



Australian Government
Civil Aviation Safety Authority

LEGAL AND REGULATORY AFFAIRS

Ref: D18/232266

26 JUN 2018

Ms Sharon Bryant
Inquiry Secretary
House of Representatives Standing Committee on Tax and Revenue
Parliament House
Canberra ACT 2600

By email: Sharon.Bryant.Reps@aph.gov.au

Dear Ms Bryant

PUBLIC HEARING – FRIDAY, 29 JUNE 2018
REGULATORY PHILOSOPHY OF THE CIVIL AVIATION SAFETY AUTHORITY (CASA)

Thank you for your message of 12 June 2018 inviting me to address the Committee on matters related to the development and implementation of CASA's *Regulatory Philosophy*. I am pleased to be able to do so and I look forward to the opportunity.

In your message of 25 June 2018, you asked for a 'very brief background to the regulatory philosophy at CASA and [my] involvement in its development'. In response, I have attached a chronological table depicting the origins and some of the more significant developments in the articulation and implementation of the *Regulatory Philosophy* since, and beginning long before, it was formally adopted by the CASA Board in 2015.

From the outset, I have been closely and directly involved in, and effectively responsible for, the enunciation, and carriage of the implementation, of CASA's *Regulatory Philosophy*, the *Regulatory Policy and Practice Initiative* within the framework of which the Philosophy was conceived, and what was then (in 2005) CASA's 'new' approach to *Enforcement Policy and Practice*, the essential features of which are reflected in the *Regulatory Philosophy* today.

I am proud of this work, and I am personally gratified by its success and the favourable recognition its outcomes have earned for CASA, in Australia and overseas. It goes without saying that none of this would have been possible without the commitment and support of CASA's Directors of Aviation Safety and, to be sure, the CASA Board.

CASA's current Chief Executive Officer and Director of Aviation Safety, Shane Carmody, has been a staunch advocate and consistent champion of the Regulatory Philosophy. He was equally supportive of my efforts in the inception of the Philosophy's foundations during his previous tenure as CASA's Deputy Chief Executive, Strategy and Support, to whom I reported as head of what was then CASA's legal services group.

I am happy to answer any questions the Committee may have, and to provide further information on any of the issues we may canvass.

Yours sincerely

Jonathan Aleck
Executive Manager,
Legal and Regulatory Affairs

Attachment: Chronological Summary – Origins and Development of CASA's
Regulatory Philosophy

ATTACHMENT
TO LETTER OF 26 JUNE 2018

INQUIRY INTO TAXPAYER ENGAGEMENT WITH THE TAX SYSTEM
PUBLIC HEARING – FRIDAY, 29 JUNE 2018

REGULATORY PHILOSOPHY OF THE CIVIL AVIATION SAFETY AUTHORITY (CASA)

JONATHAN ALECK
EXECUTIVE MANAGER, LEGAL AND REGULATORY AFFAIRS

<p>March 2005</p>	<p>CASA adopts a new approach to Enforcement—the <i>Enforcement Policy and Practice Initiative</i>.</p>
<p>November 2013</p>	<p>Then-Deputy Prime Minister and Minister for Infrastructure and Regional Development, the Hon Warren Truss MP, commissioned the <i>Aviation Safety Regulation Review</i> (ASRR) to investigate, among other things, “the outcomes and direction of the regulatory reform process being undertaken by the Civil Aviation Safety Authority (CASA)”.</p>
<p>February 2014</p>	<p>The <i>Regulatory Policy and Practice Initiative</i> is described in CASA’s submission to the ASRR.</p> <p>“ . . . [I]n much the same way responsible members of the industry and the wider civil aviation community (including CASA) are working to see the enduring inculcation of a positive commitment to safety as an integral element of every aspect of aviation-related operations and activities, rather than a peripheral or subsidiary feature of the operational environment, CASA is working to see the enduring inculcation of a positive commitment to fair, consistent, effective, appropriate and informed decision-making amongst our managers and staff, as an integral element of the regulatory environment within which we operate, rather than a legal ‘add-on’ or afterthought.</p> <p>“To this end, the same commitment and considerations that led to the establishment of what constitutes CASA’s <i>enforcement</i> policy and practice function, for which the Legal Services Division is currently responsible, is being reanimated in the Office of the Director, under the supervision of the Associate Director of Aviation Safety, to better ensure the implementation of a more broadly encompassing CASA-wide approach to <i>regulatory</i> policy and practice.”</p>
<p>February 2014</p>	<p>The <i>Regulatory Policy and Practice Initiative</i> is announced to CASA management and staff.</p>
<p>May 2014</p>	<p>Two of the ASRR’s 37 recommendations expressly call up and relate to a need for CASA to change its Regulatory Philosophy</p> <p>“The Panel recommends that:</p> <ol style="list-style-type: none"> 14. The Civil Aviation Safety Authority changes its regulatory philosophy and, together with industry, builds an effective collaborative relationship on a foundation of mutual understanding and respect. 17. The Civil Aviation Safety Authority publishes and demonstrates the philosophy of ‘just culture’ whereby individuals involved in a reportable event are not punished for actions, omissions or decisions taken by them that are commensurate with their experience and training. However, actions of gross negligence, wilful violations and destructive acts should not be tolerated.”

