



**AUSTRALIAN FEDERATION
OF AIR PILOTS**

THE AUSTRALIAN FEDERATION OF AIR PILOTS (AFAP)

**SUPPLEMENTARY SUBMISSION TO THE STANDING
COMMITTEE ON RURAL AND REGIONAL AFFAIRS AND
TRANSPORT**

OF THE

AUSTRALIAN SENATE

**INQUIRY INTO THE CURRENT STATE OF AUSTRALIA'S
GENERAL AVIATION INDUSTRY**

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Background

1. The Australian Federation of Air Pilots (AFAP) represents over 5,500 professional pilots in aviation safety and technical matters and is the largest professional pilot association in Australia. We engage in reforms through our active safety and technical committee, which is a major contributor to the development of Australian and international aviation safety standards. The AFAP is also a foundation member of the International Federation of Airline Pilots' Associations (IFALPA), the global body representing professional pilots worldwide, through which the AFAP contributes to international aviation standards within the International Civil Aviation Organisation (ICAO).
2. As a key stakeholder in the aviation industry, the AFAP welcomes and appreciates the opportunity to provide further input into the Senate Standing Committee inquiry into the current state of Australia's general aviation industry, and related matters.

Executive Summary and Recommendations

3. The AFAP believes that this inquiry is an opportunity to rethink and reform Australia's aviation regulations and regulator in a manner that achieves improved safety outcomes and efficiencies, not only for the benefit of the Australian aviation sector but also for the wider community.
4. Many stakeholders have provided input to this inquiry critical of the regulator and regulations. Many have included examples of negative outcomes supporting these criticisms too. There are many common themes contained in these criticisms and examples that should be understood holistically, so to aid the comprehension of the real and underlying contributing factors. In an earlier submission, we referred to this as comprehending consistent problems as symptom-problems. That submission can be referred to for greater explanation and detail.
5. It is apparent that regulatory comprehension and complexity are very common themes that stakeholders continue to raise complaint about. Some express remedies to this through "wants" of a complete revision and reform of the Civil Aviation Act ('the Act'), or through the complete replacement of Australia's aviation regulations with those from the USA or New Zealand.
6. The AFAP believes that this type and level of reform are both unworkable and unnecessary.
7. The aviation regulator communicates that it has outcomes-based regulations however, the problems of complexity and comprehension remain largely unresolved. The AFAP suggests that it is disingenuous to consider regulations to be outcomes-based when they don't communicate the intent and safety objectives. Successful and efficient achievement of an outcome necessarily is a function of stating, comprehending and working towards the objectives.
8. With this in mind, the AFAP suggests that the inclusion of the objectives of regulations in the regulations is the missing facet of the so-called outcomes-based aviation regulations. We believe that the introduction of this reform will greatly enhance the comprehension and reduce the problem of complexity. We refer to this as the inclusion of regulatory-intent in the regulations. This submission details this further.
9. Regarding ideas for a wholesale review of the Act, we instead envision that a simple and targeted reform of the Civil Aviation Act is the best and only legislative reform required for the Act. We suggest that this reform should aim to resolve the current lack of outcomes-focused regulatory

activity. In our view, an amendment to s9A of the Civil Aviation Act that focuses on safety systems and outcomes will achieve the desired reform many stakeholders are impatient for. Section 9A of the Act addresses the requirements for the regulator's performance and functions, including what it must consider in the development and promulgation of standards.

10. The AFAP specifically recommends:

- a. The establishment of an aviation regulatory reform process that has an objective to include articulation of safety objectives and regulatory-intent of aviation regulations within the regulations.
- b. The Civil Aviation Act be amended in a targeted manner to permanently bestow a legal duty upon the regulator to develop and promulgate regulations with systemic and outcomes focused objectives. Such a targeted amendment should be worded with an aim to resolve the current lack of outcomes-focused regulatory activity.

11. The AFAP would like the committee and other stakeholders to consider that this inquiry, and subsequent reform initiatives, will be at risk of failing to achieve meaningful reform outcomes if realistic and workable solutions are not agreed and applied. It is essential that a meaningful majority of stakeholders come to agreement on these matters so that targeted reform initiatives can be developed and applied, and so this inquiry isn't a wasted and pointless endeavour.

12. This submission includes examples of regulatory-intent and an amendment to the Civil Aviation Act. We included these only to aid comprehension of the vision and concepts articulated. The wording detailed in them should not be misinterpreted for fixed positions on the wording choice.

SUMMARY OF THE REGULATORY ISSUES

13. Before addressing the issues raised here, it is important to understand why they have arisen and the well-meaning elements associated with them too. This section discusses some of the most prominent and commonly raised issues with Australian aviation regulations.

