for doing that; hasn’t there?

Mr Lloyd—Sure. And in my knowledge, whether there have been ups and downs in the way they were running, that has always been a laid-down policy of the CEO of the authority, right back in my days to Sir Donald Anderson. He was very keen about that.

Senator O’BRIEN—Yes. You have to educate your industry to their obligations as well as police them.

Mr Lloyd—Absolutely. I have not made a great mouthful about it here but I am very interested in pilot training. There is a huge problem facing the very poor standard of instructors that has grown over the last few years. Industry has to be educated, and that includes training not only of pilots but of the operators themselves. You would be aware, senators, of the recent thing that has come from ICAO involves management as well as the lower levels, for want of a better

description—the people who actually fly the aeroplanes and the people who run the people who fly aeroplanes. The actual management itself has to have a proper safety plan in place. For Safeskies, that was the theme.

Senator O'BRIEN—Would you agree that the regulator should train its people to do their job?

Mr Lloyd—Yes, I believe the regulator should train its people. There are two training functions that CASA does: one, it is training people who they pick up out of industry, whether they be pilots or other sorts of engineers and, two, they are training them in what the law and regulations mean. They are teaching them that.

Senator O'BRIEN—How do you know that?

Mr Lloyd—Because I know people who are actually being taught it. At the present time there is no less than a dozen people at Camden who are examiners of airmen, going right through that process. They are all pilots. Some of them are older pilots who have been brought back in because they have got skills that can be used by CASA to advantage. That is happening, and it has been happening in various ways. Sometimes you might have a fellow who went around and talked to small groups that were put together for that purpose—one of the lawyers, for instance. By the way, I could not hear what Mr Ilyk was saying, but I used to know him fairly well and I am sure he went around there and talked to groups of people. I am quite sure the same thing is happening with the present legal people. Much more importantly, it is for the people who handle these people to give them that sort of training.

Very much a case in point was the introduction, into the RPT side of CASA, of Captain Pat Murray. He had an absolute policy of getting hold of the people who worked for him and training them in that way. Further, Mr Vaughan—who is his opposite number in general aviation—is doing that. Those are the people who perhaps talk to me more than others, because I have a bit to do with sport aviation. You really said it perfectly when you said this is a culture where pay-off has to be developed. You said pay-off but I hear it as pays-off.

Senator O'BRIEN—In relation to the lessons from the Seaview and Monarch coronial inquiries and other high-level judgements about the role of the regulator back then, and you have been around long enough to know that well, are they lessons that are still relevant today?

Mr Lloyd—I think people listen to them very carefully. Not always are coronial findings accepted as absolute gospel, but the regulator and the ATSB look very carefully at what is said. In industry, it is very seldom that a pilot looks at a coronial report. Occasionally, if there is a matter of close interest, people like me will have a look at it and hope we can understand what the coroner is saying. I believe pilots are very responsible people and I believe the people running airlines are very responsible people—although you do get the odd people who cut costs and cut corners, undoubtedly, particularly if their profits are not right—who listen to these things very carefully and try to build them into their own organisational or personal safety culture.

Senator O'BRIEN—To the extent that the coronial findings and the judicial inquiry findings into those accidents were critical of too close a relationship between the then regulator and industry, is that a lesson we should listen to?

Mr Lloyd—I found that very hard to understand. For the regulator to be heard, particularly in our Australian environment, it has to be pretty close to industry. They have to be in a situation where the representatives of the regulator are going to talk to the people who are responsible within the framework of an operator, are keen to listen to them. I can give you an example of how, in a small way, this can work so well. In those bodies that are self-administered an audit is conducted. The best results from those audits are achieved when, having done their audit, the party that has been audited and the auditor sit down together and see the areas that should have been addressed and should have been fixed. On the other hand they also ought to point out to the auditor areas where perhaps he could have been a bit more conscientious. That works like a charm and has been working per 50 years, with self-administered people like the Gliding Federation.

Senator O'BRIEN—But what those inquiries were saying was more about a view that, somehow, there was a partnership—a cosy relationship—between the regulator and industry which meant that the regulator was not doing its job in regulating. They are the lessons that seem to me to have come out of those inquiries. I was asking you whether we should still have regard to those lessons. I am not sure whether you have answered that yet.

Mr Lloyd—I do not think I have answered it. I think the answer is yes. You, as this terribly responsible committee, must be aware of that. It is a question of interpretation: how cosy is the relationship?

Senator O'BRIEN—Absolutely.

Mr Lloyd—If I were looking at that sort of thing in a business that I was running, I would suspect all sorts of unpleasant things and ask the police to have a look at it. If they get as buddy-buddy as that, I would think that goes way beyond how people running the regulator believe their people are operating. They probably do not know either, because we have this great culture of, 'Don't rat on your mates.' If the coroner says—and he rightly says, I think, in one of the cases running through the back of my mind—that the representative of the regulator is too cosy with the people running the heinous accident-causing airline, that is a matter for huge concern. I think, from my knowledge of CASA—and a lot of people talk to me—that they are addressing that very seriously.

Senator O'BRIEN—I am glad to hear that that is what you are hearing. Safeskies is a conference, and I think you said that you are the executive chairman of Safeskies.

Mr Lloyd—Yes.

Senator O'BRIEN—You obviously have contact with regulators and industry participants.

Mr Lloyd—Yes.

Senator O'BRIEN—How is Safeskies funded?

Mr Lloyd—It is funded by contributions from various government instrumentalities, all of them to do with aviation, by all the major airlines, by airport owners—unfortunately not Sydney, which makes me very angry in view of the amount of money they have behind them—and by

people who have interests in aviation, such as Thales, who supply air traffic control material, Raytheon and these sorts of people.

Senator O'BRIEN—So Safeskies is funded by the industry, by service providers and by departments and agencies in the government?

Mr Lloyd—Yes, substantial and useful funding. We even get funding from the ADF. They all believe that, in the words of an air marshal, for the money that they spend on that they are getting, using the old language, a good 50 bob in the pound.

Senator O'BRIEN—I do not know how you get 50 bob in the pound. I do not remember how many bob were in a pound.

CHAIR—Twenty, wasn't it, or was it 10?

Senator O'BRIEN—I think you are right. I think I can remember back to 1966, unfortunately!

Mr Lloyd—It is terrible, yes! All you young people make me feel very ancient! I am ancient!

CHAIR—You have us thinking about how many bob are in a pound, now, Mr Lloyd. I thought it was 10.

Senator O'BRIEN—You nearly said 21, didn't you? So Safeskies is something that CASA would contribute to and participate in, as would Airservices Australia and the Department of Infrastructure, Transport, Regional Development and Local Government?

Mr Lloyd—Yes.

Senator O'BRIEN—And the major airlines?

Mr Lloyd—The major airlines, ATSB in its own right—

Senator O'BRIEN—I omitted them.

Mr Lloyd—And, as I say the ADF, and certainly the major airlines—Qantas have been particularly helpful over the last few years. When it was less so, Air New Zealand came, and they still contribute.

Senator O'BRIEN—And international carriers other than Air New Zealand?

Mr Lloyd—British Airways have in the past. Emirates used to, but they did not this last time; they reckoned they were spending enough money on this kind of thing, which I thought was poor.

