

Committee Secretary
Senate Standing Committees on Rural and Regional Affairs and Transport
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Sir/Madam

I am a flying instructor, employed and actively working in the General Aviation Industry. I have held a Commercial Pilot's Licence since the early 1990s. The views I express here are mine alone, I do not speak on behalf of my employer.

I am concerned about the current civil aviation regulatory framework and its development:

- how it does not provide clear guidance to the general aviation industry,
- how it puts extra burden on aviation businesses trying to establish how they are to comply with the regulations,
- how long the development has taken
- how it has done little to enhance safety
- how the development process has undermined confidence and trust between the GA industry and CASA.
- how it has damaged the viability of many operators in the GA industry
- how it is overly prescriptive and doesn't mesh with the regulations of other developed aviation countries.

The general aviation industry (from my perspective) wants clear, concise, practical, implementable regulations that enhance safety and promote the health of Australia's civil aviation industry.

We are still in the process of having a reform of the Civil Aviation Regulations that commenced in the 1990s. The intention of regulatory reform was noble and had widespread industry support when it commenced. The process has taken far longer than the several years initially intended (it is now approaching 30 years!), it has been tortuous and has failed to deliver the intended outcomes, resulting in a worse situation than we had before.

Background:

In 1998 The Australian Parliament introduced The Civil Aviation Amendment Bill, providing a basis for, among other things, implementation of the Regulatory Framework Reform Program. This bill was prefaced with the following:

As a result of reviews of aviation regulation between 1988 and 1991, the Civil Aviation Authority began, in 1993, a program of redrafting the legislative structure of safety regulations.

Since its establishment in 1995, the Civil Aviation Safety Authority (CASA) has continued the process of rewriting the entire safety regulations and associated advisory

documentation. This process currently also reflects the Government's requirement, expressed in its policy statement *Soaring into tomorrow*,⁽¹⁾ that aviation regulations should be simple, straightforward and internationally harmonised.

Within CASA, this project has been entitled the Regulatory Framework Program. The present legislative framework is being reviewed with the objective of replacing the current Civil Aviation Regulations and Civil Aviation Orders with new Civil Aviation Safety Regulations. The principles underlying the new regulations require that they:

- are harmonised internationally with the US Federal Aviation Regulations (FARs) and the European Joint Aviation Regulations (JARs)
- are clear, concise and understandable
- have a safety outcome approach
- are enforceable
- avoid over-regulation, and
- are consistent with the role of CASA.

(see - https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd9899/99bd101)

At that time, the regulations consisted of the CARs (Civil Aviation Regulations) and the CAOs (Civil Aviation Orders), both of which were the end result of a long history of aviation regulation in Australia over many decades and were (as I recall) cumbersome to use and not particularly clear or concise. The required information to determine what we could (or couldn't) do was spread throughout both of these documents. They were held in 2 large folders and as a commercial pilot I had to be familiar with their contents and had to be competent using them to find answers to questions about my operations (all pilots had to pass several exams on the regulations).

To me, a program to rationalise the regulations made a lot of sense. As I understood it at the time, the intention was to have a single set of clear, logically arranged, concise regulations: The Civil Aviation Safety Regulations (CASR) that spelt out what the regulations were (similar to the US FARs) and another document, the Civil Aviation Advisory Publications (CAAPs) that while not being prescriptive, explained the regulations and described appropriate ways to meet the regulations (eg the CASR might specify that a pilot must carry suitable amounts of fuel for a flight, the CAAPs would describe procedures that could be sensibly used to calculate a suitable amount of fuel).

The Process:

The process of re-writing the regulations, was started in 1993 and was intended to be completed in a few years. In 2002 CASA stated:

a target date of December 2003 was set for the rewrite of the regulations. We are well on track to achieving this goal. (CASA Annual report 2001-2002)

It is worth noting that New Zealand, who around the same time commenced a re-working of their regulations to meet similar aims, completed theirs in the 1990s. (see - <https://www.aviation.govt.nz/about-us/who-we-are/history-of-civil-aviation-regulation-in-new-zealand/#1987-onwards>)

The reworking of the Australian regulations is still on-going 27 years after it commenced in 1993! (At the end of this submission I have taken extracts of the CASA Annual Reports from 1999 that refer to the regulatory reform process.)