14. In this paper we refer to regulations and their associated standards collectively as regulations.

The Cyclical Problem - Too Much Prescription but Also Not Enough

15. A commonly raised issue by many stakeholders is the increase in the prescription and complexity of regulations and their associated standards. This includes reference to increased word-count and the use of non-plain language. Whilst we broadly agree with these observations, in our view this situation hasn't arisen solely due to the aims of regulatory drafters or the regulator as a whole. Instead, we perceive there to be some well-meaning aspects to the increase in the size and complexity of regulations and standards too. Understanding why this is occurring can help to prevent it from reoccurring.

16. Increasing regulatory prescription can eventuate from safety hazard identification. For example, when the causes and contributors of safety hazards are realised or realised with greater clarity - and an unacceptable level of risk is determined to be associated with the identified hazards - then a response that pursues and provides sufficient mitigation and control of the identified hazards is

warranted. This increased risk awareness can arise through the results of accident or incident investigation findings, proactive safety management processes (such as reporting) academic studies, amendment to ICAO standards, and other sources.

17. CASA has an obligation to address aviation safety concerns and when there are instances of increased comprehension of risk, this can mean there is a need to introduce or increase restrictions through aviation regulations. Well-meaning intent can therefore be an influencing factor to increases in regulatory complexity and prescription and therefore, healthy measures of caution to avoid ill-conceived opposition to change should also be part of the considerations. However, there can also be more to the picture. A complicating consideration is the need to target and limit the reforms to only the areas requiring them and to avoid any unnecessary capture of other operational practices that aren't associated with the identified risk.
18. Avoiding regulating aspects that don't require regulation can mean very prescriptive language is used, yet the aims for simplicity and succinct regulations are then compromised at times. This can be a very challenging balance of aims and subsequently, an increase in the complexity and word count of regulations can be difficult to avoid when this balance is being pursued.
19. As a result, a self-perpetuating cycle of confusion and complexity feeding upon itself. Specifically, the cycle can be described as follows: An increase in complexity of regulations is pursued to achieve targeted risk mitigation. In a commendable attempt to limit the scope of reforms to areas only where needed, other aspects of complexity are introduced to provide prescriptive delineations. Then with an aim to tackle the interpretation inconsistency, other layers are introduced, which contributes to the complexity and lack of conciseness of regulations. This all leads to an overall increase of what has to be assimilated by the end user in order to achieve comprehension, compliance and the intent.
20. From an end user's perspective, aviation's pursuit of appropriately targeted regulations, appropriate risk mitigation, regulatory comprehension aims, consistency of interpretation, and reasonable conciseness becomes an increasingly elusive and unachievable combination to achieve. Noting that the CASA inspectorate are users of the regulations too.
21. The AFAP has suggestions to address and remedy this self-defeating quandary but let's first consider the inconsistency-issues in greater detail.

Addressing the Issue of Inconsistency

22. Inconsistency of regulatory interpretation and application by the CASA inspectorate has been a reoccurring and common theme noted by many aviation stakeholders to this inquiry. The challenge of reigning in this inconsistency is something that is acknowledged by CASA and is something they are attempting to improve, including through their recent initiative to provide a centralised Regulatory Guidance Enquiry portal for stakeholders to use and other organisational restructuring initiatives.
23. As we understand it, the intent of this portal is for it to be a single CASA front-door for enquires, with further processes behind the scenes to ensure the enquiries are addressed by the most appropriate team. Over time, a bank of responses will grow and be available for reference and

provision when similar enquires are posed to CASA. This portal and processes can have the potential to provide CASA with an ability to provide a greater degree of response consistency and accuracy to stakeholders. This is commendable and has positive potentials.

24. In spite of these positive aspects of newly reformed CASA processes, there are concerns that these benefits are coming at the expense of established and functioning relationships between CASA staff and those running and managing aviation organisations, with possible negative consequences as a result. Those relationships can allow efficiency through quick access to regulatory staff by industry. Likewise for the regulator, comprehension of the safety culture of organisations can be enhanced through such personal relationships when compared to the more faceless and computer based processes now introduced.
25. In conversations with other stakeholders we are informed that there are delays in response times when the new portal is used to pursue regulatory questions. This can lead to instances of lost work or even encourage rogue or 'suspect' safety compliance behaviour when responses aren't available in a timely manner. Thus, we raise a caution that this consistency improvement initiative could be producing unintended negative consequences, affecting measures of both efficiency and safety, mostly due to delays when compared to previous practices. From our own use of the enquires portal, we have experienced instances of response time greater than two months.
26. We question the sufficiency of the resources CASA is applying or could apply to this initiative especially given that numerous regulations that are currently undergoing amendment, are newly introduced or moved into new regulatory structures. Other questions we would like to pose relate to the focus on relying on organisational restructuring and introducing the Regulatory Guidance Enquiry portal to achieve regulatory consistency - while overlooking what beneficial safety and efficiency aspects are being diminished through the loss of relationship based interactions between industry and regulatory staff.

