



**AUSTRALIAN FEDERATION
OF AIR PILOTS**

**THE AUSTRALIAN FEDERATION OF AIR PILOTS (AFAP)
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**

NOVEMBER 2020

Friday, 13 November 2020

AFAP

President: Captain Louise Pole



AUSTRALIAN FEDERATION OF AIR PILOTS



Written by the **Australian Federation of Air Pilots**
and authorised by:

Captain Louise Pole

President

Australian Federation of Air Pilots

First Officer Stuart Beveridge

Safety and Technical Director

Australian Federation of Air Pilots

Contents

Background	4
Introduction	4
Accurately viewing the problems of General Aviation and Aviation Agencies.....	5
About this submission.....	6
The need for genuine outcomes-based regulation	7
Amendment to the Civil Aviation Act	7
Thoroughness and coordination – the positive links between safety and efficiency.....	8
The current state of systems and outcomes based goals.....	9
Red-Tape or Genuine Safety Reforms?	10
Governance and Accountability of CASA - General Philosophy.....	12
Governance and Accountability of CASA - Oversight Through Freedom of Information	13
Governance and Accountability of CASA - Industry Complaints Commissioner.....	14
Governance and Accountability of CASA - CASA Board	15
Composition of the Aviation Safety Advisory Panel	16
CASA Expertise, Resources and a Diminished Inspectorate	16
Comprehension of Regulations and Standards – Complexity and Useability.....	18
Summary and Recommendations.....	20

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. The AFAP appreciates the opportunity to provide input into the Senate Standing Committee inquiry into the current state of Australia's general aviation industry.

Introduction

3. The General Aviation (GA) sector of the Australian aviation industry is as vast and diverse in its service provision types as its geographic footprint is upon Australia. Our nation's geographically dispersed population means that aviation contributes a greater role to national connectivity than when compared to many other nations. Given the remote nature of some Australian communities, and their relatively small populations and economies, provision of large scale air transport is not commercially viable for many of these locations. Thus, GA can rightfully be viewed as an integral transport infrastructure link between these remote and regional communities, and the remainder of the country.
4. GA also provides many other varied and important service provision roles to Australian society, including emergency rescue and aeromedical services, fire spotting and water bombing, and search and rescue. Other services provided by GA include such things as scenic flights, community service flights, personnel transfer to ships or offshore petroleum platforms, aerial survey work, and agriculture sector based airwork, to name just a few.
5. Much of the training of aviation personnel has traditionally been conducted through the GA sector of the aviation industry. Furthermore, GA often provides the initial step on the career path ladder for many aviation careers. Specifically for pilots, the AFAP is aware that this step is not only important but also significantly valued. From time to time, many airline pilots can be caught reminiscing about their GA flying days as some of the best flying of their aviation careers, providing them with key foundational professional experience. Many pilots choose to remain in GA because they find it uniquely rewarding.
6. For all these reasons and more, Australian GA needs to survive and prosper for the greater good of Australia and to ensure that we maintain our remote and regional communities, and connectivity with and to them. Additionally though, the AFAP also remains a staunch safety advocate and reminds this committee for the need to not undermine or allow aviation safety to become degraded due to pandering to emotive feedback to this inquiry.
7. The AFAP welcomes the Senate Committee inquiry into the current state of Australia's general aviation industry and the opportunity to contribute to it.

Accurately viewing the problems of General Aviation and Aviation Agencies

8. The AFAP understands that much of the basis for the establishment of this inquiry has grown from pressures and challenges upon the GA sector which, rightly or wrongly, are sometimes attributed to CASA's aviation safety frameworks, to the manner in which CASA functions and to a lesser degree, the work of other relevant Government aviation agencies. The AFAP agrees that there are significant challenges upon the GA sector, and agrees that there is room for improvement in the work of our aviation agencies, which can and should lead to an easing of pressure upon GA. However, the AFAP also believes that it is not fair to entirely ascribe all the challenges and pressures upon GA to the actions of CASA and the regulatory reform process alone.
9. GA has been in decline for a number of years and many will readily cite statistics that note this decline is significant from 2008. The use of 2008 as a point in time is a convenient way to skew viewpoints because this was the peak of positive economic influence on GA activities from the then resources sector boom. Thus, we caution the use of out of context and edited statistics and suggest that it is necessary that a wider view includes the period prior to that influenced by the resources sector boom. In fact, the AFAP suggest that the 2008 report from the RRAT Committee inquiry: "Administration of the Civil Aviation Safety Authority (CASA) and related matters", remains a useful resource for this committee and it illustrates that many issues are long standing and that the post 2008 remedies haven't actually achieved the outcome that was intended and hoped for.
10. Economic cycles are always felt acutely by the aviation industry and the small scale nature of many GA organisations mean that these organisations are particularly sensitive to the pressures and rewards of the boom and bust economic cycle. However, so-called "*affordable safety*" is a risky and dangerous vision that can lead to dire implications in the real operational environment. Minimum and genuine safety standards are extremely important and if organisations and individuals cannot afford to operate safely, and to reasonable standards, then the AFAP suggests that they should question their business acumen and ethics. Safety must remain the genuine primary concern and consideration.
11. Too often the strength of feeling for many problems in the GA sector means that suggested solutions are simply related to a need to ease the cost burden, because that is too often exactly where the pressure point is felt most. Similarly, proposed solutions to problems of over regulation are too often simplistic and limited to proposals that centre on less regulations. However, over regulation and unnecessary cost impost are both actually symptoms of the same broken and fractured regulatory system and the AFAP believes that these problems should instead be viewed as symptom-problems i.e. they are problems but they are also symptoms of deeper systemic problems too. For this reason, we should renew our focus to addressing these real underlying problems. Simplistic remedies that don't actually address the underlying problems increase the likelihood of unintended negative consequences.
12. One of the most consistent comments made by a wide array of aviation stakeholders about CASA is that they are inconsistent. This points to systemic and structural process problems.