In that time, the amount of regulatory material has dramatically increased, the complication and prescriptive nature of the regulations have increased, industry has had to keep re-adjusting to the changing regulations, there have been numerous exemptions that have had to be made when unintended consequences, complications and oversights have been discovered and confidence in the regulator and regulations has dropped to very low levels.

Current Situation:

The result of this 27 year process to reform the old regulations into a clear, concise and understandable set of regulations that avoid over regulation results in the following:

we know have the following sets of documents setting out the regulations we must abide by:

- the CASRs (regulations)
- the CAAPs
- the Manual of Standards (MOS)
- the remaining CARs (containing regulations not yet transferred to CASR)
- the remaining CAOs (containing regulations still not transferred to CASR or CAAP or MOS)

(see <https://www.casa.gov.au/rules-and-regulations/current-rules>)

The original 2 thick folders (CAR/CAO) have multiplied to be a whole shelf of folders. The CASR alone now consist of 5 volumes and is approx 1800 pages.

The MOS consists (currently) of 20 parts covering required standards in many areas including aircraft maintenance engineer licensing, airworthiness, flight operations, air traffic control training etc. Part 61 alone of the MOS, (which covers flight crew licensing and training - areas I need to be conversant with as an instructor) consists of 4 volumes and around 700 pages.

There also are currently hundreds of exemptions to the flight crew licensing regulations that we may (or may not) need to be aware of. These exemptions are typically made as a result of deficiencies discovered in the CASRs – eg oversights, inconsistencies or conflicting regulations, unintended consequences of the regulations etc. (see <https://www.casa.gov.au/rules-and-regulations/standard-page/flight-crew-licensing-legislative-instruments>).

The 27 year process of reforming the regulations has been a huge burden on the industry and has not achieved the intended aims. We do not have a regulatory framework that is clear, concise and understandable, it does not avoid over regulation. Having such a complicated framework does not enhance safety. I do not believe the situation meets the original (and very desirable) intentions of reforming our regulations set out in the 1998 bill. The original regulations that we had prior to the reform, appear in hindsight, to have been far easier to understand and comply with.

Could it be Better?:

One of the intended outcomes of the reforms expressed in the 1998 bill was to harmonise our regulations with the US FARs.

It is worth noting, the USA is a far more challenging environment for aviation than Australia (with our generally good flying weather, fairly uniform climate and lack of serious mountains). The US generally has far worse weather than Australia with challenging topography due its high mountain ranges. The US have a General Aviation fatal accident rate of around 1 per 100,000 hours.

Australia also has a rate of around 1 per 100,000 hours. (see <https://www.atsb.gov.au/media/32897/b20060002.pdf>). New Zealand (again a more challenging environment for aviation than Australia) has a similar fatal accident rate.

You can buy on Amazon a paperback of the US Federal Aviation Regulations and Aeronautical Information Manual (FAR+AIM) for \$45 - \$15 for an electronic version. See

<https://www.amazon.com/FAR-AIM-2020-Regulations-Aeronautical/dp/1619547988>).

This paperback is actually 2 books, covering not only the regulations that pilots and instructors need to know, it also has the standard procedures pilots follow in planning and operating flights (this is covered in Australia by a separate set of documents again, the AIPs). The combined paperback book FAR+AIM is 1200 pages.

How can the US can provide pilots with a concise paperback book of regulations and have a similar safety outcome as us, for a more complicated aviation environment?

When trying to avoid over regulation and develop clearer, concise regulations, why did we develop a unique set of regulations, far more prescriptive and of a quantity far in excess than those of other developed aviation countries like the USA and New Zealand?

For the US, Australia and New Zealand there are similar safety outcomes, yet our operating environment is generally less difficult than the others – so are our prescriptive regulations helping or hindering aviation safety?

Is this a factor in why GA in the US appears to be thriving compared to GA in Australia?

Some more background on the process of regulatory reform:

In asking why I have lost faith in the process of regulatory reform it is worth looking at the way CASA have represented the process. CASA Annual reports are publicly available from 1999 (see <https://www.casa.gov.au/publications-and-resources/corporate-publications>) . I did a cursory search through a number of them looking for the phrase “Regulatory Reform”. I have summarised some of this below.