CHAIR—Mr Lloyd, thank you very much for the assistance you have given to the committee.

Mr Lloyd—Thank you very much. I do have a personal plug to make: I extend a warm invitation to all you people to come to Safeskies in October next year.

CHAIR—And where is that Safeskies being held?

Mr Lloyd—Canberra—deliberately so that we can have you there.

CHAIR—Thank you.

[11.46 am]

ALECK, Dr Jonathon, Head of the Legal Services Group, Civil Aviation Safety Authority

BYRON, Mr Bruce, Chief Executive Officer, Civil Aviation Safety Authority

CARMODY, Mr Shane, Deputy Chief Executive Officer, Strategy and Support, Civil Aviation Safety Authority

HART, Mr Michael Anthony, Commissioner, Office of Industry Complaints, Civil Aviation Safety Authority

QUINN, Mr Michael David, Deputy Chief Executive Officer, Operations, Civil Aviation Safety Authority

WIGHT, Mr Robert Ian, Acting Group General Manager Air Transport Operations, Civil Aviation Safety Authority

CHAIR—I welcome officers from the Civil Aviation Safety Authority. I remind senators that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Officers of the department are also reminded that any claim that it would be contrary to the public interest to answer a question must be made by a minister and should be accompanied by a statement setting out the basis for the claim.

Mr Byron—I do have a couple of comments to make, and my colleagues the deputy CEOs have some brief comments to make, to perhaps clarify a couple of issues that came out of yesterday's hearing. We will be as brief as we can. Thank you for the opportunity to make this statement. The committee today and yesterday heard evidence from a range of aviation industry participants. The committee has received almost 50 submissions from interested parties. You have received evidence from the families of the victims of the Lockhart River tragedy. Again I would like to put on the record my sincerest sympathy to Lockhart River families who have lost their loved ones. The loss of life on 7 May 2005 was an absolute tragedy.

Yesterday and today you have heard from a range of organisations and former employees of CASA. It is important for the committee to note that CASA does not have a direct regulatory relationship with the four associations you heard from yesterday. They represent about 7,000 or 8,000 people. By no means do they represent all of the 37,000 pilots, all of the 13,000 owners of aircraft or the 100,000-plus people who are in some way connected to the industry. As a regulator, those who we do have direct relationships with are the almost 2,000 certificate holders—none of whom have appeared before you today but who I understand have made submissions. Our principal focus is the safety of passengers. A key element of our change program has been increased surveillance of that sector of the industry, and that has been

achieved. Our major domestic airlines arguably transport about 96 per cent of passengers travelling in Australia on any given day, and although they have made submissions they have not been present for a public hearing or questions about their relationship with the regulator.

It is indicative of our industry that there are many voices, all wanting to be heard, with many differing points of view. Some of the information you have heard, we believe, is not correct. Many of the associations yesterday asserted they have not been adequately consulted on regulatory reforms like the introduction of the testing of alcohol and other drugs. It seems that sometimes our views on consultation differ. Many groups consider themselves to have been consulted only if their point of view is taken up.

To use the introduction of the new regime for the testing of alcohol and other drugs as an example, we have conducted 34 national workshops as well as numerous meetings with industry and employee representative bodies. Senators, it is up to you to decide whether we consult generously enough. I think, from the statistics, we do consult extensively. It is just that sometimes some stakeholders do not get what they particularly view as the outcome.

In fact, you have heard some criticism that sometimes we overconsult with the industry. I have told you today that we have replaced almost 50 per cent of our staff. Earlier today you heard from some former employees of CASA who were not on the journey with us. Again, it is up to you to decide if you are hearing from disaffected employees and their relative importance in determining whether CASA is moving forward.

Some stakeholders take issue with the way a firm regulator goes about doing its business. I am the first to say that we, CASA, do not have an easy job, but I stand by the record of my organisation over the last few years. We do not expect to receive bouquets for the work we do, but I would like to believe that most of the industry, from time to time and on considered and calm reflection, acknowledges and generally accepts that CASA delivers real safety outcomes and we play a pivotal and constructive role in managing Australia's air safety regime.

Mr Carmody—I have one matter first: I have to table the implementation of the regulations paperwork that Senator O'Brien sought yesterday so that you can see which regulations have been implemented and which ones are waiting to be implemented. I want, firstly, to echo some of the things that Mr Byron said and also to cover a couple of points from yesterday. The Transair accident on 7 May was indeed a tragedy. It was certainly a tragedy for the families of the victims, and they have our sincere sympathies. As a regulator, we must do all we can to make sure these sorts of things do not happen again, and that is very much our aim. I want to talk briefly about the critical matter of the Federal Court decision on Aero-Tropics yesterday but, in doing so, it is important to put it in the context of the lessons we have learned from the Transair tragedy.

As I have said many times, this was a tragedy. Although we do not agree with all aspects of the ATSB report, it was certainly comprehensive. We do agree on many aspects of the report including that there were no mechanical problems with the aircraft, that the pilots made deliberate decisions and that the ATSB's two-year investigation of Transair clearly showed inadequacies in Transair's check and training regime, in their pilot management and in their safety culture. Those things feature in the ATSB report and we agree with them.

The requirements on CASA as a regulator are onerous. In 2006, well after the accident and as a result of a lot of detailed investigation into Transair by CASA, we issued show cause notices on Transair. On 26 August we issued a supplementary show cause notice. On 24 October we issued a notice of cancellation of their air operator certificate and they were immediately given an automatic stay by the Administrative Appeals Tribunal.

In late November 2006, ATSB, whose investigations into Transair were still continuing, provided CASA with information on deficiencies in the check and training regime of Transair. We did not have this information in the past. We acted immediately. We sought to obtain the records, and they refused us. We used our serious and imminent provisions and we grounded the operator on 25 November 2006. Two days later Transair surrendered its air operator certificate.

I raise these matters because they relate directly to the current matters with Lip Air or Aero-Tropics. I have one more example, though, before I move to Lip Air. Last year we had serious safety concerns with the chief pilot of a helicopter operation in Western Australia. In September 2007 we issued a show cause notice. In December 2007 we cancelled his chief pilot licence and private pilot licence. In December 2007 the decision was stayed by the AAT. It is still stayed and he is still flying passengers. We consider it a serious and imminent risk to aviation safety but we have done all we can. There have been many other examples in the last few years.

Now to Lip Air. To me the parallels between Lip Air or Aero-Tropics and Transair are horrifying. We have found the same sorts of problems in Lip Air as were discovered in Transair after the accident. We have discovered them before an accident. Using the limited powers we have available over 10 months we have conducted an investigation of an airline that anecdotally in the community is known to be dodgy. We have evidence that indicates that aircrafts and pilots were not in the places they said they were in, when they were checked and certified, to conduct certain activities. We have what appear to be pre-signed flight approval forms. We have records that appear to have been designed to deceive us. In March 2008 we issued them with show cause notices. In May 2008 they responded unsatisfactorily. We then suspended the approvals of the chief pilot and the check pilot, effectively closing the airline on 2 June. On 5 June the operator went to the Federal Court and received a 24-hour stay. On the next day they went to the Administrative Appeals Tribunal and they received a stay until 21 July. We conducted further investigations and on 27 June we used the strongest powers we have—again, the ‘serious and imminent’ provisions to ground the airline. Yesterday we were in the Federal Court, and once again the Federal Court ruled against the serious concerns of the regulator and allowed the airline to continue to fly.