13. CASA has internal issues, can operate with internal silos and has an organisational cultural reform process underway which is incomplete and has somewhat stagnated. There are also a number of examples of quality stakeholder consultation contributions being ignored and disregarded by CASA. These matters necessarily transpire into outcomes that have similar characteristics to CASA. CASA is not the sole aviation agency with these problems but given CASA is one of the most influential of aviation agencies, it has rightfully become a significant focus of GA, this inquiry and our submission.
14. There is significant reform required but GA sector organisations are simply under-resourced, ill equipped, and without means to achieve and influence the necessary reform required alone. This is evidenced by the high degree of consistency between issues raised to this inquiry and with those raised to the 2008 inquiry.
15. Holistic reform of CASA and regulatory reform processes cannot occur without government help. Government does provide some proactive assistance with an aim to better guide CASA by way of provision of Ministerial Statements of Expectation and guidance to the Board. However, these are too weak to ever influence a change necessary to remedy how the development and promulgation of standards are performed by CASA. Similarly to the effectiveness of the 2008 recommendations, the 2019 amendment to the Civil Aviation Act (1988) ("the Act") remains incomplete and is insufficient to remedy the heart of the problems with aviation regulatory reform processes and that of CASA.
16. The AFAP posits that that amendment to the Act was predominantly merely focused on remedying the symptom-problems rather than addressing the underlying issues. The AFAP proposes that a further accompanying amendment is needed to address the underlying problems, which we will articulate in this submission.

About this submission

17. There are many challenges faced by the GA sector of the aviation industry. Many are nuanced and technical in scope, which practically puts them beyond the reasonable scope of high level government attention. Instead of including a comprehensive list of necessary reform areas for GA, the aviation industry and related government agencies, the AFAP has chosen to address high level issues and make recommendations through this submission that are rightfully the consideration of government.
18. This submission focuses on the work, functions, effectiveness and culture of CASA and the influence of these upon the GA sector. Furthermore, the AFAP posits that a simple but outcomes-focused amendment to the Civil Aviation Act would address many ongoing flaws and issues felt by the aviation industry, including the GA sector. The AFAP also draws the attention of the Committee and the industry to matters related to CASA's governance and accountability.
19. This submission provides a vision for reform and recommendations to reach that vision.
20. The work and functions of other aviation related government agencies will likely form the focus of a subsequent submission to this inquiry by the AFAP.

The need for genuine outcomes-based regulation

21. It is the view of the AFAP that all aviation stakeholders, including the general public, would benefit from an amendment to the Act that requires CASA to conduct their own processes and regulatory reform functions in a manner that involves specific considerations and focus for coordinating these with regard to the aspects of the system that any standards reforms would interact with.
22. Real world activities don't occur in an isolated or detached theoretical bubble. For this reason, it is imperative that changes and reforms to aviation standards must also truly have an outcomes-based focus and not be developed in internal CASA silos for unworkable theoretical outcomes. The AFAP posits that the way to practically achieve this is to have systems-based considerations embedded into the processes of CASA's regulatory development work. The Act insufficiently addresses this and in fact has systems-approach inconsistencies.
23. The Act does not specifically require CASA to perform its regulatory development and implementation functions in a manner that considers civil aviation safety as a system. Nor does the Act require CASA to conduct its own internal functions in a coordinated or systemic manner. The Act does, however, provide a specific requirement for CASA to:

“promote the development and improvement of the system” and conduct “regular reviews of the system of civil aviation safety”. (s 9).

24. It is the view of the AFAP that the promotion of the system and the review of the system do not constitute a requirement to develop and implement regulations with specific consideration of aviation safety as a system-of-safety. Moreover, we believe that the absence of this core requirement means there is insufficient focus or accountability for coordinating reforms with industry to avoid undue burden and unnecessary cost imposts originating from a diminished coordinated regulatory reform process. That is, we identify this as the underlying problem to the previously mentioned symptom-problems.
25. It is the position of the AFAP that reviewing and promoting an existing system are somewhat secondary functions to that of developing and implementing aviation safety standards, for which the promotion and review must effectively be founded upon. We strongly believe that the development and implementation of reforms should necessarily occur in a systemic manner too.
26. Requiring CASA to consider reforms and the development and promulgation of standards in a systemic manner necessarily causes a focus on how proposed changes would function in a real world environment. Given the nature of the frustrations already expressed in the feedback by many aviation stakeholders to this inquiry, we hope that our proposal can be genuinely considered for adoption by all.