NB this is not an exhaustive search and I have just cut and pasted bits from the reports so please check the original source for context but I believe it gives a disturbing overview of the tortuous process this has been over the last decades.

2000-2001

CASA has been undertaking a major programme of regulatory reform since 1996. The Regulatory Reform Programme involves comprehensively reviewing existing regulatory documentation against a set of criteria that reflect the objective of ensuring our aviation

standards are appropriate, clear, concise and aligned with international practice. Under the programme, CASA is progressively consolidating the 1988 CARs and the CAOs into a single set of Civil Aviation Safety Regulations (CASRs) with major Parts addressing different aspects of aviation operations.

2001-2002

CASA's Regulatory Reform Programme has been re-focused and is on target to deliver a world standard aviation safety regulation regime.

During the year the Regulatory Reform Programme was reviewed and, in consultation with industry, a target date of December 2003 was set for the rewrite of the regulations. We are well on track to achieving this goal.

2002-2003

Over the past four years, CASA has brought a major program of regulatory reform near to completion with a comprehensive rewrite of aviation safety regulations. The reforms will underpin enhanced aviation safety with Australian standards that are clearer, more concise, unambiguous and better aligned with international practice.

...

The Regulatory Reform Program, a major initiative to re-write the bulk of Australian aviation regulations, remains essentially on track for completion by December 2003.

2003-2004

The current Regulatory Reform Program (RRP), begun in 1999, is CASA's vehicle for achieving a quantum improvement in the quality of Australia's civil aviation safety standards. Following a review of progress in 2001, the program was scheduled for completion on 31 December 2003.² This timetable was based on achieving the substance of reform without an unduly protracted change process. While ambitious, the timetable was intended to address industry expectations about an end to the extra demands of consultation and to restore regulatory certainty as soon as possible. In 2003-04, six CASR Parts were made, bringing the program total to 30 out of a planned 58. Substantial progress was also made in developing regulatory packages for the remaining CASR Parts. However, it became apparent that the December 2003 deadline could not be met without sacrificing the quality objective and the Minister asked that CASA review the timetable. CASA is now taking whatever time is necessary to refine the remaining Parts in further consultation with the industry. It is also looking again at how closely the rules target established safety risks and will make a real difference to safety outcomes.

...

CASA has been under considerable pressure, including from members of the aviation industry, to finalise the Regulatory Reform Program. I firmly believe, however, that if we are to achieve CASA's goal of 'safety through clarity', the objective must be to get the rules right rather than completed quickly. As the Minister urged in his Charter Letter, we must take care not to squander the unique opportunity we have to achieve a world's best practice regulatory system.

...

CASA's intention is that the bulk of the Regulatory Reform Program will be completed during 2004-05.

2004-2005

Rules for the sake of rules is not an acceptable outcome of reform. It is also extremely important for the new regulatory regime to be easy to understand and work within. Complex rules without good reason are not acceptable. This means new rules need to focus on the safety outcomes we are seeking to achieve and must be developed within a simple two-tier framework of the Civil Aviation Act and Civil Aviation Safety Regulations.

2005-2006

CASA is committed to completing the Regulatory Reform Program, which will provide new rules in response to industry changes. This will require continuing resource investment by CASA and the industry, but reform will enable the industry to position itself well for the future.

2006-2007

CASA is progressively combining and updating the requirements currently set out in the Civil Aviation Regulations and Civil Aviation Orders into new Civil Aviation Safety Regulations under its regulatory reform programme

2008-2009

Parliamentary scrutiny CASA's operations underwent intense scrutiny by the Senate Standing Committee on Rural and Regional Affairs and Transport through its Inquiry into the Administration of CASA and Related Matters. The inquiry received 61 submissions from the aviation industry, individuals and CASA, and held public hearings for two days in July 2008. In its report the committee made a number of recommendations, including: ... bringing the regulatory reform program to a conclusion as quickly as possible

2009-2010

Many of the aviation safety regulations have been reviewed and revised, and that process will continue into 2010–11. The Aviation White Paper presented CASA with some significant regulatory reform challenges, including a requirement to complete the reform in 2011. 'Regulatory reform' is partly a misnomer—we currently have an effective set of regulations in place, but we are enhancing, modernising and refining them. To date, approximately one-half of the 60 proposed CASR Parts have been made and implemented. The remaining half, however, form the core of our aviation safety regulatory program, comprising the Maintenance suite, Operational suite, and Flight Crew Licensing suite. The Sport and Recreational Aviation suite of CASRs are also yet to be finalised and implemented.

