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Rural & Regional Affairs & Transport
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To Whom It May Concern

**Senate Inquiry Rural & Regional Affairs & Transport - General Aviation
Civil Aviation Safety Authority (CASA) Conduct
BRM Aero - Aircraft Manufacturer - Submission No. 2**

I refer to the sitting of the Senate Inquiry into Rural & Regional Affairs & Transport General Aviation and respectfully ask that this document be presented to Senator Susan McDonald as the Chair and other committee members for consideration and inclusion into this inquiry. This is in addition to a submission made by myself dated 25 November 2020.

This submission is to provide further evidence that the decision made by some officers in CASA and the treatment delivered to BRM Aero, the manufacturer of the Bristell Light Sport aircraft and the Australian Importer of the Bristell, Anderson Aviation Australia would appear based on all our evidence was and is wrong. Despite incontrovertible evidence CASA refuses to lift a Safety Notice which still adversely affects the reputation of the aircraft, its value and the reputation of a highly respected aircraft manufacturer.

Further to this I would like to ask the Senate consider the example of the treatment of BRM Aero and Anderson Aviation Australia and the resultant impact of in house lawyers in organisations such as CASA and the significant potential and real negative impact on individuals and organisations in the aviation industry when trying to deal with matters that are in dispute. This is outlined further in this document.

Regards to the terms of reference for the inquiry. My evidence and experiences here points in particular to the following:

1. The legislative and regulatory framework underpinning CASA's aviation safety management functions, and the application of the Civil Aviation Act 1988 and the Civil Aviation Safety Regulations 1998 to Australia's aviation sector, is not fit for purpose in that many businesses and individuals struggle with regulatory interpretation and the financial burden of compliance.
2. The safety and economic impacts, and relative risks, of CASA's aviation safety framework currently has significant short and long term social and economic impacts as the CASA decisions on small businesses, agricultural operations and individuals

- across regional, rural and remote Australia are often either protracted, flawed and costly.
3. The processes and functions of the CASA and the efficacy of its engagement with the aviation sector, including via public consultation is essentially paying 'lip service' and has no substantive benefit to the aviation community.
 4. Much of delivering the regulations and the culture within some areas of the CASA are counterproductive to growth in the general aviation sector, particularly at the grass roots level. This culture leaving businesses and individuals suffering significant financial loss, retribution if they speak up. In a time when industry would welcome a regulator that appeared to work more with industry rather than against it.

We must reiterate that to date no other Aviation regulatory body worldwide has ever supported the position taken by CASA related to the Bristell Light Sport Aircraft despite CASA attempting to solicit support.

I must state yet again not only has this damaged the business of the Australian importer, it has commercially damaged a foreign manufacturer. This manufacturer being described by the European Aviation Safety Authority (EASA) as being of a very high standard.

Since my last submission to the Senate Inquiry BRM Aero has achieved full certification for their new 750kg B23 Bristell aircraft including Type Acceptance by CASA for the aircraft to be on the Australian Civil Aircraft Register. This is no small achievement despite CASA Sport Aircraft stating that they were of the view that BRM Aero as a manufacturer were 'willing but not capable'. There is proof of this statement.

CASA to date continues to attempt to cause harm to the BRM Aero brand and the ability for Anderson Aviation Australia to import and distribute this high quality aircraft without this 'cloud' by way of maintaining a position with a still in place Safety Notice. However the current Safety Notice bears no resemblance to the initial notice and references a new topic, one that should be adhered to by every pilot for every aircraft.

New Information

We had to seek additional technical expertise to support our claim that CASA were always wrong in the decision they made regarding the Bristell Light Sport Aircraft and BRM Aero the manufacturer to issue the aforementioned Safety Notice & Operating Limitations.

A submission sent to CASA in response to their notes attached to the Safety Notice highlighted some interesting and somewhat alarming points. This document details further supportive documentation that CASA in our view are wrong still and always has been.

CASA by their own admission stated :

'While I accept that there is no conclusive basis to presently find that BLSA do not comply with the spin recovery requirements specified in paragraph 4.5.9 of ATSM standard F2245, I am nonetheless concerned that BRM have been unable to demonstrate to CASA conclusively that each BLSA design variant does in fact comply with this requirement in a manner that is free from errors, omissions and inconsistency that have, at the very least, led to significant doubt.

