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Committee Secretary

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

I thank the committee for the opportunity to add to my original submission. I have had the opportunity to further consider the regulatory framework which CASA and AA operate under in the area of rescue and firefighting.

I would submit that there is a systemic problem with the regulatory framework based around the application of CASA 139H Regulation 139.760.

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

On the face of it and in line with the reasoning of the High Court in Project Blue Sky discussed below, this regulation purports to contradict the empowering sections of both the CA Act and the AA Act requiring both organisations to apply the power invested by parliament in a manner consistent with the Chicago Convention.[1]

I would respectively ask the senate to examine this regulation and determine if in fact the opposite weighting should apply to comply with the respective Acts and that the Chicago Convention should prevail.

Project Blue Sky[2]

In the project blue sky case the High Court held that a particular standard made by the Australian Broadcasting Authority (ABA) was unlawful as it contravened s 160(d) of the Broadcasting Services Act. S 160 (d) required the ABA to perform its functions in a manner consistent with certain International treaties.

The power invested in both CASA and Airservices by parliament is subject to the same regulating provision as that in the Broadcasting Services Act.[3]

[1] S11 and S9 of CA Act and AA Act respectively
[2] Project Blue Sky v Australian Broadcasting Authority(1998)194CLR355
[3] S11 and S9 of CA Act and AA Act respectively

The High Court was unanimous in its decision that the section had been breached by the issue of a standard inconsistent with the respective International Treaty.

The Court was split 4:1 on the result of the breach. The majority holding that the breach did not invalidate the standard but rendered it unlawful.

I would submit that the contradictory nature of of 139.760 raises an argument that it could be found to be invalid.

The Effect of 139.760

The effect that this regulation has on Australia's commitment to and compliance with the Chicago Convention should not be understated.

It serves as an impediment to the timely introduction of ARFFS improvements implemented by amendments to Annex 14. Some of these amendments relating to agent required for category and the remission factor are significant changes.

Any amendments to areas which are specifically covered in the Manual of Standards (MOS) will not be given effect until a review of the MOS removes any inconsistency. This is compounded by the fact that the MOS has not been updated since 2005.

Conclusion

An amendment to 139.760 recognising that the requirements of the Chicago convention prevail in areas of inconsistency with the MOS would place the responsibility back on CASA an Airservices to monitor and take appropriate action in response to amendments made by ICAO to Annex 14 in a timely manner.

This would seem to be legal requirement under both organisations empowering Acts to exercise the delegated power in a manner consistent with the Chicago Convention.

Respectfully,

Andy Hanson