THE ALTERNATIVE TO INCREASING PRESCRIPTION AND COMPLEXITY

The Alternative and Benefits – Articulate Regulatory-Intent in Regulations

27. Confusion, disagreement and misinterpretation of regulations can only occur when the true purpose and intent of the regulations are not understood. Education is a key means for regulatory comprehension, however the provision of education can be very resource cumbersome when the intent of regulations remain unclear.
28. The AFAP recommends that civil aviation regulations be progressively amended so that they include, as much as is practicable, the intent or objective within the regulation. The intent should be clearly stated in a succinct manner within the regulations themselves, not left to reside in guidance material (or absent altogether). The AFAP believes that the regulatory-intent clauses should provide accompanying "notes", which refer to the relevant guidance material so that more detailed articulation of the safety outcomes of the regulation is available.
29. We believe that there will be benefits to such a reform. These include:

- a. Safety – aviation safety regulations are written to achieve safety outcomes including risk mitigation. The safety aims of each regulation are more likely achieved when operational users of regulations comprehend the safety objective of each regulation.
- b. Efficiency – delays due to deliberating over regulatory meaning have the effect of cost impost, including due to lost or delayed business opportunities (when an operation cannot proceed due to comprehension if it is legal or not to do so). See Appendix B.
- c. Reduction of inconsistency between CASA inspectorate staff – Improvements to regulatory comprehension should lead to consistent and transparent application of regulations during CASA based inspections and audits.
- d. Less CASA resources required – With clear notation of regulatory intent, there will conceivably be less demand for CASA services provided through the centralised Regulatory Guidance Enquiry portal and other engagement channels. In time, this may enhance the overall productivity of the regulator, which could lead to a reduction of regulatory service fees for end users.
- e. Less prescription – Complexity and prescription in regulations could be reduced in some instances if the intent of regulations was sufficiently articulated and assessed.
- f. Improved CASA compliance with requirements under s9 of the Act: “(c) developing and promulgating appropriate, clear and concise aviation safety standards;”
- g. Achieving longstanding regulatory reform aims - The 2014 Aviation Safety Regulation Review (ASRR) made recommendations to improve aviation regulation, many of which remain unactioned. The inclusion of regulatory-intent in regulations could achieve some of those key recommendations, such as the “returning to a third tier of regulation, removing as much detail as possible from regulations, and using plain language standards in the third tier.” Noting that the first tier is the Civil Aviation Act, CASRs largely form tier two, and the associated Manual of Standards form tier three. Relevant extracts from the ASRR report include:

Recommendation 30 - The Civil Aviation Safety Authority changes the current two-tier regulatory framework (act and regulations) to a three-tier structure (act, regulations and standards), with:

- a. regulations drafted in a high-level, succinct style, containing provisions for enabling standards and necessary legislative provisions, including offences
- b. the third-tier standards drafted in plain, easy to understand language.

ASRR Recommendation 31 - The Civil Aviation Safety Authority structures all regulations not yet made with the three-tier approach, and subsequently reviews all other Civil Aviation Safety Regulation Parts (in consultation with industry) to determine if they should be remade using the three-tier structure.

- h. Better alignment to intended outcomes - The inclusion of regulatory-intent may increase the opportunity to assess if operational activities are being conducted in a way that achieves the intended outcome.

The Ability of the CASA Inspectorate to Assess

30. CASA has, for some time now, been progressing its ability to assess regulatory compliance against outcomes-based markers, which necessarily means that capability for assessment against regulatory-intent is foreseeably possible too. Specifically, requirements and guidance for the inspectorate staff involves assessments that are in the PSOE format: P-Present, S-Suitable, O-Operational and E-Effective, where the P and O are objectively based assessment measures and the S and E are subjectively based assessment measures. Noting, the subjectively-based measures must necessarily involve outcomes-based markers.
31. The existing problem though is that inconsistency of assessment of regulatory compliance, via the subjectively based markers, does occur. This inquiry has received submissions from stakeholders noting that different inspectorate staff interpret regulations differently (See Appendix C). It should be considered that this is a real issue to address and that current difficulties would be reduced if regulatory-intent was articulated in the regulations. I.e., provide a basis for subjective regulatory practices to be aligned with a clear intended safety outcome.