The concerns of the safety regulator are genuine, and we try and learn lessons. The rules under which we operate—the laws that were passed by this parliament in 2003—severely inhibit the way we operate. The concept that a tribunal can grant an automatic stay against the strong recommendations of the safety regulator and allow airlines to continue to operate and carry passengers is of serious concern. The unbelievably onerous requirements for CASA to use its extremely limited powers to continually rebuild its case, only to have it overturned by the courts, is frustrating and demoralising.

Yesterday Senator Heffernan spoke about passion. Australia has a highly professional regulator and we are passionate about aviation safety. Now is the best opportunity that you have to do something about aviation safety as well. This restrictive regime, one in which the

regulator's hands are effectively tied, needs to be dealt with. This regime, where safety judgements are reviewed by the courts, and almost invariably overturned, is untenable. One of these days there will be an accident during one of these stays—and as you said yesterday, Mr Chairman, the response will be 'woops'.

To conclude, if we cannot ground a small airline like Aero-Tropics, which almost no-one had heard of until last week, on serious and imminent safety grounds in an effort to prevent future accidents and protect the travelling public, then I ask you: what do you expect we will be able to do with a medium or a large operator with money, time and legal representation? If we had similar safety concerns, we would not be able to progress. There are a number of simple fixes to this legislative problem that will restore balance in aviation safety, and I implore you to consider them in your deliberations. Thank you.

CHAIR—Thank you, Mr Carmody. Mr Quinn?

Mr Quinn—If I could link that with how we got to the position that we established on Lip Air—prior to an accident, which I guess is the key role of a regulator: to be ahead of the game rather than behind the game. Senator Heffernan asked me yesterday a question specifically about what had happened since Transair. If I could elaborate very quickly on a few procedural aspects, and a couple of new activities that have been introduced into CASA that enabled us to get to where we got to with Lip Air prior to that becoming a repeat accident. We have introduced aspects, both on a people and procedural level in terms of new reporting requirements in monthly management reports, and operational management reports, which report specifically on the surveillance activity in the various offices so we know what is going on. This includes the publication of senior management instructions, which give us the ability as a management team to be able to direct the field officers based upon risk, as to where we want to see the activity and what type of activity we want to see, and the introduction of risk based surveillance—that is, operational surveillance or targeted surveillance, where we have a no-notice turn-up at the door and enter the facility, which we do on an ad hoc basis; enhanced capability with our front-line staff in terms of training. With our air transport officers we have introduced a four-week inspector training course, covering new skills to the inspectorate, like human factors, threat and error management, lead auditor training, certificate in management training, and safety management systems; the implementation of certificate management teams, looking at multidisciplinary teams of focused people into an organisation and assessing the organisational health; and lastly, and very importantly, a coordinated enforcement policy, where the operational field officers liaise with our compliance and enforcement team to determine what is the most appropriate line of action we may need to take using the spectrum of tools that we have available to us. That gives us a summary of what has gone on and what is going on in CASA today compared with what was going on in CASA prior to the events outlined yesterday.

CHAIR—Thank you. Just to clear up a few things, of the 50 submissions that we got, there were two from the major RPT operators. Both of them said that they had no desire to appear in front of us but if we really wanted them they would come—just to get that very clear. There was short notice. There was no denying them the opportunity to put their case forward, and you do not suggest that. It would be helpful if you have more information—and you can take this on notice—about the helicopter pilot in that operation. I have an interest as a Western Australian senator who spends a little bit of time on helicopters in WA. If you could provide the committee with that, that would be good. I take your criticism of the laws that were given to you by this

parliament in 2003. Did CASA raise that with the previous transport minister? Has that been raised?

Mr Carmody—We have raised the problems with the serious and imminent and automatic stay provisions over the last couple of years. It is fair to say that every time we experience something that is not successful we learn a little bit more about the process. We are trying to work our way through it. We have raised it. It is one of the areas that could be dealt with.

CHAIR—You have a regulation in terms of CAO48 and there is nothing stopping you enforcing that regulation.

Senator O'BRIEN—Mr Quinn, you talked about managerial instructions and enhanced capability of front-line staff in terms of training. Can you give us more details about that? Is there a manual that front-line staff get that says what they are expected to do?

Mr Quinn—The current activities are outlined in two specific manuals, the surveillance procedures manual and the air operators certificate manual. Both of these manuals are currently under rewrite.

Senator O'BRIEN—Are they in operation or not?

Mr Quinn—They are in operation.

Senator O'BRIEN—How long have they been in operation? Are they being rewritten now because that has not been done for years or is this a regular rewrite that is done every 12 months? What is the story?

Mr Quinn—I would have to defer to one of my colleagues. That was before my time. The purpose of the senior management instructions is to complement the new activities that I outlined. These will be incorporated in the rewrite of a manual. As such, every manual is a live document and should be amended. Also, the compliance and enforcement manual is part of the list of activities that are utilised by the front-line staff.

Senator O'BRIEN—So these manuals are currently the subject of a rewrite. Is that what you just told us?

Mr Quinn—Yes.

Senator O'BRIEN—You are not sure how long it is since they were rewritten. Mr Byron, can you tell us whether they were rewritten after you took over or do they predate you assuming the position?

Mr Byron—They were certainly initiated prior to my arrival. There have been progressive amendments to them over the last few years. What Mr Quinn is talking about—

Senator O'BRIEN—Wholesale or at the margins?

Mr Byron—Progressive amendment. We have increased the amount of surveillance that we do and it is important that the manuals reflect that sort of approach. There has been a progressive amendment of those manuals.

Dr Aleck—The enforcement manual was revised considerably in 2003 in light of the new legislation. There were—

Senator O'BRIEN—You would have to do that, wouldn't you?

Dr Aleck—Yes, of course. In addition to that, representatives of what was then the Office of Legal Council, including Mr Ilyk, the head of what was then called the enforcement and investigations branch, travelled round the country to explain the way those processes acted. That manual has been revised again. It is about to be re-released. I must say that substantively there are no major changes at this point, but it enhances it and clarifies some ambiguities. In the meantime, in terms of enforcement related matters, the coordinated enforcement process that Mr Quinn referred to has been issued as a policy notice. It is obligatory for all managers and staff to have regard to it and to adhere to it. It addresses some of the matters that were raised earlier in a very constructive way.

Senator O'BRIEN—Could we have copies of those policy notices that would assist us to understand the evidence you are giving about the nature of the instructions to enforcement staff?

Dr Aleck—Certainly in terms of enforcement that is not a problem at all.

Senator O'BRIEN—Regarding the training that you spoke about, Mr Quinn—the enhanced capability of front-line staff in terms of them being provided training—what is the training program? I thought we were hearing yesterday that there had been a bit of a hiatus with that because certain courses were not available.