Amendment to the Civil Aviation Act

27. Section 9A of the Act sets out the performance and function priorities that CASA must regard and consider, which necessarily 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 is actually a more fundamental requirement.

28. Whilst the AFAP considers the 2019 amendment to be a positive step to address some of the shortfalls and issues felt 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."

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.

Section 9A - Performance of functions

- (1) In exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration.
- (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:
 - (a) the effects of the operation and use of aircraft; and
 - (b) the effects associated with the operation and use of aircraft.
- (3) Subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9(1)(c), CASA must:
 - (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.

Thoroughness and coordination – the positive links between safety and efficiency

29. For almost all organisations, a lack of thoroughness and coordination can negatively affect both safety and cost efficiencies because of the exacerbation of wastage and oversights. The AFAP

believes that an opportunity to better enhance both the safety and the financial efficiency of the aviation industry was missed when the Civil Aviation Act was amended in 2019. **Too often cost and safety are paired off as opposing challengers in regulatory reform processes and outcomes.**

30. The AFAP pursues a modern approach to these pair of important reform and safety concerns by recognising that both are actually supported and improved upon by a focus of bettering thoroughness and coordination. We believe that an inclusion in the Act of a requirement to consider civil aviation safety as a system will lock in greater thoroughness and coordination, which will in turn unlock greater cost efficiencies and safety risk mitigation for all aviation stakeholders.
31. The AFAP envisages when CASA performs its functions with a more thorough and coordinated approach, unnecessary cost impacts upon individuals, businesses and other aviation stakeholders would more readily be avoided, both for internal and external stakeholders to CASA.
32. Given that the GA sector is very sensitive to both the effects of the economic cycle, and that of regulatory reform, any genuine reform that can improve the coordination and thoroughness of CASA and its functions, will have a significant influence upon GA and should not be easily disregarded. In fact, the AFAP believes that an adoption of a vision to improve coordination and thoroughness should attract serious consideration for other aviation organisations so to improve their own internal safety and efficiency performances.

The current state of systems and outcomes based goals

33. Aviation is a complex and dynamic safety sensitive industry where no one party or individual can maintain a watch over all of its interrelated parts. The safety of this system is reliant upon the parts of the system competently supporting each other in a coordinated and effective manner. This is sometimes referred to as a systems-approach to safety with safety defences-in-depth. This is an outcomes-based focus.
34. Given that the Act does not require CASA to conduct its own internal functions in a coordinated or systemic manner, why should we expect that the output of CASA's work will result in well coordinated outcomes for the aviation safety system and industry either? Currently, this insufficient focus on coordinating reforms well with the real world environment can and has led to disjointed standards promulgation. This case study helps to highlight the outcome of a loosely directed standards development framework.

Case Study Example: Community Service Flight Standards

A current hot topic example of a lack of systems-based consideration in standards development is that of Community Service Flight (CSF) standards.

A 2017 ATSB investigation found that the CSF sector of general aviation had an unacceptably heightened risk profile compared to how it was regulated, and that ongoing issues existed regarding a lack of systems and support from organisations in this sector (such as Angel Flight) to their operating pilots. I.e. the investigation found systemic, human factors, and organisational risk issues to address.

CASA acknowledged these findings and progressed changes to the CSF standards. However, CASA provided apple solutions for oranges problems. That is, CASA provided increased minimum standards for individual pilots and for aircraft maintenance, whilst at the same time failing to address the core and identified issues which are systemic and organisational in nature. These remain largely unmitigated risks.

The CSF sector, and other aviation stakeholders, have remained opposed to the changes introduced by CASA. Although, this is without identifying the nuanced remedy that we propose.

35. There are other examples of disjointed and incomplete standards promulgation by CASA. The introduction of new flight crew licensing standards (Part 61 of the Civil Aviation Safety Regulations) is unfortunately a strong example of this. Not long after Part 61 was introduced, CASA had to introduce many other exemptions and “patches” in order to assert that particular square peg into the round hole awaiting it. The issues and problems related to Part 61 still linger more than half a decade after it was introduced. Surely this provides an example where the reforms don’t fit the system of aviation in which they were intended to fit: these rules have been noted by many aviation stakeholders to be exhaustive, sometimes unworkable, cost negative, and in many cases, they don’t create any discernible change to aviation risk mitigations when compared to the previous ruleset for this area. All of these issues have been raised by the industry to CASA during consultation in the regulatory development period, but have been either ignored or overruled; this is of great concern to the AFAP.

Red-Tape or Genuine Safety Reforms?