CASA can do it – Existing Example of Regulatory-Intent

32. There exists one example where CASA has provided the intent of regulation within the regulation. Civil Aviation Order (CAO) 82.3 and 82.5 both contain an identical appendix that articulates the intent of the regulation within it. An extract of Appendix 1A to both of these CAOs states:

1 Objective

The objective of this Appendix is to ensure the continued availability of safety information by restricting its use for purposes other than maintaining or improving aviation safety.

33. Associated with this clause are other clauses that outline the principles and exception, along with the actions considered inappropriate that conflict with the stated objectives. Furthermore, the clause outlining the regulatory-intent (“Objective”) also provides “Notes” for where the relevant guidance material is to be sourced, assisting the reader to regulatory-intent comprehension.
34. The AFAP believes that whilst the included *Notes*, in the particular example we have selected, point to the existence of relevance guidance in ICAO literature, any emulation of this style with other Australian civil aviation regulations need not be limited to ICAO based sources of guidance only. I.e. existing CASA based guidance material could be just as relevant, or more than relevant in many instances.
35. Overall, the AFAP considers the above example of regulation with regulatory-intent to be a significantly important and useful example of a concise plain language regulation that clearly articulates its purpose and intent. It is an example regulation that is almost entirely outcomes-based and focused, which can be considered for further emulation throughout the aviation regulations.

36. We note that in many instances, that not all regulation can be provided in pure outcomes-based form. In those instances, it could be considered that a mix of outcomes-based and prescriptive regulations may be more appropriate.

THE TRANSITION FROM HERE TO THE ALTERNATIVE

Performance Based or Outcomes Based Regulations?

37. Before discussing how Australia can transition our current aviation regulatory style to regulations with a clearer outcomes focused inclusion of regulatory-intent, it is important to first discuss the current understanding of outcomes-based regulation and performance-based regulation.
38. In the ICAO Safety Management Manual (Doc 9859), performance based regulations are described as:

“Standards which enable **performance-based regulations are expressed in terms of the desired outcome**. The resulting performance-based regulations require that the service provider demonstrate that its proposed approach will achieve the desired outcome.”

[Emphasis added]

39. Whereas CASA explains on its website that safety outcome-based regulations involve:

“**Brief regulations that express the high-level safety outcomes sought**. The regulations allow for an outcome to be reached via multiple or various pathways, whilst still maintaining an acceptable safety case.”

[Emphasis added]

40. CASA goes on to say that these brief outcomes-based regulations should also be supported by guidance material that provides suggestions, explanations and amplification of a regulation's policy intention
41. For all intents and purposes, performance based regulations and outcomes based regulations can be considered to be different terminology for the same regulatory philosophy concept. Noting that in Australia the term outcomes-based is preferred and internationally, including within ICAO, the term performance-based regulation is the norm.

More to the Solution than Outcomes-Based Regulations

42. The transition towards greater inclusion of regulatory-intent in civil aviation regulations is not as simple as adopting CASA's current outcomes-based regulatory philosophy. It should be recognised that a large proportion of civil aviation regulations are unsuitable for transformation into a pure outcomes-based regulatory form. In spite of this, we believe that there is certainly considerable scope for combining the prescriptive and performance-based approaches.
43. This perspective is supported by ICAO (Doc 9859, 8.3.5.13), which states:
- “In practice, regulations are rarely fully prescriptive or fully performance-based, but rather contain elements of both. They are also performance-based to different degrees.”

44. In progressing towards greater inclusion of regulatory-intent in civil aviation regulations, the AFAP believes that a number of cautions must be considered collaboratively within the aims of the reforms, such as:
- Maintaining a primary focus on the safety objectives and outcomes.
 - Some small operators prefer prescriptive regulations as they do not have the internal organisational resources to devote to choosing from diverse options of compliance.
 - Regulatory reform must always consider the need to avoid unintended consequences.
 - Any reduction in prescription should not be taken as a means to reduce safety standards or compliance from the safety objective.
 - Regulatory reform should avoid divergence from international standards.

Existing “Purpose” versus Missing “intent”

45. CASA has recently promulgated the Flight Operations Regulations, and associated standards, through the CASRs. Within the associated CASR standards (Manual of Standards or MOS), some sections are prefaced with an opening summary titled “purpose”. Conceivably this is an attempt by CASA to improve the readability of the standards and to provide a broader overview and summary of the section that follows. Whilst this is an improvement over previous regulatory styles, it would be incorrect to perceive this inclusion of “purpose” to be an inclusion of regulatory-intent. These “purpose” sections could more accurately be titled “summary”.
46. The inclusion of this so-called “purpose” articulation does have its benefits and it would be a useful supplement to the inclusion of actual regulatory-intent into the regulations.
47. The below example is intended to highlight the difference between the new method of providing “purpose” in the standards and that of introducing genuine regulatory-intent clauses to the regulations. This example also shows how the regulations can become more comprehensible and effective in articulating the safety intentions.