To make such a statement and yet go on to issue a Safety Notice appears disproportionate to their own statement above.

If CASA acted reasonably, rather than in the unreasonable manner they have acted in the past and are acting still, CASA would have read and honestly and fairly considered the information provided to it by the manufacturer which confirmed that the Bristell Light Sport Aircraft is and always was compliant with the ASTM F2245 certification standard and it would not have issued a safety notice or imposed any operational limitations on the aircraft in the first instance. Neither would CASA have continued to stonewall and maintain the position they did for two years.

Casa Legal Representation & In House Lawyers

Over time it has become very evident that CASA exhibit again and again they have the capacity, corporate muscle and legal might to, and it appears regularly, take advantage of in house lawyers and the ability to exploit a bottomless resource that is not affordable for the average person or business in the aviation industry.

One of the issues that has become evident through this challenge with the Bristell aircraft/BRM Aero and Anderson Aviation trying to 'satisfy' CASA rests in a number of areas that are all intrinsically linked.

- CASA can stonewall and take indeterminable amounts of time to respond, to act or even to consider any information or argument provided to them.
- CASA has the advantage of controlling a dispute and determining to a great extent the outcome they choose to pursue, such as personal agendas, vendettas or simple power plays. They can exercise this control by just ignoring you or making unfounded claims that you are powerless to defend without spending considerable sums of money. Often that CASA know you cannot afford.
- CASA employees can source legal advice from in house lawyers without having to consider the monetary cost. To them they have a bottomless bucket of legal advice that they can use to their advantage on many occasions while that same access to legal advice is not available to the individual or small business, when in some cases they have taken a 'set' against you, your business or in our example, aircraft.
- In house lawyers get paid no matter the outcome of their decisions and given that their client is also their employer it appears on many occasions that CASA lawyers fail to remain impartial and act in the interest of a right and fair outcome for both CASA and the individual or business.
- CASA appear to be able to continue to 'fight', 'stonewall' and literally drag out an issue in the hope that, and it is the case often, most people or organisations simply give up. The fight being too costly both emotionally and financially for the average person or small to medium aviation business to continue to pursue or challenge, or even pursue at all.

Or CASA lawyers feel pressure to act in a certain way due to pressures from their employer or immediate superiors.

Overall it equates to a significant imbalance of power, in a lot of cases abuse of power and aviation industry participants who are denied natural justice or procedural fairness.

Of interest is the following:

Legal Services Directions 2017 made under section 55ZF of the Judiciary Act 1903

The obligation states:

Consistently with the Attorney-General's responsibility for the maintenance of proper standards in litigation, the Commonwealth and Commonwealth agencies are to behave as model litigants in the conduct of litigation.

(aa) making an early assessment of:

- (i) the Commonwealth's prospects of success in legal proceedings that may be brought against the Commonwealth; and
- (ii) the Commonwealth's potential liability in claims against the Commonwealth

There are many points in this Direction that would apply to many businesses across the industry. In paragraph 2 (f) it is clear that this is in fact done regularly in anticipation that the person or organisation challenging CASA cannot keep up the challenge because of lack of resources. This is a common occurrence.

(f) not taking advantage of a claimant who lacks the resources to litigate a legitimate claim

Given that as soon as CASA were faced with an appeal in the Federal Court of Australia they immediately withdrew the operating limitation they had imposed on the Bristell Aircraft. It could be argued that it was for the reason below. However it also proves that there was the real potential that CASA already knew that the claims made about the safety of the Bristell were in fact flawed and based on less than credible information from a less than credible flight test in Australia that was relied upon to pursue BRM Aero.

(h) not undertaking and pursuing appeals unless the Commonwealth or the agency believes that it has reasonable prospects for success or the appeal is otherwise justified in the public interest,

It is important that in house lawyers in departments such as the CASA are aware of the extent of model litigant obligations as ethical issues will often occur. Consideration should always be given to the impact not just on the individual or business but also on the CASA.