36. The actual process of regulatory reform can often be the wave that rocks the boat of safety assurance due to the manner of the reforms development and implementation creating disconnects, deficient system interactions and reduced levels of coordination in the system.
37. Undue “red tape” from regulations is something to which the AFAP agrees is a worthy cause for concern and avoidance due to the effect in causing unnatural disconnects in the system with detrimental effects upon both safety and the financial efficiency of the aviation industry.
38. However, the AFAP also strongly believes that it is important to make the distinction between unnecessary red tape and the necessary introduction of changes to the system of aviation safety. This distinction can be the most contentious area of reform and therefore, should not be ignored when deliberating on what, if any, reforms are introduced. In order to aid comprehension of our proposal, we provide the following example scenarios. We believe that these illustrate that our proposed amendment to the Act will enhance determinations for what are genuine regulatory reforms and what are predominantly unnecessary imposts.

Example scenarios of the AFAP proposed amendment at work

Scenario 1 - Inappropriate regulation is proposed

In this scenario, regulation has been drafted and developed by CASA which will be too onerous for the risks associated with that particular sector of the industry. There is insufficient data to

support the change along with no real basis of established international standards that can be relied upon either. It will also create unnecessary cost imposts too. Many stakeholders are concerned and alarmed.

Under the current arrangement, an aviation stakeholder can utilise paragraphs 9A (3)(a)&(b) to support their argument that the proposed regulations are inappropriate on cost and risk based grounds. However, CASA staff are still pushing ahead with the scenario 1 proposal. Obfuscation and hollow consultation replies are being provided in response to consultation feedback related to the inappropriate regulations.

If the AFAP proposed addition of paragraph s9A (3)(c) were also available, there would be a further legislated basis for the concerned stakeholders to utilise in articulating that the Scenario 1 proposal didn't fit the system in which it is intended to function. This would help the stakeholders to focus their feedback on the reasons why the proposal is not appropriate rather than to remain overly fixated on the argument of economic impact to their operations alone. This would ultimately help to better inform the reform process of where it has erred too.

In this scenario, with a systems-based included in the Act, it would become more difficult for CASA to continue to promulgate the inappropriate regulations or standards and if CASA still proceeded with doing so, it would be easier for aviation stakeholders to mount an argument for change, repeal or accountability thereafter.

Scenario 2 - Appropriate regulation is proposed

In this scenario, regulation has been developed by CASA which is based on sound principles, addresses genuine safety reform initiatives and comfortably aligns with international standards (such as in the ICAO SARPs) - yet because there are some likely cost based contributions to be absorbed by some aviation organisations, there is an inappropriate opposing argument being mounted, based upon paragraph s9A (3)(a) (i.e. cost considerations). This argument is actually undermining the priority of paragraph s9A (1) (safety being the priority consideration) and the sound work of CASA.

With this scenario, and under the current arrangement, some aviation stakeholders are utilising emotive media means to sledge the sound but technically nuanced position proposed by CASA. Furthermore, some are also mounting some pressure on CASA through political connections.

In this scenario, CASA is trying to support its proposal on the basis of paragraphs s9A (3)(a)&(b). However, the pressure is mounting and without a real focus to articulate what "safety as the highest priority" genuinely means, the appropriate safety regulations are at risk of being watered-down, undermined or prevented altogether.

However, if the AFAP proposed addition of paragraph s9A (3)(c) were also available, there would be a further legislative based additional mechanism to articulate that the Scenario 2 proposal is

necessary, does fit the system in which it is intended to function and therefore, should be promulgated.

Articulation of safety as the priority

With a systems-based consideration requirement amended into the Act, safety as the primary consideration becomes articulated beyond abstract philosophical mission type statements. The examples of Scenario 1 and 2 illustrate that a systems-based consideration inclusion to the Act is unbiased toward or against costs. Yet, whilst this proposal is unbiased on cost considerations, it does enhance overall safety and therefore it helps to facilitate the primary safety intent of the Act and for CASA.

Governance and Accountability of CASA - General Philosophy

39. Section 9 of the Act provides the Civil Aviation Safety Authority (CASA) with the responsibility for establishing appropriate standards for the civil aviation sector. These standards are made in many forms but largely can be referred to as delegated legislation. Section 9A further articulates the considerations CASA must take into account when developing and promulgating delegated legislation.
40. The AFAP acknowledges the necessity for delegated legislation and believes a positive benefit is the provision of a means for Commonwealth Government agencies to develop timely, targeted and appropriate regulation for the sector which they have responsibility for regulating. However, the AFAP also acknowledges that this arrangement exposes a risk of a lack of oversight when delegated legislation is the utilised alternative to parliamentary originated legislation. We believe that the work of Government agencies must remain as accountable to the community as would otherwise occur through normal parliamentary oversight mechanisms.
41. An unfortunate symptom of this reduction in governance and accountability of the work of Government agencies is that inappropriate regulation and unnecessary “red tape” can be created and enacted without sufficient recourse. This is often a complaint by aviation stakeholders toward CASA’s regulatory development work, which in turn leads to sector based calls for a review of the whole Civil Aviation Act. Whilst the AFAP agrees with those sentiments in principle, we posit that such calls for a complete review of the Act are more indicative of the strength of feeling to poor standards development than they are a realistic and targeted solution to the issue. In fact, we believe that a whole Act review is likely to create significant unintended consequences instead of solving delegated legislation issues.
42. The AFAP believes that the advantages of delegated legislation need not be lost due to any disadvantages and risks from diminished parliamentary oversight through delegated legislation. The necessary balance can and must be restored by increasing the effectiveness of alternative mechanisms of oversight and accountability to supplement any occurrence of reduced oversight and erroneous standards development.
43. The AFAP envisages that this can occur through two complimentary paths. We believe that enhancements to Freedom of Information (FOI) mechanisms are necessary to allow greater