Table A Example Inclusion of Regulatory-Intent

Example / Suggested Outcomes – Based Clause	
Reg topic area: Approach bans for IFR flights	
EXAMPLE INTENT CLAUSE	<p>Suggested Regulatory-Intent Clause</p> <p>(Insert prior to the following sub regulations in Part 91)</p> <p>Objective</p> <p>The objective of the approach ban for IFR flights is to achieve a safety outcome through the prevention of unnecessary missed approach manoeuvres by non-suitably qualified IFR aircraft.</p> <p>This objective is achieved when airspace in the final approach segment is reserved and prioritised for suitably qualified low-visibility flights to make approaches during periods when weather criteria will prevent non-suitably qualified IFR aircraft from achieving the necessary visual reference for landing.</p> <p><i>Note: Criteria for the final approach segment is contained in ICAO PANS-OPS (Doc 8168), Volume II.</i></p>

CASR PART 91	<p>Current CASR/Regulation (extract):</p> <p>91.310 Approach ban for IFR flights</p> <p>(1) The Part 91 Manual of Standards may prescribe circumstances in which an aircraft flown under the IFR must not make an approach to land at an aerodrome.</p> <p>(2) The operator and the pilot in command of an aircraft for an IFR flight each contravene this subregulation if:</p> <p>(a) the aircraft makes an approach to land at an aerodrome; and</p> <p>(b) the approach to land is made in circumstances mentioned in subregulation (1).</p> <p>(3) A person commits an offence of strict liability if the person contravenes subregulation (2).</p>
MOS 91	<p>Current MOS/Standard (extract):</p> <p>CHAPTER 16 APPROACH BAN FOR IFR FLIGHTS</p> <p>16.01 Purpose</p> <p>(1) For subregulation 91.310 (1), this Chapter prescribes circumstances in which an aircraft flown under the IFR must not make an approach to land at an aerodrome.</p> <p>(2) This Chapter applies to an aircraft conducting an IAP at an aerodrome:</p> <p>(a) that has an air traffic service in operation; and</p> <p>(b) for which RVR reports are available for IAPs to the relevant runway.</p> <p>16.02 Approach ban — other than low-visibility operations</p> <p>...</p> <p>16.03 Approach ban — low-visibility operations</p> <p>...</p>

48. To be clear, the above “objective” *example* does not exist in the current regulations.

Setting Goals and Expectations for the Evolution of the Regulations

49. As previously mentioned, not all regulation is suitable for the inclusion of regulatory-intent. Many are already succinct and to the point in their largely prescriptive and comprehensible form. Meanwhile, regulations that are most suitable for the inclusion of regulatory-intent are those commonly referred to as performance-based regulations, such as those in Safety Management Systems (SMS) and higher level regulations associated with Fatigue Risk Management Systems (FRMS). However, there exists many levels in between these two ends of the scale. These are the regulations referred to above where the inclusion of regulatory-intent will vary on a case-by-case basis to varying degrees.

50. The AFAP is cognisant that this can mean that our reform proposals cannot be a “quick fix” to the civil aviation standards. Although, that does not mean that they can’t be achieved in a reasonable timeframe in the near term.

51. None the less, if Australia does take up an aviation regulatory reform process of the nature we propose, then we suggest that consultation and input should be sought from the industry to ensure that a clear policy and strategy is set out prior to venturing down the reform path. Goals

and markers for how and when to achieve change should be included in the strategy. We believe the current regulatory reform agenda has been drawn out and lacking in clarity of vision. Lessons from past reform mistakes are important to help inform future regulatory reforms.

Aim to Keep it Simple

52. Any regulatory reform process that has an aim to reduce complexity and verbosity, whilst aiming to provide greater clarity of regulatory-intent, should also avoid being a complex process too.
53. A key aim must be that regulations written to include the regulatory-intent must always consider how the end users will be able to apply them in the real operational environment. They should be safety focused but be “end user focused” too. Processes and tasks for regulatory inspectorate staff will ultimately benefit from this approach too.

Aligning Resource Prioritisation to the Regulatory-Intent Reforms

54. The AFAP envisages that over time, the use of existing regulatory resources would become more efficient due to the improved consistent comprehension that can arise from the inclusion of regulatory-intent into the regulations. Additional resources may be required during the establishment of the reform for such a project to be successful. At the very least, existing resources would need to be prioritised to such a reform project, including the eventual establishment of targeted training for existing staff so that they are best placed to regulate to the outcomes-based regulations. This view is consistent with ICAO guidance (Doc 9859, Chapter 8.3.5.9):

“Performance-based regulations that are written in this manner require regulators to have the skills and expertise to assess the performance of the system, rather than to merely assess prescriptive compliance with the letter of the regulations. ...”