In house lawyers should always consider:

- Keeping costs and delays to a minimum. The issues should always be narrowed in a dispute. For example, if it fails to narrow the issues in dispute, raises purely technical defences or forces an applicant to prove a fact that it knows to be true.
- endeavoring to avoid, prevent or limit the scope of litigation and participating in alternative dispute resolution where appropriate;
- the expectation that a government department will deal honestly and fairly with its citizens and discharge its powers for the public good. Government has no legitimate

private interest in performing its functions and is, more often than not, larger and better resourced than private individuals or small business. It is expected that the government and its agencies to act as a "moral exemplar.

There are many papers and documents in many and varied government departments that discuss in house lawyers and the expected conduct.

What is critical to note is that CASA employees should not be allowed to avail themselves of unlimited legal resources at the expense of innocent parties and use that access to maintain a position that denies an individual or organisation the natural justice they deserve.

It is clear as the years have passed that the place for in house lawyers and how they are used to 'win' a case, or metaphorically speaking, beat an individual or business into submission is something that occurs with regularity and should stop.

There is no place for bias, vendettas, power struggles, abuse of power, imbalance of available resources that are used to crush people by an organisation such as CASA.

Many in the aviation industry would argue and would agree there is a time when heavy handed prompt regulatory action in the interest of aviation safety is necessary. However for it to be misused so that some within CASA can feel that sense of power, be able to force their view or opinion is not a reason. We are about compliance not opinions.

In our example if you don't like a particular aircraft fine that's your opinion, don't purchase one. But that does not give you the right to seek to destroy its reputation on the basis of less than credible information. Does an aircraft comply? If it does it shares the equal right to fly as the next compliant aircraft.

Industry is entitled to natural justice and procedural fairness, and the aviation industry in Australia should stand up and fight for it, now.

On that basis it could strongly be argued that CASA should have to source and pay for lawyers outside their department just like we in the industry are forced to. They should have to budget for it and should have to disclose the amount of funds expended on legal cases and the number of cases they lost, because there was not a legitimate case in the first instance.

I would propose that the Senate seek out how much money CASA has squandered out of the public purse for cases they were never going to win but chose to pursue because they do not know when to quit. Or maybe it is the case they should never have started in the first place.

It is time that the industry was protected from the egos and angry individuals that appear to seek to destroy people and businesses rather than offer the support that still some few good people in the CASA try and do on the back of their degrading reputation.

To be subjected to unfair treatment, be made to keep pursuing something you know should not be occurring distracts you from your family, it distracts you from earning your income, it distracts you from running your business, it distracts you from matters related to safety, it causes undue stress that hinders your performance, it damages your reputation, it goes on and on. All this while government employees sit back collecting their pay packet, not having to pay legal expenses, laughing at the poor individual or business that had the guts to stand up.

The harm that is done goes beyond trying to destroy a brand, crush an importer because you decide you don't like them for whatever reason. It undermines our industry. It makes us look a joke to other aviation authorities around the world. It makes people in Australia in the industry have no respect for CASA. It hinders the growth of our industry.

We need a CASA again that supports, educates and nurtures the aviation industry. Yes regulating is part of it as well, there is no argument there. But given that CASA is there to support and regulate it appears that there is a greater attempt to destroy the grass roots of our industry, which means we will require less CASA employees because there will be less aviation industry. I assimilate it to a dog chewing its own leg off.

Industry wants nothing more than to have digestible sensible regulation that is easy to understand making it easier to comply with. Industry wants to be treated fairly and honestly and with respect by CASA. Its simple! Then the mutual respect will be a by product of a respect shown to industry.

The relationship between our regulator, CASA, and the aviation industry should not be one of a combative nature as it appears today. It should be one of mutual respect, one of working together. Not one of aggression and who has the deepest legal pockets. It was once good, a long time ago, it can be again with the right people and a cultural change.

There is no place in any industry in my opinion for stand over tactics, bullying, harassment, stonewalling, conflicts of interest or plain dishonesty. We can do better, and should for the future of general aviation, for safety and for better, open relationships where education and regulation walk hand in hand with respect and the common good for aviation in Australia.

In anticipation of hope for brighter days and smoother flying ahead, I appreciate the opportunity to present this additional information to the Senate Inquiry into Rural & Regional Affairs & Transport General Aviation.

Yours Faithfully

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