community and industry-based oversight of the work of Government agencies, in lieu of full parliamentary oversight (a reactive means of governance). Furthermore, legislation enacting the development and promulgation of delegated legislation must be enhanced so that there is sufficient provision of more targeted performance and functions expectation than currently occurs (a proactive means). We have discussed our proposal for proactive means, we offer some proposals to enhance the reactive means too.

Governance and Accountability of CASA - Oversight Through Freedom of Information

44. The AFAP believes that the appropriateness and adequacy of the existing framework for exempting delegated legislation is insufficient without a viable FOI mechanism to support the community and industry based experts to hold relevant Government agencies to account. This is especially so when and where parliamentary oversight is insufficient to do so alone, such as in the case of delegated legislation and decision outcomes based upon delegated legislation.
45. In certain highly technical fields, such as aviation, it isn't possible or appropriate for those without specific expertise to develop the necessary technical regulations and standards. However, it is also equally inappropriate for there to be insufficient oversight of the work of our public servants. The work and function of Government agencies, such as CASA, must be accessible to an alternative supplementary oversight mechanism when delegated legislation mechanisms are used.
46. The Act tasks and permits CASA to develop and promulgate appropriate safety standards for the civil aviation sector. The Act also requires CASA to consult with stakeholders when performing these functions. In spite of these requirements and functions, CASA is still able to maintain a high degree of obfuscation and avoidance of accountability from parliamentary oversight, aviation stakeholders and the general public. More concerning though, is that there are examples where obfuscation is openly based on reasons of self-interest. In citing reasons for not disclosing requested documents, CASA FOI Officers have informed the AFAP that (in part) their decision is because:

"...disclosure of the information would reduce the public's confidence in CASA and would also have an adverse effect on the receipt and quality of information that CASA needs to perform its aviation safety role."

[Extract from a decision letter on an FOI request for the 2017 Melbourne Aeronautical Study Draft Version 0.3]

47. The AFAP considers this a significantly self-serving position, not in the public's interest and contrary to both the intent of FOI legislation and to that of CASA's priorities, as stated in the Act. Section 9A of the Act outlines the performance of functions of CASA and the highest priority is for aviation safety, certainly not reputational self-interest. S9A (1) states:

"In exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration."

48. The above FOI decision is not the only example of censorship that limits community-based oversight of CASA safety decisions. Another example relates to documents related to approvals and conflict of interest declarations for a CASA Officer assigned to oversight the operations of the now defunct airline, Jetgo Australia. An organisation that collapsed under the weight of its own incompetence and with a history of more than two years of trading while insolvent. The AFAP received allegations that the particular CASA Officer had a conflict of interest with an owner of Jetgo Australia, and that this was negatively affecting the safety oversight of the airline's operations. With a focus on responsibility for safety, we pursued many avenues including an FOI request to access the annual conflict of interest declarations made by that officer. The documents were so highly redacted that even the internal process form numbers and titles were censored.
49. Given that the parliament cannot perform an oversight function on all technical regulations developed through delegated legislation mechanisms, nor the decisions based on these standards, the AFAP believes it absolutely essential that FOI mechanisms are sufficiently robust to allow genuine industry sector and community-based oversight and accountability to occur. This must occur to supplement the reduced parliamentary oversight that occurs as a symptom of achieving the delegated legislation advantages.

Governance and Accountability of CASA - Industry Complaints Commissioner

50. A key means for aviation stakeholders to successfully appeal and establish a path towards restitution about CASA actions is undermined by the organisational structure within which the CASA office of Industry Complaints Commissioner (ICC) sits.
51. Currently the office of ICC reports directly to the CASA Board. Extracts from the CASA website state that the ICC "does not sit within CASA's organisational structure to ensure independence and impartiality". Furthermore, a stated aim of the ICC is to provide aviation stakeholders and the public a "way to make a complaint about the decisions, administrative actions or services provided by CASA staff, delegates or authorised persons to determine if they are wrong, unjust, unlawful, discriminatory or unfair; and the behaviour of CASA staff."
52. That ICC aim makes sense in theory however in practice, the organisational structure that is meant "to ensure independence and impartiality" actually has flaws within it that allow for a conflict of interest to occur, bringing into question the legitimacy of any such assurance. This possibility is most acute when the CASA Board, or the members thereof, are involved in or subjects of complaints that are the focus of ICC review. This is because the ICC does not consider "complaints about or concerning the conduct of a member of the Board". Thus, the aims of the ICC are finite and are limited to only part of CASA's conduct and decisions, not all of it.
53. The Board need not be directly involved in matters for the conflict to be present. The ultimate decision making responsibility within CASA sits with the office of Chief Executive Officer (CEO)/Director of Aviation Safety (DAS). Yet the office of DAS is beyond the reach of ICC review because the CASA CEO/DAS is currently both a staff member and a board member and thus, the DAS effectively enjoys both immunity from ICC review and an ability to influence the Board's acceptance of, or otherwise, of outcomes of ICC reviews. Given that the ICC reports to the Board,

in which CASA's most senior staff member sits, these embedded organisation structural flaws undermine a process that is meant "to ensure independence and impartiality" but which instead allow for a means for CASA's most senior staff member to actively be a receiver and decision maker of ICC outcomes.