SUPPORT THE REFORM WITH A LEGISLATIVE AMENDMENT

Accountability and Stability

55. Regulatory reform to include outcomes focused regulatory-intent into regulations could conceivably occur as a result of CASA adopting the concept from this submission, as a result of recommendations from this Inquiry, or another non-legislative initiative. There may be enough interest from executive CASA staff to develop and promulgate such reforms. However, staff attrition, competing ideas and alternate priorities of the regulator may mean that such a regulatory reform could stagnate, be terminated, be poorly applied, or may never be initiated at all. For these reasons, the AFAP contends that stability for the pursuit of reform for CASA’s regulatory style is most suitably enshrined in legislation.
56. CASA is a government agency that is ultimately accountable to representative government, on the behalf of the Australian community. Amending the Act to ensure a legal basis would align with goals for public sector accountability and governance, and enhance the provision of service by the aviation public sector to the public and aviation community.

CASA Acknowledges the Importance of Legislative Accountability

57. At the November 2020 hearing to this inquiry, CASA provided statements and responses to questions from Senators. In particular, Dr Aleck (Executive Manager, Legal, International and Regulatory Affairs, CASA) provided responses on this matter to Senator Patrick. An extract of the Hansard record of this exchange is provided at Appendix A in this submission. However two key quotes are (Referring to the changes to the Civil Aviation Act in October 2019), Dr Aleck:

“By putting it in the Act, and in the course of the second reading speeches, it was made clear that this was about making the importance of that expectation as clear as it could possibly be. Of course, **it creates a legal duty** where previously there was an expectation. And

“...I must say that, **cognisant of the fact that this was now a legal duty, we made it very clear that, as this is now a duty**, the expectation will be that we will be able to demonstrate in a much clearer way how this is done.”

[Emphasis added]

58. Whilst there will be varying opinions of how effectively CASA has or has not achieved the intent of the provisions in the last amendment to the Act, what is clear is that providing a legislative basis for important reforms does cause government agencies, in this case CASA, to enact and align processes and projects to the importance of the newly emphasised legal duty.

Targeted Legislative Amendment

59. Occasionally various aviation stakeholders raise positions for a whole-of-Act review and amendment. Unfortunately, such positions are more informative of the weight of frustrations for the current regulatory state than they are for a useful civil aviation legislative reform. The AFAP cautions against such broad and risk laden reform considerations as these could conceivably lead to a multitude of unintended consequences. Instead, we suggest that the aviation community and government consider that there is a significant degree of consistency of the issues raised by most stakeholders and that these fall within the remit of s9A of the Act - Performance of Functions (of CASA).

60. Much of the current and longstanding criticism can be summarised into matters such as: inconsistent regulation application, confusing regulations, verbosity of regulations, and poor alignment to how regulations need to operate in the practical operational environment (leading to cost impost in some cases). All of which can be summarised as symptoms related to the performance of CASA's functions.

61. Thus, instead of contemplating broad and risky reforms to significant portions of the Act, the AFAP suggests that it would be wiser, more efficient and effective to refine wants of broad Act reform instead into a nuanced and targeted reform of s9A of the Act.

Amendment to the Civil Aviation Act

62. Section 9A of the Act sets out the performance and function priorities that CASA must regard and consider, which includes that CASA must regard safety as the most important consideration. In

2019, the parliament amended this section of the Act to create a mechanism to better align CASA's performance and functions to the parliament's expectations and requirements. However, these changes only addressed risk and cost-based considerations, not systemic safety based outcomes and expectations. That is, they only addressed the symptom-problems yet the need for aviation to function as a system with an outcomes focus is a more fundamental requirement.

63. Whilst the AFAP considers the 2019 amendment to be a positive step to address some of the shortfalls and issues experienced by GA, and the wider aviation industry, we also strongly believe that it is incomplete and that critical flaws remain. To resolve this, the AFAP proposes that s9A(3) be amended with an additional mechanism for enshrining obligations for when CASA develops and promulgates aviation safety standards under s9(1)(c). Specifically, we propose that s9A(3) must oblige CASA to:

“....take into account that civil aviation is a system of safety.”