Mr Quinn—We introduced a new form of capability into the organisation in the form of roles of safety systems specialists and air transport inspectors. The role of these inspectors and these specialists is to complement the technical skills of the flying operations inspectors and the airworthiness inspectors. However, the remit that they have is to look at an organisation more from a system safety perspective and more from an organisational safety and health point of view. So, therefore, the skill set required by this group of individuals, and to be consistent, is different to that you would expect of a technical person. I mentioned the areas of human factors—basic introduction and understanding of human factors. Most of these people come armed with these skills, so it is really a refresher to update them. The CASA view on safety management systems has been detailed in this organisation for quite some time. CASA ran a series of seminars back in the early 2000s regarding SMS—and this is just a continuation of that theme—on threat and error management training, understanding risk in real terms and lead auditor training. That is being provided to that group at the moment as they are inducted into the organisation. That will be eventually rolled out to all the air transport office staff.

Senator O'BRIEN—Is that an area that ICAO would have looked at?

Mr Quinn—That is correct. It was on the ICAO remit. This is, again, part of the softer skills. They were looking more at the technical skills as part of the audit program. Also, there were courses run for the FOIs and AWIs on 21 May 2007, 6 August 2007 and 19 May 2008.

Senator O'BRIEN—The FOIs and the?

Mr Quinn—The AWIs—the airworthiness inspectors.

Senator O'BRIEN—Was that general or was that just for an intake of people who were filling those positions?

Mr Quinn—I am not familiar with the specifics of the course. Most of those courses were prior to my time.

Senator O'BRIEN—Can you help us, Mr Byron?

Mr Byron—I will ask Mr Wight to give the detailed answer.

Mr Wight—The induction courses that we have just outlined were for the introduction of our new capability staff for the air transport inspectors. The first course that we ran as a result of intake was on 21 May 2007. With that, we have integrated training with the flight operations inspectors and the airworthiness inspectors as a part of those courses. We have run three courses. There have been new inspectors brought on and existing staff are being brought through the courses as we continue to run the courses.

Senator O'BRIEN—Those courses are on those aspects of training systems, safety perspective, human factors—

Mr Wight—Safety management systems; threat and error management.

Senator O'BRIEN—Is there a part of those courses that deals with the philosophy of CASA as to how one should operate in terms of relationship with industry, obligations of the regulatory regime et cetera?

Mr Wight—Probably part of the certificate management team training covers that aspect. Some of the other aspects would be covered in the general induction training in Canberra.

Senator O'BRIEN—Do you have a curriculum for each of these courses?

Mr Wight—I could provide an outline of the courses for the inspector training, yes.

Senator O'BRIEN—Are those the courses you just mentioned?

Mr Wight—The four-week induction course I mentioned? Yes, certainly there is a curriculum and outline of the course.

Senator O'BRIEN—That would be good. Thank you very much for that. I am not sure what you meant, Mr Quinn, when you said that this is what is going on today as distinct from yesterday, given that we were at a hearing yesterday. I was not sure that you were referring to 'yesterday' in that sense, but I want to be absolutely clear what you mean by that.

Mr Quinn—My apologies for that. I was referring to the questions asked by Senator Heffernan on the points that have been outlined in the ATSB Transair report which were critical of some of the CASA activities. Senator Heffernan asked me, 'What has been done to ensure that these things are fixed?' And that is what I was referring to. This has been a constant and gradual change. It is ongoing and will continue to develop.

Mr Carmody—May I add something about training. Firstly, one of the things that has not been mentioned is that our induction courses have been running since late 2006. We have probably put about 200 staff through our induction course into the organisation. The course introduces all new staff from around the country to the regulator, what we are doing, how we do it—those sorts of things.

Senator O'BRIEN—Is that a standard course for everyone?

Mr Carmody—Absolutely. There is a syllabus available, if you would like to see that.

Senator O'BRIEN—Thank you.

Mr Carmody—It is a standard induction course for the organisation. Also a lot of the points that I think Mr Quinn was alluding to are picked up in our Diploma of Aviation Safety. A lot of these things are covered in the diploma course and the certificate course. Finally I would like to table, if I may, the interim results of the ICAO universal audit oversight program, which I have in a chart summary form. Even though these are the interim results, if you would be happy for me to table those I will do so.

Senator O'BRIEN—Certainly. That is an ICAO document you are tabling?

Mr Carmody—This is a comparison of Australia's level of implementation of the eight critical elements of the safety system based on the ICAO report provided to Australia in May 2008.

Senator O'BRIEN—So it is a CASA document?

Mr Carmody—Yes. I will table that, if I may.

Senator O'BRIEN—Thank you for that. The chairman asked if, when staff attended the induction course, they get a tie.

Mr Carmody—You did notice.

Mr Wight—Or a blue shirt.

CHAIR—I was not sure whether Mr Byron had brought them all back from his last overseas trip for you, but I did note that they were all the same!

Mr Byron—My last overseas trip was a holiday. Perhaps members of the committee would like a CASA tie?

CHAIR—Thank you for dobbing me in, Senator O'Brien!

Senator O'Brien—I have had those sorts of things in the past.

Dr Aleck—Quickly to the remarks about training, one of the longer sessions in that standard induction course has to do with the approach and regulatory framework of CASA. I conduct that session myself, so I am aware of what is in it. One of the things that became clear as a result of that was that, certainly for operational people, a longer period of focused attention on those issues was in order. That has been developed. The only thing we are waiting on now are dates for this to be conducted. So that will add that element to it as well. That will be conducted in the field.

Senator O'Brien—Okay. We received some evidence today about the state of liability insurance and the impact that that has on CASA's role in a coronial inquiry. Have you got anything to tell us about that?

Mr Byron—I certainly have. I will ask Dr Aleck to give you the detail.

Dr Aleck—First of all I will just mention in passing that for a year now CASA has been involved with Comcover. We no longer have external overseas underwriters, so we are part of the Commonwealth framework on that score.

Senator O'Brien—Since when—what is the date?

Dr Aleck—This came into effect I think in July 2007. It has been about a year. I will get that for you.

Senator O'Brien—So incidents prior to that are the subject of previous insurance arrangements and obligations?

Dr Aleck—No, as far as that is concerned, let me say that—and perhaps this is the best time to say it—I worked for Mr Ilyk for many years. I have great respect for Mr Ilyk and over the years we have respectfully disagreed on a couple of points. I have not had direct involvement in the insurance related matters involving Seaview and Monarch, although I was involved in peripheral issues. I did have very direct involvement in the issues involving the Transair matter in the coronial. As a matter of law, an insurer is responsible to its insured. When counsel are engaged to represent the matter, they are legally bound to represent the real party and interest. I recognise that there are financial realities and it is in the insurer's interest to minimise loss. It is difficult for me to imagine many situations in which CASA's interests and the insurer's interests would depart considerably, but I can say unequivocally that, in so far as the way CASA's relationship with the lawyers who represented CASA in the coronial proceedings is concerned, those were in no way, shape or form driven or run or managed by the insurer. As it happens, the law firm that

was contracted by the insurer to represent us is a member of our panel of firms. They met regularly with us. I saw the dispatches that went from our counsel and our legal team back to the insurer reporting on what we had done. I am convinced, because I was there, that the perspective and the strategy—if that is the right word—and the attitude and the orientation about how our representation was to be handled were driven by the executive management of CASA and not by the insurers. That is certainly true in this case.