54. Additionally, the current organisational structural arrangement for the office of ICC may preclude the office from engaging in certain reviews where senior CASA staff are involved. Thus, a complainant can be forbidden from enjoying "an easy, accessible and effective way to make a complaint" in some circumstances. This is of course due to no fault of the complainant but is one resulting from the current organisational structural arrangements for the office of ICC.
55. Given that the CASA CEO/DAS is ultimately responsible for all decision outcomes from CASA, the circumstances where there can be a guaranteed assurance of independence and impartiality is questionable. The current structure means the DAS is both ultimately responsible for the decisions which can become the subject of ICC review and, a responsible party for where the complaints review is subsequently reported to.
56. The AFAP would like to draw the Committee's attention to the fact that a previous generation of the RRAT committee has considered the establishment of a more independent complaints mechanism. An extract from the September 2008 report from the Standing Committee on RRAT: Administration of the Civil Aviation Safety Authority (CASA) and related matters ("the 2008 Committee report"), stated that:

"...the committee is of the view that the suggestion that Australia create such a statutorily independent office has some merit."

57. The AFAP recommends that the ICC should be established as a separate statutory office to CASA, with powers to investigate and report to an authority, independent of CASA and responsible to the Parliament.

Governance and Accountability of CASA - CASA Board

58. According to the 2008 Committee report, the CASA Board was re-established to provide a mechanism to improve the governance of CASA. That report states:

"The committee considers that many of the complaints levelled at CASA throughout the course of this inquiry suggest that it is timely for the government to be considering avenues for improving CASA's governance structures. The committee makes particular note of calls for the reintroduction of a board structure within CASA and concurs with suggestions that a board would enhance CASA's governance and accountability. The board should reflect a diverse range of experience and knowledge relevant to the management of Australia's aviation safety regulator."

59. The AFAP suggests that many of the complaints and frustrations submitted to the current inquiry are remarkable by their similarity to those referred to in the 2008 Committee report, which leads

to the logical question: was the reestablishment of a CASA Board sufficient in ameliorating the issues of governance that it was intended to remedy?

60. It is also worthy to consider if the composition of the Board has been of a nature suitable to ensure that the changes the committee expected, actually occurred - we suggest not. Whilst it is likely that the many individuals that have served on the Board, have done so in a professional manner, we suggest that there are key perspectives that likely have not been included in Board deliberations and decisions and therefore we raise the matter of Board composition as a consideration for the Committee.
61. The AFAP notes that the reintroduction of the Board was to drive reforms in CASA and aviation to achieve outcomes in the sector. Professional pilots are the group that most often deals with the final results of decisions and processes in the aviation safety system. Collectively as representatives of professional pilots, we are uniquely placed to collate and observe the nature of the reoccurring issues. This helps us form our views to ascertain what are the consistent and reoccurring matters, which in turn allows us to better identify proactive reform initiatives to rectify the reoccurring issues and safety system pressure points. We suggest that the committee should consider professional pilot representation to the CASA Board to help guide and achieve genuine outcomes based reforms.

Composition of the Aviation Safety Advisory Panel

62. The Aviation Safety Advisory Panel (ASAP) is the primary advisory body through which CASA directs its engagement with industry and seeks input on current and future regulatory and associated policy approaches. The ASAP has never had a representative on it from a member based association.
63. Professional pilots are a unique group of aviation stakeholders in that the result of nearly all safety decisions flow through the aviation system to us. We, as an association of professional pilot representatives, are uniquely able to observe and collate where consistencies and deficiencies collect in the aviation system. Other front line professionals may also be able to do the same however professional pilots, more so than others, receive the outcomes of these other groups, and are at the final point of control in the aviation decision making process. The AFAP is the key representative organisation for GA pilots and would be best placed to contribute to the ASAP.
64. A consultative panel in the medical sector for example, similar in purpose to that of the ASAP, would not exclude doctors. Yet in aviation, the voice of professional pilots is not welcomed by CASA in the ASAP.

CASA Expertise, Resources and a Diminished Inspectorate

65. The AFAP has many working relationships with CASA staff. Whilst some CASA staff are represented by the AFAP on Industrial Relations matters, our main touch point with CASA is through the main focus of CASA's work. The AFAP Safety and Technical team are regularly involved in industry standards matters and as a result, have built up many working relationships with CASA staff across many areas of the regulator's structure. There is a high level of trust and

engagement to many of these interpersonal relationships. This places us in a unique position to gather and observe many traits and issues related to the functionality and culture of CASA as an organisation, and to understand it related to the needs of the industry.