Table B Proposed Amendment to the Act

Civil Aviation Act Section 9A extract and the AFAP amendment proposal
For clarity, paragraph 9A(1) and (2) predate the 2019 amendment to the Act. Paragraph 9A(3)(a) and (b) constitute the 2019 amendment to the Act (in red), whilst paragraph 9A(3)(c) (in blue) is the AFAP's proposed amendment.
<p>Section 9A - Performance of functions</p> <p>(1) In exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration.</p> <p>(2) Subject to subsection (1), CASA must exercise its powers and perform its functions in a manner that ensures that, as far as is practicable, the environment is protected from:</p> <ul style="list-style-type: none"> (a) the effects of the operation and use of aircraft; and (b) the effects associated with the operation and use of aircraft. <p>(3) Subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9(1)(c), CASA must:</p> <ul style="list-style-type: none"> (a) consider the economic and cost impact on individuals, businesses and the community of the standards; and (b) take into account the differing risks associated with different industry sectors; and (c) take into account that civil aviation is a system of safety.

64. The AFAP believes that this Act amendment will align and achieve safety outcomes that consider the civil aviation system in a holistic and practical manner. Whilst we are not fixed on the exact wording for the Act amendment, we strongly believe that the amendment must guide and oblige CASA, with safety-systems or holistic clauses, to a more informed regulatory philosophy that includes the promulgation of regulatory-intent into many of the aviation regulations.

What does *System of Safety* mean?

65. During the process of socialising our proposed Act amendment with other stakeholders (since early 2019), we have found it useful to propose a specific example with wording in which the concept could take form. It has never been our intention to be fixed on the exact wording. Rather, the example is only intended to assist others with the comprehension of the concept.

66. Despite our intent, a commonly raised issue by other stakeholders is the use of the terminology “system of safety” in our proposed example Act amendment. Some stakeholders have suggested that the inclusion of this terminology in the Act would also require the addition of a definition of system-of-safety in the Act too. We draw attention to the fact that the Act already contains similar terminology, and without definition of it. For example, section 9 states:

“CASA’s functions

(1) CASA has the function of conducting the safety regulation of the following, in accordance with this Act and the regulations:

...

(g) conducting regular reviews of **the system of civil aviation safety**... .. and to promote the development and improvement of **the system**”

[Emphasis added]

67. ICAO documents also use this type of terminology without definition too. Doc 9859 (8.3.5.9):

“Performance-based regulations that are written in this manner require regulators to have the skills and expertise to **assess the performance of the system**, rather than to merely assess prescriptive compliance with the letter of the regulations.”

[Emphasis added]

68. The AFAP remains agnostic to the requirement for a definition of aviation safety systems or not, however we do believe that the discussion on this point should be consistent and if stakeholders believe our proposed amendment to the Act (in its current form) requires an accompanying Act amendment to provide a definition, then these views should exist for the current wording in the Act too.

69. We reiterate that the purpose of our proposed amendment to the Act is to achieve safety outcomes that consider the civil aviation system in a holistic and practical manner. Considered word choice may mean different words are selected but the AFAP requests readers to absorb the concept rather than to focus upon exact word selection for now.

SUMMARY AND RECOMMENDATIONS

70. The AFAP believes that this inquiry must resolve to provide workable recommendations to the longstanding issues that many stakeholders, previous inquiries and reviews have repeatedly articulated. These have mainly focused on regulatory complexity, comprehension and inconsistent interpretation.

71. Regulatory complexity, comprehension and interpretation issues are problems in their own right but it is more accurate and useful to view these as symptom-problems of key underlying issues within the aviation regulations and regulatory regime.
72. True outcomes-based regulations don't exist in a practical sense if the intent and safety objectives of the regulations are absent from the regulations and end user comprehension.
73. The current lack of regulatory-intent and concise communication of safety objectives leads to inconsistency of interpretation, delays due to deliberations, lost commercial opportunities, and poor adherence to the intended safety objective.
74. The AFAP recommends:
 - a. The establishment of an aviation regulatory reform process that has an objective to include articulation of safety objectives and regulatory-intent of aviation regulations within the regulations.
 - b. The Civil Aviation Act be amended in a targeted manner to permanently bestow a legal duty upon the regulator to develop and promulgate regulations with systemic and outcomes focused objectives. Such a targeted amendment should be worded with an aim to resolve the current lack of outcomes-focused regulatory activity.