Senator O'BRIEN—So to the extent that there has been comment on the strategy, the management of CASA accepts full responsibility?

Dr Aleck—I think I know what you are driving at there.

Senator O'BRIEN—You know what I am driving at, don't you? It is no secret. It has been in *Hansard*.

Dr Aleck—If you are referring to the coroner's comments—

Senator O'BRIEN—Yes, sure.

Dr Aleck—The coroner was referring to the mode in which counsel represented. I do not think, frankly—and with respect—that is entirely true. I think I have said before in estimates—

Senator O'BRIEN—So the coroner was biased? Was the coroner unable to accurately detect the nature of the strategy?

Dr Aleck—The coroner made an observation expressing his perception and his view of the way in which these proceedings were conducted, and he formed the view that counsel would not have proceeded in that way unless they had been instructed to. I think this was in the context of an attack on the integrity of the ATSB. I would say that is not true.

Senator O'BRIEN—That is where you and the coroner obviously do not agree, and I am not in a position to objectively rule on the matter. I have to make a decision as to whose view I accept. But let us get back to the question that I asked, which is this: in the environment where you were privately insured, who selected legal counsel?

Dr Aleck—The insurer would identify the lawyer.

Senator O'BRIEN—So they would select the lawyers?

Dr Aleck—They would. But also if CASA as the insured had a difficulty with that I am confident that our view would be taken into account.

Senator O'BRIEN—Was that ever the case?

Dr Aleck—Not in my experience. But, as I have said, the only matter in which I was directly involved was the Transair coronial proceedings, and the firm that the insurer selected was a member of our legal panel.

Senator O'BRIEN—So could you tell us without fear of contradiction that the instructions that those lawyers received were entirely under the control of CASA?

Dr Aleck—I cannot say what instructions they may have received from the insurer. What I can say is that the way in which they conducted this matter reflected—I would say 'entirely' but I would be happy to defer to our executive—the views and preferences of our executive management. As to if those happened to coincide with instructions that they have got from their insurers, that may be. I do not know what the personal exchanges were entirely. I did see the reports back to the insurers, but there may have been others that I was not aware of. But I was not troubled by them.

Senator O'BRIEN—In terms of the nature of what—I am not sure how to put it; whether it is instruction or consultation or information—was exchanged between the insurer and CASA, was that managed by CASA or by the insurer?

Dr Aleck—Between the insurer and CASA?

Senator O'BRIEN—Yes.

Dr Aleck—I think the nature of our relationship with the insurer began and ended with our notification of the possible claim, and from that point forward all of our involvement was with the lawyers. There was no need to be directly involved with the insurer, and no need arose for that to be handled so.

Senator O'BRIEN—So there was no input from CASA to the insurer after that point on that matter?

Dr Aleck—Certainly not from the Legal Services Group, and I do not believe from the rest.

Mr Carmody—Not from management either, Senator. I make that clear.

Dr Aleck—Other than the initial notification.

Senator O'BRIEN—I was taking that to be the meaning of the answer, Mr Carmody. I can assure you I did not interpret that there was a barrier between you in relation to that answer.

Mr Carmody—I am sorry; Dr Aleck just said not from Legal Services, so I was expanding it just to make it clear, thank you.

Senator O'BRIEN—Thank you for doing that. In terms of other matters, Dr Aleck, you had some knowledge of this in the past, I assume?

Dr Aleck—I have had involvement before. Over the years I have served as senior legal counsel in the same office. My recollection is—and I do not want to speak with any specificity because I do not recall any particular cases—that we did not have much direct involvement with the insurers at all. Our involvements were exclusively with the lawyers—and I am going back to CAA days—that the insurers had paid to represent us. I guess that is the critical thing. It is not different, I think, from an automobile insurance arrangement. If you are involved in an accident

and you are insured and it involves the need for legal advice, it is your insurer who will pay for that. But the lawyers will talk to you once you make that arrangement. I think if an issue arises where your interests begin to diverge from the insurer's interests, there are ways and means of dealing with that to ensure that conflicts of interest do not obscure the progress of the matter.

Senator O'BRIEN—Mr Byron, this morning we were given a printout from the SEEK website, which has a link with CASA, which still contains the passage:

CASA works to be a valued partner with the aviation industry ...

Mr Byron—Yesterday the context of a question was: do we include that in advertisements? I have asked for a check of all advertisements for the last 18 months to be done. It excluded, I think, a couple that were done by search agents, and the advice I have got this morning is that none of the specific advertisements that were put in the newspapers included the sole words of partnering with industry. If I can see what you have there, I would be happy to check that.

Senator O'BRIEN—It is off the SEEK website. It is a link to your website with a commentary about CASA and what is new at CASA.

Mr Byron—So it is not an advertisement for a job?

Senator O'BRIEN—It is not obvious from the page that I have whether it is in connection with a particular job. It is a link from their website, under 'EXECUTIVE JOBS \$10K+'—but I am not sure that that is relevant. It is a reference on this website, with a link to your website, which I presume would have something to do with your sponsoring that sort of thing.

Mr Byron—I will certainly check the detail of this, but in the checking that I have done so far this morning no specific advertisements have included that stand-alone comment. From my point of view, I do not want to see that comment there as a stand-alone comment without the balancing of the fact that when at times we have to be a firm regulator that is what we have to do. I will check that.

Senator O'BRIEN—When senior officers communicated views to you about what was happening in CASA, what was your response, Mr Byron?

Mr Byron—It would depend upon what the nature of the issue was. Normally, if someone had a serious issue they would come and talk to me about it. Sometimes I got the views of senior management in writing by email—that type of thing. To the best of my knowledge, with any concerns that I have received I have always dealt in some way with the individual, either accepting what they have said and done something about it or rejecting it for whatever reason.

Senator O'BRIEN—Did you tell people not to bother sending you that material again?

Mr Byron—I certainly do not recall ever doing that, no.

Senator O'BRIEN—Did you recently send out a message to staff telling them you did not want any surprises, particularly in relation to concerns that you had that perhaps there was an

enforcement issue that you did not become aware of until it was brought to your attention by management?

Mr Byron—I certainly recall in the last few months having an issue to deal with where technical officers had not communicated rapidly enough to senior management what they were doing. The message that was certainly given was that officers had an obligation to do that and if they were dealing with industry and a sensitive issue was being raised then we wanted to hear about it.

Senator O'BRIEN—A 'sensitive issue' being?

Mr Byron—A regulatory decision of some sort.

Senator O'BRIEN—Okay, some enforcement.

Mr Byron—Not necessarily enforcement. It might have been an interpretation. It might have been a restriction on an AOC or something like that which might have been sensitive. One of the things we have been trying to do for the last approximately two years, putting a bit of focus on it, is to make sure that the operations at the front line—which to a large extent were quarantined during the large change program and have since been bolstered—are starting to provide us with information into a central location, not my central location necessarily, but the deputies', so we know what is going on in the big picture. In fact, I recall that, when Mr Quinn arrived in the organisation, I gave him written instructions about making sure we established that capability in the operations part of the organisation so that he knew exactly what was going on in the various parts of the organisation. Mr Quinn might like to give his views about how I relayed that and that type of thing, but certainly it is important that if there are regulatory decisions being taken or restrictions being placed on industry at an operational level that have significant implications then we want to know about it.