<p>December 2014</p>	<p>In its Response to the ASRR Report, the Government agreed with Recommendations 14 and 17.</p> <p>[Recommendation 14] The Government believes that CASA and industry must work closely together on regulatory reform priorities. An ongoing and meaningful dialogue between industry and the regulator is vital.</p> <p>“The Government’s new SOE for the CASA Board will require CASA to develop a clear statement of regulatory philosophy which will include meaningful industry involvement, as well as a compliance and enforcement policy informed by those developed by other Commonwealth regulators and other leading aviation regulatory authorities. These policies will be considered by the CASA Board and the CASA Director of Aviation Safety</p> <p>“CASA has confirmed that its regulatory philosophy will be reviewed in the first half of 2015 as part of CASA’s Regulatory Policy and Practice initiative and that the outcomes of the review will be considered by the CASA Board and new Director of Aviation Safety.”</p> <p>[Recommendation 17] The Government expects that CASA’s new regulatory philosophy policy, referred to in response to Recommendation 14, will specifically address this recommendation. In formulating its advice on ‘just culture’, CASA has advised that it will have regard to approaches such as those adopted by the United Kingdom and the European Union and anticipated ICAO SARP’s in this regard. . . .”</p>
<p>April 2015</p>	<p>In his Statement of Expectations for the CASA Board (2015 to 2017), the then Deputy Prime Minister and Minister for Infrastructure and Regional Development expressed his expectation that CASA will</p> <p>“provide an implementation plan of how CASA will implement the Government’s response to the CASA-related recommendations in the Aviation Safety Regulation Review Report in an effective and timely manner.”</p>
<p>June 2015</p>	<p>Draft Regulatory Philosophy prepared for review by the Director of Aviation Safety and submission to the CASA Board for consideration and Endorsement.</p>
<p>September 2015</p>	<p>CASA Board endorses the Regulatory Philosophy</p>
	<p>CASA Board’s adoption of Regulatory Philosophy announced in media release by then Director of Aviation Safety</p> <p>“We now have a clear and concise set of principles that will guide all our actions</p> <p>“It is vitally important every CASA person understands these principles, how they apply to the work they do and the need to ensure they adhere to them in practice.</p> <p>“These principles will guide and direct the making and implementation of regulations, safety education and support, the delivery of regulatory services, operational surveillance and enforcement, as well as our consultation and communications.</p> <p>“Where necessary, CASA will develop new policies and procedures to give meaningful effect to our regulatory philosophy.</p> <p>“I am committed to ensuring these principles make a real, positive and lasting difference to the way CASA operates and way we interact with the aviation community.</p>

	<p>"I understand some people may be sceptical at first about how or whether these principles will make a practical change to the way we carry out our regulatory responsibilities.</p> <p>"To regain trust, we must earn that trust. We look forward to the opportunity to do just that, and I invite the aviation community to use CASA's regulatory philosophy as a benchmark against which our performance is measured.</p> <p>"Although many of these principles are already reflected in existing policies and practices, the adoption of this regulatory philosophy will sharpen the focus on how and how well CASA does its job."</p>
<p>October 2015</p>	<p>The US Flight Safety Foundation issues press release praising CASA's <i>Regulatory Philosophy</i> (and US Federal Aviation Administration's National Compliance Philosophy).</p> <p>"These leading national civil aviation authorities are embarking on enlightened best practices to compliance and enforcement by emphasizing the importance of proportionality, discretion, and remedial action to address safety issues. . . . All countries should closely examine CASA's and the FAA's new, forward thinking compliance and enforcement philosophies</p> <p>"In the same spirit [as the FAA's Compliance Philosophy], CASA's new 'Regulatory Philosophy' issued on September 15, 2015 sets out ten key principles to guide their regulatory powers. The principles include embracing a 'Just Culture' approach, taking actions that are appropriate and in proportion to the circumstances, exercising discretion fairly, avoiding punitive measures, with a focus on encouragement of training and education, with a view to remedying identified shortcomings and deficiencies.</p> <p>"These modern safety management [<i>sic</i>] enforcement philosophies, which need extensive training and 'buy-in' from front-line inspectors to senior management can readily re-establish trust between the regulatory and the regulated"</p>
	<p>Director General of the International Air Transport Association (IATA) writes to CASA's then Director of Aviation Safety, complimenting CASA on its adoption and promulgation of the Regulatory Philosophy.</p> <p>"We are particularly pleased to note that this is strongly aligned with initiative to IATA's and the industry's efforts to promote a 'smarter regulation' approach to aviation. In this regard, we have established a set of key principles that we are asking regulators to consider when devising and implementing new regulation.</p> <p>"These include the need for regulation to be clear, consistent and proportional and for the regulatory process to be collaborative and consultative, all of which are included in CASA's own philosophy. . . .</p> <p>". . .[W]e will certainly be holding CASA's philosophy up as a model when we engage with other regulators around the world about taking a smarter regulation approach."</p>
<p>March 2017</p>	<p>In his Statement of Expectations for the CASA Board (2017 to 2019), the then-Minister for Infrastructure and Transport explicitly expressed his expectation that, in terms of its regulatory approach, CASA will</p> <p>"Implement its regulatory philosophy, with the philosophy being reflected in relevant policies, procedures, manuals and when CASA personnel are carrying out their day-to-day operations."</p>

<p>August 2017</p>	<p>CASA’s Director of Aviation Safety issues Instruction 02/2017, Limitations on the Use of Safety Information.</p> <p>“In keeping with CASA’s Regulatory Philosophy, and the Regulatory Policy and Practices framework within which the Philosophy was developed, this Instruction extends the application of CASA’s rational approach to ‘just culture’ to include safety information obtained or derived from sources other than the reporting programs of the kind to which ‘just culture’ protocols normally apply, to cover the full range of information acquired in the normal course of CASA’s surveillance and audit processes.”</p>
<p>From October 2015 (ongoing)</p>	<p>Workshops on <i>Implementing the Regulatory Philosophy: Making it Real, Making it Work</i> conducted for CASA management and staff throughout Australia</p>
<p>2018 (ongoing)</p>	<p>Focused workshops on <i>Discretion, Proportionality and ‘Just Culture’</i> initiated for CASA management and staff.</p>