Link to the AFAP's initial submission:

75. <https://www.aph.gov.au/DocumentStore.ashx?id=1c7d1b0d-ba2f-4adf-9d45-b8d5fad96ad3&subId=695867>

Australian Federation of Air Pilots

February 2022

Appendix A: Hansard Extract - November 2020 hearing to this inquiry

Hansard Extract: November 2020 hearing to this inquiry	
(Referring to the Civil Aviation Act amendment of October 2019):	
Senator PATRICK:	And that's what I want to get out on the table. I have a definite view on what that means and I'm trying to understand CASA's view in respect of that change directed by the parliament.
Dr Aleck:	<p>We were very conscious of that change, very well aware of what it would imply. The language, as you probably know, was taken almost verbatim from the minister's statement of expectations. At the time, we were aware of the fact—as were those who participated in the introduction of the legislation, in the second reading speeches—that this provision enshrines what CASA was meant to be doing anyway. Those expectations about taking cost and risk into account are expressed in our regulatory philosophy. They are expressed in the directive that's been around about risk based legislation. By putting it in the Act, and in the course of the second reading speeches, it was made clear that this was about making the importance of that expectation as clear as it could possibly be. Of course, it creates a legal duty where previously there was an expectation.</p> <p>[Emphasis added]</p>
Senator PATRICK:	So you're saying that's business as usual—that, prior to that point, you were doing that anyway?
Dr Aleck:	<p>We did. But I must say that, cognisant of the fact that this was now a legal duty, we made it very clear that, as this is now a duty, the expectation will be that we will be able to demonstrate in a much clearer way how this is done. We provided guidance and direction to those in our organisation who are responsible for developing standards under the provisions of the Act that are referred to in the amendment—what these terms mean. These are terms that have been dealt with in a legal context. So we said that, if you're going to comply with the law, you need to know what that means. It does actually impose a new discipline, and in the process of developing—</p> <p>[Emphasis added]</p>

Appendix B Lost or delayed business opportunities due to reg complexity

Stakeholder input re: Lost or delayed business opportunities		
Submission # (& Section)	Organisation	Relevant Extract
Submission 12 (Section 9)	Aerial Application Association of	"Lost opportunities – especially in terms of working with industry but also in business where a required CASA licence or approval may hold up a business for months – thus

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	Australia (AAAA)	compromising industry's ability to react quickly to commercial opportunities. This is a huge cost imposition on industry and reflects poorly on CASA 'systems' across manufacturing, certification and operational requirements. CASA is the main reason GA manufacturing struggles to get ahead in Australia."
Submission 39 (Introduction)	McDermott Aviation	"The primary trigger for CASA becoming a dominant risk to our business is that were we have been used to intermittent issues requiring specialised attention, we are now finding that most contacts with CASA require multiple, extended and administratively complex transactional overheads with no guarantee of a positive result."
Submission 39.1 Most of submission 39.1)	McDermott Aviation	(The main theme of the supplementary submission from McDermott Aviation is effectively a case study example of a work-around to the issue of complex and slow CASA reg processes affecting the ability to take up business opportunities)

Appendix C Inconsistency of Reg interpretation

Stakeholder input re: Inspectorate staff interpreting regs differently		
Submission #(& Section)	Organisation	Relevant Extract
Submission 11 (Section commencing at quote)	The Australian Helicopter Industry Association (AHIA)	"CASA functions are not applied/exercised uniformly..."
Submission 12 (Section 9)	Aerial Application Association of Australia (AAAA)	"Loss of manufacturing capability – directly attributable to CASA causes through inefficiency, delays, poor understanding of their own regulations, lack of expertise or even non-compliance with their own regulations. This represents a direct cost to the economy, jobs and Australia's international standing."
Submission 19 (Section 4)	Regional Aviation Association of Australia (RAAA)	"The inconsistencies between different CASA offices and even different CASA personnel continues to be a drain on the industry and often results in unnecessary expense and waste of resources due to one individual's interpretation of a particular regulation."
Submission 21 (Section 4, paragraph 3)	North QLD Aviation Services	"...with the interpretation of Rules, AD's, requirements etc. It is often found that interpretation, rather than solid clarification, is offered by CASA representatives when contacted for assistance from Industry. These interpretations differ from staff member to staff member."
Submission 28 (Section: The myth of outcomes-based legislation)	The Australian and International Pilot's	"...the industry prefers the certainty of prescription as a solution to, and defence against, the lack of standardisation among CASA inspectors."

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	Association (AIPA)	
Submission 39 (Introduction)	McDermott Aviation	"The primary trigger for CASA becoming a dominant risk to our business is that were we have been used to intermittent issues requiring specialised attention, we are now finding that most contacts with CASA require multiple, extended and administratively complex transactional overheads with no guarantee of a positive result."
Submission 63 (Section "Clear and Concise", paragraph 4)	Agri-muster / Katherine Helicopters	"...if I ask two separate CASA FOI's I'll get two different answers. This is true about any part of the rules. differing interpretation by FOI's make compliance difficult and proves the system isn't working as surely Clear and concise rules couldn't be misinterpreted."