66. There are many claims made by aviation stakeholders that the expertise of the CASA Inspectorate has been diminishing over time and the AFAP has witnessed the outcomes of many reform initiatives that support the merit of these claims. The information provided to the AFAP by past and present CASA staff aligns with this broad based belief in the wider aviation industry too. This truth concerns the AFAP for a number of reasons.
67. Aviation safety relies on a well resourced regulator with practical expertise and knowledge of the industry. It is the view of the AFAP that CASA has and is allowing the overall expertise level of the Inspectorate staff to diminish and that this is negatively affecting the quality and timeliness of regulation provided to the aviation industry, including to the GA sector. As mentioned earlier, the GA sector is particularly susceptible to change and cost imposts. Small delays and compounding confusion as to how standards and regulations apply to the real world can cause the delay or the cancellation of some service work that would otherwise be a source of income for GA organisations.
68. CASA staff inform us that unnecessary regulatory responses could be avoided if there were improvements to the number of inspectorate staff, improvements to the internal training provided, and improvements to the policy structure guiding the staff.
69. The AFAP openly challenges the industry and this inquiry to contemplate if these issues are contributing to a desire by CASA to increase regulations (overregulate) as a means to achieve safety outcomes when expertise and resources have diminished. I.e. an increase to the quantity and prescriptiveness of regulations when there is less ability by the regulator to assess and oversee the work and outcomes of organisations in the operational safety environment.
70. We are most concerned about the negative outcome this can have on aviation safety.

Case Study Example: CASA Oversight of Rossair

Rossair was a GA organisation based in Adelaide South Australia. In 2017, 3 pilots tragically lost their lives in a fatal aircraft accident on a flight conducted by Rossair.

The ATSB Aviation Occurrence Investigation (AO-2017-057) found that there were a number of differing factors that contributed to the fatal accident of the Rossair Cessna 441 aircraft. Some of the factors associated with the accident were a lack of formal CASA oversight, the extensive period since the last formal oversight and a lack of systemic assessment of the organisation's operations. The report states:

"In the 5 years leading up to the accident, the Civil Aviation Safety Authority had conducted numerous regulatory service tasks for the air transport operator and had regular communication with the operator's chief pilots and other personnel. However, it had not conducted a systemic or detailed audit during that period, and its focus on a largely informal and often undocumented

approach to oversight increased the risk that organisational or systemic issues associated with the operator would not be effectively identified and addressed.”

Whilst there was some regulatory oversight and the report did not specifically mention the quantity and quality of CASA’s inspectorate resources, the ATSB did note about CASA that:

“...its ability to fully understand the effectiveness or suitability of the operator’s processes based on this interaction was limited.”

71. The implications of CASA not performing its functions and work adequately can contribute to tragic outcomes. This is of course contrary to the primary function of CASA.
72. The AFAP understands that there is a disconnect between those raising problems within CASA and those in CASA with the ability to enact timely reform for the betterment of aviation safety. A lack of genuine consultative management style within the regulator is something that is unlikely going to be rectified without external influences contributing to the change.
73. The AFAP would like to see an increased influence on CASA by government so to improve the pace and quality of internal CASA reform initiatives. Many CASA staff inform us of their frustrations at the slow and somewhat disingenuous nature of the current reform process to achieve functionable outcomes to the CASA culture, structure, training (comprehension of the intent of regulations and standards), and policies. Many good and well meaning CASA staff give up on hope when they learn that positive change is too elusive. The risk here is that this will lead to staff attrition and the consequence of a further deterioration of expertise in the CASA Inspectorate.

Comprehension of Regulations and Standards – Complexity and Useability

74. The regulation of aviation safety relies on many facets working sufficiently harmoniously together in order to achieve efficient and meaningful outcomes. The expertise and quantity of regulatory staff is a very important factor in achieving such outcomes but so too is the useability and applicability of the regulations and standards. These are in fact the core to the regulatory processes and outcomes.
75. Difficulties with comprehension of the regulations and standards has been identified as a particular problem by GA stakeholders, the wider industry, and indeed by many of CASA’s own staff as well. This has been communicated directly to the AFAP by CASA Inspectorate officers, including that comprehension difficulties have routinely caused delays to providing outcomes to the industry.
76. These complaints of regulatory complexity are not new and aren’t necessarily related simply to the word count of regulations. The AFAP has observed that there is effectively a repetitive cycle to the issue of complexity and useability where no real resolution is in reach. The cycle includes calls from industry stakeholders for an adoption of other (more comprehensible) regulatory styles, such as from the USA (FAA) or New Zealand’s (CAA) regulatory style. Typical CASA responses provided include that there is work occurring on regulatory reform, acknowledgement of the issues, but no real comprehensive pivot towards genuine outcomes regulation and useability.

When reforms are promulgated, the basis of industry frustrations and the comprehension issues remain. Then the cycle continues, which indicates to the AFAP that intervention from government is required to break the cycle.