Senator O'BRIEN—Is that part of an ongoing instruction, or is that something you have recently added to the level of instruction?

Mr Byron—I remember communicating by minute that to—that really is an expectation that I would have of—

Senator O'BRIEN—Until you minuted it, it has not been something that has been part of a manual or something?

Mr Byron—No. It is a reminder about good management practice, if you like.

Senator HEFFERNAN—Mr Quinn, I am still trying to get my head around the massive criticism against CASA about how it is being deskilled. I cannot make a judgement on that, but plenty of other people have made that judgement. You have a pilot background, don't you?

Mr Quinn—Correct.

Senator HEFFERNAN—So when you came to CASA, did you get reskilled? Did they get you in a room and say, 'You were a pilot, Son; now this is your new task'?

Mr Quinn—Senator, I should elaborate. I did not join CASA as a pilot or a flying operations inspector; I have come in as a senior executive with a significant background in safety management, air safety investigation and risk management.

Senator HEFFERNAN—So you demonstrated your skills at your interview rather than you were retrained.

Mr Quinn—Flying operations retraining for me is not part of my remit.

Senator HEFFERNAN—As you know, I am not into bloody sooks. Someone gets stuck into me, I let them go. It is therapeutic for them and it is probably therapeutic for me. But the constant criticism is that in the huge turnover—I do not think anyone disagrees that there needed to be reform—the place is gradually being deskilled. One of the things that was put to us, either today or yesterday, was that if you come into CASA as an inspector with a flying background, which is probably a good thing—do you put them through a course and say: ‘You’re no longer a pilot or whatever you were. This is your new job.’ Do you give them lessons? If you worked for Kendall airlines and came to CASA and then fronted up to someone at Mascot or somewhere, if you were not on top of your brief, as it were, if you were a bit vague about the interpretation of how you prosecute this particular regulation, you could react in a defensive way by being offensive. Most people who go the knuckle are self-sufficient; their self-esteem is not what it ought to be. You ought to be able to express yourself without doing your block. This is probably a bloody good essay on me; I am always doing my block. Do you accept the criticism that the place, by minute cuts, might be becoming deskilled?

Mr Quinn—Let me put it this way: deskilled or the experience levels changing, it is certainly a challenge for us. They are two very different things. We have specific requirements for people joining us as flying operations inspectors. We have certain criteria outlined for that. For whatever particular position we want, whether it be in general aviation or in the air transport area, where a pilot will have heavy jet experience, the skill level is what is different. This is where it changes. This is where there has been some commentary within the organisation, particularly with the new skill set that we have in the organisation. I referred before to the safety system specialists and the air transport inspectors. They are a new breed of people that are new to the organisation. Many of the old-school people believe that this is an inappropriate for the future, and I believe you have heard that this morning. I believe, as a 20-year safety specialist, that this is the right way. It is the correct balance of those two that we need to complement and to continue to build. We are currently still recruiting technical staff.

Senator HEFFERNAN—It is a dynamic industry. No doubt there are a whole lot of likeable rogues in the industry. There is no industry that does not have likeable rogues in it. You have to round up those rogues, I suppose you could say, with people who might find the rounding up of rogues a new job description for them. Do you put them through a course? If I am burnt out pilot and I come to work for CASA as one of these new generation inspectors, is there a course whereby I can come out the other end of it with a ticket that says, ‘Son, you are qualified.’

Mr Quinn—I will defer to Mr Wight, who is in charge of the area for flying operations inspectors, but let me start by saying this. I think I made the comment yesterday about the skill set, particularly in the heavy jet industry, whereby I challenged the validity of having flying operations inspectors qualified on a heavy type of aircraft actively occupying a control seat, and

that being some sort of regulatory oversight. What does it really mean? We have moved to a regime where we take a much broader view of what is compliant, what is safe and where the risks are in the organisation. We have moved away from strictly that—saying, ‘You will be an FOI. You must fly this aircraft, and you must fly it so often.’ There are also certain risks in that for CASA, keeping competency and proficiency levels high. We have moved away from having a combination of that skill set and occasionally doing that. Certainly not in the heavy end of the industry anymore, but in the general aviation industry control seat occupation still goes on occasionally. On how a flight operations inspector joins the authority and how they transition into being active as an inspector I will ask Mr Wight to comment.

Mr Wight—It is probably fair to say that people join the authority—if you are talking about flying operations inspectors—because they have been pilots. They do not join the authority, particularly the air transport end—

Senator HEFFERNAN—Are you a burnt-out pilot?

Mr Wight—I have been a pilot in the past, yes. They do not join the inspectorate to be a pilot, effectively; they join to become a regulator. As far as maintaining skills, certainly in the air transport end, we provide some simulator training for the crews to maintain currency for their instrument ratings. As to their occupying a control seat in the air transport end, that basically does not occur at all. Their role is to observe what the airline is doing. As far as new technologies coming into the country are concerned, we have operators who will be bringing in 777s. We have been able to source some expertise from overseas with the required skills for the 777. We will be providing the appropriate training for staff dealing with new technologies like the 787. With the Airbus A380, we have been provided with training from the manufacturer for our own existing staff. We talked before about the initial induction training for the new breed of staff and for the existing staff. Where we require our staff to have specific skills, either we can bring in the expertise or we can provide the training to our existing staff.

Senator HEFFERNAN—But if you are a pilot and you come into the CASA organisation to become an inspector, can you inspect areas in the industry other than the area of expertise that you have come out of? Who inspects the inspectors? How do you know that your airframe inspector is competent, or that he is not losing his skill for some reason? It might just be because of old age, like me.

Mr Wight—Are you talking about the airworthiness inspectors?

Senator HEFFERNAN—You bring in people from a wide range of sources. There is churning in the industry, and new faces turn up. Some of them might be pilots—and bloody good pilots at that—but they are sick of being away from home all the time. Do you reskill them so that they can go down to whatever person’s workshop and say, ‘Son, that nut is on back to front?’ Or do they just do the flying part of the inspection?

Mr Wight—We have people with various skills as flying operations inspectors.

Senator HEFFERNAN—But he is this multiskilled person, isn’t he?

Mr Wight—No. We have the flying operations inspector, who is a person being employed as a pilot. We have airworthiness inspectors, who are basically people who have been engineers. The safety system specialists and the air transport inspectors come from various backgrounds, and they are basically the systems specialists.

Senator HEFFERNAN—The skill they inspect is the competency which they have come out of.

Mr Wight—They are complementing the work that the technical inspectors are doing, which is essentially the flying operations inspectors and the airworthiness inspectors.

Senator HEFFERNAN—But the competency in which they inspect as a CASA inspector is the technical competency which they have come out of?

Mr Wight—There are two issues. There is where we look at technical issues. That is essentially where we look at product, which is the term that has been used, where we actually look at systems within organisations. That is where we have the systems specialist.

Senator HEFFERNAN—But the bloke who lifts the bonnet, as it were, has had a life of looking under the bonnet before he starts to inspect the bloke who is looking under the bonnet.

Mr Quinn—It is important that I make a clarification here. CASA's role in the industry is not to tell the industry how to operate. It is to ensure that they are compliant.