2010-2011

In 2010–11 there was particularly strong performance in advancing the regulatory reform program; continuing to implement the objectives stated in the 2009 National Aviation Policy White Paper, Flight Path to the Future, and in the Australian Airspace Policy Statement 2010;

CASA Corporate plan 2009-2012: to complete the Regulatory Reform Program in a timely manner

Finalising the remainder of the CASA Regulatory Reform Program by December 2011 Result Priority was assigned to the passenger-carrying regulations, which have involved an intensive and extensive body of drafting work. The aerial work, sport and recreation, and other outstanding CASR Parts will be finalised in 2012.

2011-2012

The year covered by this report saw material progress in the delivery of the regulatory reform program

CASA Corporate plan 2011-2014

Complete the Regulatory Reform Program in a timely manner

2013-2014

Developing new aviation safety regulations, taking account of best international practice and aligning Australian requirements with relevant overseas practices. Measure Working in conjunction with the Office of Parliamentary Counsel (OPC) to finalise the outstanding parts of the operations regulations (by June 2014)

Work will continue on the development and implementation of the regulatory reform program, which includes transitioning the governance of flying training organisations, multi-crew training, checking organisations and design organisations to the new regulations.

2015-2016

There was a new level of communication and transparency to complete the aviation regulatory reform program. A detailed timetable covering 20 regulatory change projects to be undertaken over the next three years was published after extensive consultation with aviation representative groups and individuals from all sectors of the aviation community.

The Regulatory Reform drafting, incorporating the classification of operations, a three tier structure where possible and meeting the Government's requirements for new and amended regulations, will be completed by December 2015

2016-2017

Regulatory reform and progress achieved in key areas CASA's Board is working closely with the organisation to drive a practical approach to regulation. We have set some ambitious targets for the release of all outstanding regulations, and we will meet them by working to a deadline with defined deliverables and being transparent by making the regulatory reform timeline public. We are challenging ourselves to release regulations that are reasonable and relevant.

CASA will continue to focus on new regulations and instruments adhering to Commonwealth legal drafting practices and avoiding inconsistencies with other pieces of relevant legislation. Rules will continue to be prepared in accordance with a three-tier regulatory structure and using easy to understand language. CASA is committed to the

remaining reform program regulations drafted for public and industry consultation by the end of 2018.

2017-2018

Regulation reform program: Significant progress was made on CASA's regulation reform program. CASR Part 149 – Approved Self Administering Aviation Organisations was made in July 2018. It had been hoped that completion of this Part would take place earlier in 2018, but important policy-related developments requiring additional consideration and associated drafting adjustments contributed to a longer than expected delay.

Develop and commence implementation of the final tranche of regulatory reform
Result: The final tranche of regulatory reform – Civil Aviation Safety Regulations (CASR) Parts 91, 103, 105, 119, 121, 131, 133, 135, 138 – has commenced. Public consultation for CASR Part 91 and the Part 91 Manual of Standards was completed in May 2018. Aviation Safety Advisory Panel technical working group meetings were conducted for CASR Parts 121, 133 and 135. CASR Part 119 was discussed at each of the three working group meetings. CASR Part 149 was made in July 2018.

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. Agreed in Principle The Government will support appropriate regulatory reforms in the future noting that there needs to be sufficient time for CASA and industry to transition to the changes, recognising this can often take several years. Rules will continue to be prepared in accordance with a three-tier regulatory structure. Subsequent reviews of other CASR Parts will determine if they need to be remade, noting that CASA, working with industry, has set out the immediate priorities for regulatory reform. Implementation is ongoing as drafting of the remaining parts of the regulatory reform program are progressed.

CASA expects all remaining parts of the regulatory reform program to be drafted by the end of 2018, noting that transition periods and final rule application may extend beyond the date of regulations being made.

Thank you for the opportunity to express my concerns.

yours faithfully

Jonathan Kelly