77. The AFAP stresses the importance of maintaining the outcomes of safety standards but is open-minded to the means to achieve and maintain the strong safety outcomes that Australian aviation has a reputation for. The AFAP is much less open-minded to ideas to maintain the status quo. This is because we believe the current style and method of regulating is not functional or genuinely outcomes focused. There is a hybrid nature to the current regulations format and style that stymies the outcomes focus and therefore the ease of comprehension. Effectively, we do not have outcomes-based regulations, rather we have a subjective-prescription form of regulation where regulations are firm but the interpretation of them varies for a multitude of reasons.
78. ICAO provides Standards and Recommended Practices (SARPs) and then to articulate the SARPs and provide a means of comprehension, secondary documents are provided to detail the intent of each particular SARP. This pairing of documents effectively takes only two steps to reach an outcomes focus for users. In contrast, CASA only occasionally reaches an outcomes focus, by providing the intent of promulgated standards, and if they do it is after multiple steps, not just two. In fact, step two in the Australian context actually involves an increase in complexity and confusion rather than a reduction.
79. The lead documents we refer to are the Parts of the Civil Aviation Safety Regulations (CASRs), whilst step two in the provision of standards in the Australian context are the Manual of Standards (MOS) associated with each CASR Part. After these two steps, there is sometimes associated advisory publications, which can come in multiple formats. To add to the complexity, there are also many Exemption Instruments promulgated, and other sideline-workarounds, to the practical issues of the industry which can be necessary to address the incomplete or disjointed standards and regulations. This structure should provide a strong indication that we do not have genuine outcomes-based regulations in the practical context. Moreover, we have a priority focus on providing prescription over a priority of providing comprehension for the intent of standards and regulations. This is the nature of the problem, which can be described as a hybrid regulatory methodology that is not compatible with itself let alone with the needs of aviation stakeholders. This hybrid approach is most likely a symptom of two differing schools of thought within CASA itself. Which further indicates that there is a lack of clarity of vision.
80. The current structure of the regulatory documents increases the ability of misguided CASA public servants to be self-servants. The subordinate MOSs of the CASRs are afforded less parliamentary scrutiny than the Parts. Inclusion of the weight of prescriptive regulation in each MOS, instead of the Part, allows CASA tighter control of the specificity of aviation regulation but also less scrutiny and external accountability.
81. The AFAP acknowledges that CASA is developing plain English guides to the recently promulgated CASRs but these will take many years to be promulgated. Moreover, these are being provided in an attempt to aid comprehension of the complexity of MOS content, not replace it. They are not a reform of the structure of standards development, just an addition to it.

Summary and Recommendations

82. Regulation of aviation safety is a necessary task and the AFAP cautions the making of any recommendations by this committee which are predominantly focused on merely superficially appeasing the many frustrations raised through submissions to this inquiry. We strongly suggest that the majority of frustrations and issues raised as problems for the GA sector and with CASA are more accurately symptom-problems of more structural and systemic issues. For this reason, we strongly recommend that resolution is not through quick-fix solutions, rather structural reform is necessary.
83. The AFAP reminds the committee, and other aviation stakeholders, that the 2008 RRAT Report identified very similar issues as to those currently being raised and we stress that the recommendations implemented post that inquiry should be considered an insufficient set of remedies.
84. The AFAP asserts that a legislative amendment is the necessary mechanism to ensure that necessary aviation and CASA improvements and reforms both occur and remain regardless of the composition of the CASA Board and executive level staff.
85. The AFAP proposes that the options available, to ensure that there is appropriate and adequate parliamentary oversight of delegated legislation, are through the creation of targeted outcomes-based expectations .
86. The AFAP thus provides specific recommendations:
- The AFAP proposes a specific amendment to s9A of the Civil Aviation Act to address the current issues associated with civil aviation focused delegated legislation and standards, and a lack of holistic and outcomes focus: **the inclusion of a consideration of a system-of safety.**
 - The AFAP proposes that the accountability and oversight of CASA requires enhancement through a **review and reform of the Board composition.** Furthermore, this should include professional pilot representation to the Board.
 - FOI provisions should be enhanced so that they can provide an effective and viable means for **community and industry sector-based oversight and accountability.**
 - The AFAP recommends that the Industry Complaints Commissioner should be established as a separate statutory office to CASA, with powers to investigate and report to an authority, independent of CASA and responsible to the Parliament.
 - The AFAP notes the many poor consultation outcomes and recommends that the Aviation Safety Advisory Panel be reformed to **include member-based association representatives,** critically a professional pilot representative.
 - The AFAP requests that the committee make specific recommendations to address the deterioration of the expertise and resources of the Inspectorate staff in CASA.
 - The AFAP recommends that the committee set up a process to reform the current structure for regulation and standard documentation with an aim to genuinely decrease the complexity so that the intent of standards is more readily comprehensible. The AFAP recommends that

this be the stated outcome expectation upon CASA by the Minister in the next version of the Ministerial Statement of Expectations upon CASA.

Australian Federation of Air Pilots

November 2020