Senator HEFFERNAN—With the regulations.

Mr Quinn—In terms of technical skills, I do not want flight operations inspectors out there commenting on techniques that operators are using to operate an aircraft. I want them to have the knowledge and the background of the operation to be able to determine and understand whether something is compliant with the regulations.

Senator HEFFERNAN—Surely you need a person who can tell by having a look whether the regulations are being adhered to. For example, there is a thing over in Europe called the OIE. It is a global oversight of animal health. They have inspectors and a set of regulations. Recently, they gave certification, with a set of ticks and crosses, to Brazil that their beef herd had a certain status. As a consequence of that, Australia went over and bought some of their beef and brought it back to Australia. That was on the basis of the OIE certification only. They said, 'It is certified; let's bring it in.' I think we sent *Dateline* over there to have a look at their foot-and-mouth-free status. It was complete baloney. They had no status at all. But the official document, ticked off by the regulator in Europe, said they were AOK. If any of the most basic farmers had visited Brazil, they would have seen that it was not so.

When someone in your organisation takes the sheet out to wherever they go and they tick all the things, how do they really know that what they are ticking has actually happened? The instance we were given was in relation to the FOI and the 777s not being inspected, but they were flying. How do we know whether a bloke might not know what the job is? Who is inspecting the inspector?

Mr Quinn—We do have people who do that, we do continue to do targeted surveillance and we do have capability to do that.

Senator HEFFERNAN—I am not saying you do not; I am just asking you to tell us about it.

Mr Quinn—We do. In terms of the comment that was made about the resources in the Sydney field office yesterday, regarding oversight of Qantas, I can say that we have ramped the technical skill base there to conduct that type of activity based on familiarity, alongside the new breed who spend more time in the management offices and the boardroom than out there in the hangars and in the flight operations training.

Mr Byron—There is a little bit of looking under the bonnet, I think.

Mr Quinn—Yes.

Senator O'BRIEN—We did say that we would give CASA some time to put some material before us in camera. Are we ready to do that now? We were scheduled to conclude at 12.45.

Mr Byron—Prior to that, there was some evidence given to the committee this morning that we would like the opportunity to very briefly provide our view on. Could we have a couple of minutes on that?

ACTING CHAIR—Sure.

Dr Aleck—Obviously, I listened very carefully to what Mr Ilyk had to say and I read his submission closely. There are a couple of assertions I would like to respectfully disagree with—some of which may be a result of the fact that he had been away from the organisation for a while, though some of them actually existed and occurred at the time he was there.

ACTING CHAIR—He did qualify some of the things he said by indicating that they were limited by his knowledge and he had not had direct contact since he left.

Dr Aleck—He did. It is in part for that reason that I want to add to some of those things. Firstly, I have spoken about the role of the insurers—I will not go on about that. In terms of the enforcement mentality, I will not labour that in any great length except to say that it is well recognised that enforcement is a key core function of CASA in the act. It is also one of the few obligations on Australia that is specified in the Chicago convention, not in an annex to the convention, so you do not file any differences to that. In August 2006, I spent a day with Mr Byron outlining the kinds of things I had in mind for enhancing and developing, amongst other things, the enforcement function of CASA. Since then, I would have to say that we have progressed considerably down that road. Are we there yet entirely? Certainly not. But I also believe that, in many respects, the best is the enemy of the good in some cases and I am pleased for the progress we have made and I am pleased for the progress we are making.

There was a suggestion that there was little or no, or is little or no, legal involvement in the legislative drafting process. That function has been taken away from CASA, and the consultative groups working in the regulatory development management branch are involved in developing the policy, but now, as a result of some changes that we oversaw, there is a cooperative

relationship between the regulatory development area as well as the legal area to ensure that some of the policy objectives that are being articulated in legislation are in fact within our gift legally. It makes no sense to develop a comprehensive set of regulations which for reasons that go beyond CASA's remit do not comply with Commonwealth requirements. Not only is that involvement on an ongoing basis; there is an arrangement now whereby any new regulatory proposals or any amendments to regulatory processes, whether in the orders or the act or the regs, are done in consultation with the legal services group. So that is happening and has been.

The aviation rulings, of which there have never been many, was a notion set up at one time that CASA should be able to articulate a sort of organisational view on what the law means. The problem in Australia, unlike some other jurisdictions, is that we do not know what the law means finally until a court says: 'This is what it means.' We can give our opinion, but our opinion stands no greater force in the face of a tribunal or a court than the opinion of someone who objects to what we say. A number of those aviation rulings are, I think, dubious, to be honest. Before we embark on a program of generating many more of them, we want to be sure that the content of those things is consistent with the law and with the policy of the organisation.

There is a suggestion that managers should manage and take advice and not be driven by lawyers. There has been a perception that lawyers were overly involved in decision making. The reality is—and I do not think anyone would object to this—that a lawyer's job begins and ends with giving advice. It is the client's or the organisation's responsibility to accept that advice or reject it in whole or in part. Over the past several years, the degree to which the legal services group has been contacted by various levels in the authority from the most senior levels down to the operational field has increased considerably. So I would not say that there is any active or, to my mind, clandestine discouragement to seek legal advice. I recognise there is a tendency sometimes on the part of many to say, 'The lawyer said to do this, so I'll do it.' We go out of our way to make sure that, if the law requires something, we are explicit about that. But in many cases the law does not require a specific outcome in a prescriptive sense; it requires that certain things be taken into account before a technical decision is made—and we actually play an active role in ensuring that that happens.

When it comes to some of the developments in the US and Canada, we have heard back and forth stories that we are too lenient; we are too harsh; we overregulate; we under-regulate; we are prescriptive; we are flexible. If I say that if everybody says this then perhaps we are doing something right, that is glib and flippant, and I do not mean that. But over the years the fact that we have been challenged and indicted in many ways for being one or the other of the extremes suggests that it is a difficult balance to manage and we are trying to achieve that balance in a more effective way.

The enforcement decision-making process—and Mr Quinn alluded to it—through the coordinated enforcement process is a significant development. I emphasise that operational and technical decisions to vary, suspend or cancel someone's authorisation is a decision taken at the operational management level. It is not a decision taken in the enforcement area. What is required now is consultation between the operational areas and the enforcement area. Matters over which the enforcement area does have some responsibility include—while not autonomous, the decision-making authority rests in that office—the decision to initiate an investigation with a view to the preparation of a brief of evidence for submission to the prosecutor's office and to issue infringement notices. That authority rests in the Enforcement Policy and Practice Branch

on the basis of matters that are referred to us. We do not initiate those on our own. As soon as matters come to us they are given a fair and even-handed consideration, and amongst the documents that we will be tabling is the way that process works.

Finally, I think the only thing I will comment on is that Mr Ilyk made some references to developments in the US and Canada, and I made some references to that myself. There are many similarities and many differences between the regulatory regimes in the United States and Canada and Australia. Certainly as far as the United States' regimes are concerned, I am not unfamiliar with them. There is a danger in assuming that everything they do there is right or in assuming that everything they do there is wrong. On the one hand you could say that the FAA has come in for significant criticism these days because of its oversight problems, but you can also say that the dollar amounts of the civil penalty fines that are imposed on operators in the US are in the millions every quarter. It is a different scheme, though. It is a civil penalty scheme and, if the FAA assesses a \$300,000 fine against a major carrier, that matter is not resolved for several years. It is negotiated—the term is 'compromised'—and at the end of that exercise it is oftentimes considerably less than that; not always, but oftentimes. I think it would be ill-advised for Australia to go down that route. If you think the lawyers are overly involved in decision making now, wait till you see what would happen if that kind of scheme were in place. There are lessons to be learned from that and from the Canadian system too, and I think that we are taking those lessons on board fully. That is all, I think.

ACTING CHAIR—Senator Siewert wanted to know, when you talked about 93 per cent of prosecutions succeeding, whether that means that 93 per cent of matters that you referred to the DPP were taken to prosecution and succeeded, or is there some lesser—

Dr Aleck—It would include matters that were prosecuted and resulted in a conviction or a finding of guilt—there is a slight difference and I will not labour that—or in a situation where the defendant entered a plea. Those are what is included. Of the matters that went through prosecution, there was a 76 per cent success rate after they went before a court. Those are DPP figures and that was up to 2005. We can provide further figures as soon as the DPP provides them to us.

Senator HEFFERNAN—The agricultural blokes who were here this morning thought it would be a good idea—and I reckon that it does not sound a bad idea—to have a DLO type person they can ring up in CASA, a person that is peculiar to their particular idiosyncrasies.

Mr Carmody—I listened to that too, and it might be a good idea. One of the things that I would say is that we have got a very large industry that we are trying to regulate and that gentleman represents 130 operators.

Senator HEFFERNAN—I understand that.

Mr Carmody—But, at the same time, I think that his point is valid and we could probably see whether we could find a way to work with them. We have been working pretty closely with them.

Senator HEFFERNAN—We have a DLO in immigration whom we ring up to bypass all the bloody rigmarole. Do you think that there is going to be a point where airlines cannot cut any more costs before they start to endanger the safety of the flying public?

Mr Byron—Obviously that point is out there somewhere—

Senator HEFFERNAN—It is a bit like a peak oil.

Mr Byron—Yes.

Senator HEFFERNAN—It is a bit of a worry to me.

Mr Byron—I mentioned yesterday the issue of looking at the changing nature of the industry and the forces that act on it. Our emerging risk study was principally initiated because of the changing nature of the industry, particularly the fare-paying passenger sector and particularly with the changes in the large new carriers, the low-cost carriers, and that type of thing. We are going to be taking a very active look at those sorts of issues.

Senator HEFFERNAN—So there would be little identifiers coming—you would have identifiers, like little warning signals, surely? The equipment you put on a plane to get a warning of the ground approaching, whatever you call that—for some planes that equipment is dearer than the plane it is on.

Mr Byron—Yes. Certainly, as those things become regulated—like EGPWS is regulated—the attitude of the operator to install that equipment is becoming part of a dialogue that we are getting in our operations part of the organisation.

Senator HEFFERNAN—I am pleased to hear that. There must be a light blinking somewhere on this stuff.

Mr Byron—We are starting to use the word ‘intelligence’ a little bit more now, and I think that fits in that area.

Senator HEFFERNAN—Finally, with regard to Transair and the evidence that they may have been having paid endorsements on fare-paying flights—which you say is a serious misdemeanour—how do we prevent that in the future?

Mr Byron—I would like to make a brief comment and then I will pass to Dr Aleck. Certainly the suggestion that operators have done or may be doing that is a significant concern for me. Last night I initiated a program where we are going to take a look at some sectors of the industry—the low-cost area; the smaller regional carriers—to see if we can determine whether that practice is currently being undertaken by operators. Certainly, if we do find that we will take appropriate steps to look at it from a financial viability point of view. But probably more importantly, we will look at the way in which that affects the ability of an operating crew to effectively work together, if one pilot is paying for the privilege. Dr Aleck, would you like to comment on the legalities of it?

Dr Aleck—Only to confirm, I think, what Mr Byron suggested yesterday was a preliminary legal view on it, and that is that the kinds of activities that can be conducted during a revenue flight in the flight deck cannot include flying training in the formal sense—the law prohibits that. But as Mr Byron also suggested, accruing hours as pilot in command can be had in the situation they call ‘in command under supervision’, so that the fellow in the right seat is actually flying the aeroplane. You will often hear them announce before you take off from Canberra to go off somewhere, ‘My first officer is going to be conducting this flight.’ Charging for that—

ACTING CHAIR—They will not let you get off when they say that!

Dr Aleck—That is true!

ACTING CHAIR—The doors are closed when they tell you!

Dr Aleck—That is right. But, in fact, if you look at the legislation, the person who is flying the aeroplane in those circumstances is fully qualified to act in that condition. They are simply getting hours to enable them to achieve different qualifications later on—they need to have a certain number of hours acting in command. But the point is that, whilst those things are permitted and certain things are prohibited, the idea of charging someone to do what they are permitted to do under the legislation is potentially problematic for the reasons Mr Byron said. But the fact is that at this point there is no legal reason to prevent that. We are not an economic regulator. But to the extent that those economic arrangements may affect the safe operation of an organisation, that is certainly something we would have a look at.

Senator HEFFERNAN—It would not have been news to you, although it was news to me yesterday. Have you been familiar with this as an issue for many years?

Dr Aleck—The charging aspect of it?

Senator HEFFERNAN—On a fare-paying flight, yes—paying for my endorsement hours to the operator on a fare-paying flight by the operator.

Dr Aleck—I had not heard much about that, frankly, over the years. The fact that they were doing those kinds of things is not new. The fact that it might be some sort of side business was news to me.

Senator HEFFERNAN—We were sort of told it was the most profitable part of this organisation’s business.

Dr Aleck—I had not heard that before yesterday.

ACTING CHAIR—And I think what you said was that if it was not to be endorsed as ‘in command under supervision’, it was not worth anything.

Mr Byron—That is correct—it would not be worth someone paying to accrue copilot hours.

ACTING CHAIR—So if it was about copilot hours it does not make sense.

Mr Byron—No.

ACTING CHAIR—If it was about in command under supervision, it does make sense.

Mr Byron—Yes. I think I mentioned yesterday—

ACTING CHAIR—And you say, I think, that that would be inappropriate.

Mr Byron—It would be quite inappropriate. As Dr Aleck said, we probably do not have a legal basis, but it certainly would give us indicators to go and look at other aspects of the operation, like the crew operating procedures. You can imagine a copilot sitting in the right-hand seat saying, ‘I’m paying for this flight, Captain.’ That is quite inappropriate. We have to take a look at that. That is a concern.

ACTING CHAIR—Or, ‘Shut up; you’ll do what I’m telling you, because I’m the real pilot and you’re not really even on staff.’ Thank you for that. There are a lot of questions we could ask, but we did commit to concluding before now. We will now go in camera for those comments for that short period you asked for.

Mr Quinn—One last thing: I have the agenda of the induction training course that you asked for, so I can table that here if you like and I can also provide the curriculum of the course.

ACTING CHAIR—Thanks.

Evidence was then taken in camera—

Committee adjourned at 1.16 pm