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10 Feb 22

Committee Secretary

Senate Standing Committee on Rural and Regional Affairs and Transport

P.O. Box 6100

Senate, Parliament House, Canberra ACT 2600

Re: Submission to inquiry - Current state of Australia's general aviation industry

Dear Honourable Senators,

Please allow me to introduce myself to the Senate Committee. My name is Kurt Pudniks, not-so-happily reaching 40 years of age in two weeks' time. I have 15 years of professional systems engineering consulting experience, mostly to Defence. Regarding sports aviation, I have 500 hours of paragliding experience and 1000+ hours of kitesurfing experience.

CONTEXT OF PARAGLIDING WITHIN SPORTS AVIATION

Based on my study per the below links, **no paragliders** have ever submitted their story to the Senate Committee in 2014, nor 2022 (to date). I humbly insist that you please consider accepting my submission due to **my unique perspective of a paragliding enthusiast** and kitesurfer who is the victim of the same old CASA abuses of legal process that so, so many other pilots have endured since 1996.

Please note I have reviewed all of the 71x submissions to the current Senate review (2022) here:

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Rural\\_and\\_Regional\\_Affairs\\_and\\_Transport/GeneralAviation/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/GeneralAviation/Submissions)

I have kept a public record of my notes on each of these 71x submissions here:

<http://whyfly.net.au/viewtopic.php?t=2>

Additionally, I am reviewing the 269x submissions to the Forsyth report (ASRR, 2014) here:

<https://www.infrastructure.gov.au/infrastructure-transport-vehicles/aviation/aviation-safety/regulation-review/public-submissions>

However, I have already read submission #107 by Pro Aviation (Phelan, 2014) which contains an extensive 150+ pages of 10x cases of pilot abuse by CASA in years past.

**OPEN QUESTION: What will it take to stop CASA's abuse of general aviation and sports aviation?!**

MY STORY - INDEXED BY TERMS OF REFERENCE

*\* The committee will consider the operation and effectiveness of the Civil Aviation Safety Authority (CASA) and other relevant aviation agencies, with particular reference to:*

*the legislative and regulatory framework underpinning CASA's aviation safety management functions, including:*

*the application of the Civil Aviation Act 1988 and the Civil Aviation Safety Regulations 1998 to Australia's aviation sector, and whether the legislation is fit for purpose;*

CASA currently funds the Sports Aviation Federation of Australia (SAFA) nee Hang Glider Federation of Australia (HGFA) under a Deed of Agreement to share approx \$600k pa in funding [1]. I presume this ought to provide a level of management control of SAFA by CASA.

In Apr 20, SAFA unlawfully suspended my membership, in breach of the Administrative Appeals Tribunal (AAT) Act 1975. I reported this to CASA who did nothing stating "because SAFA is not yet Part 149, due to CASA-granted grace periods, there is nothing CASA can do to control SAFA". I believe this is tantamount to criminal collusion between CASA and SAFA. CASA legal later advised "some control".

CASA essentially forces paragliders to join SAFA under Civil Aviation Order (CAO) 95.8. This lack of choice of association for work opportunity appears to breach the Fair Work Act 2009.

In Aug 20, I submitted valid Part 149 paperwork to CASA. In Jun 21 CASA advised they will not review my Part 149 paperwork because I am "under investigation by CASA". I referred this decision to the AAT as shown at **Attachment A (see pp. 4-5)**, which also notes the junk terminology within Part 149 legislation itself eg CASA may use any means to investigate (perhaps, any lawful means?) and CASA is not bound by the rules of evidence! This seems repugnant to the Australian Constitution. I also tried to advise my story to the CASA CEO (Ms. Pip Spence) at **Attachment B (see p. 6)** but her executive assistant blocked the letter for the reason that I was a "potential criminal". So much for CASA listening.

In Jan 22, the CDPP served papers on myself for a court attendance notice (CAN), to be prosecuted by CASA in Katoomba local court on 21 Feb 22. The 16x charges relate to "unlicensed operation of an aircraft in flight". **I embrace the court because - this will be my first right of reply - since Mar 20!**

Under the Civil Aviation Act 1988, an aircraft is defined as "a craft which derives support from the reactions of the air, except those reactions against the Earth's surface" and flight is "when the aircraft moves under its own power for the purposes of take-off". CASA appears to lack the high school physics education requirement to determine that a paraglider does not meet the definition of aircraft, nor flight, as defined by the Civil Aviation Act 1988 ie where is the thrust? Where is the power plant?

More broadly, there are ICAO requirements for CASA to have "qualified people with credentials of technical expertise". This is the area of capability that CASA seems to lack the most.

*\* the safety and economic impacts, and relative risks, of CASA's aviation safety frameworks;*

The paragliding club SAFA nee HGFA is given free reign by CASA to unlawfully deny members any right of review or right of reply in club disciplinary matters. SAFA can suspend a paraglider certificate for any reason. The SAFA email response to my complaint in Apr 20 was "the details do not matter, there is no defence to what you did, the appeals process you are referring to is defunct because we are a company now". CASA endorsed this documented behaviour, claiming CASA can do nothing to regulate SAFA until they become a Part 149 self-administering organisation. This creates a world's-worst safety culture where no paraglider would dare to speak up about safety issues for fear of being suspended.

*\* the immediate and long-term social and economic impacts of CASA decisions on small businesses, agricultural operations and individuals across regional, rural and remote Australia;*

CASA have carefully constructed a monopoly structure for SAFA. My own Part 149 application has been stone-walled since it was submitted in Aug 20. CASA have no interest in healthy competition among multiple paragliding self-administering organisations, which would create a healthy safety culture ie raising concerns and complaints without fear of retribution by the monopoly club of SAFA (as enabled by CASA stone-walling and misfeasance – rather than CASA doing their day job!).

*\* CASA's processes and functions, including: the efficacy of its engagement with the aviation sector, including via public consultation;*

My letter to the CASA CEO was blocked for the absurd reason that I was a “potential criminal”. The CASA investigator, when calling on the phone, refused to outline his lawful duty statement and qualifications to conduct the investigation. The investigation consisted of a series of undefined accusations with no credible technical explanations given at any point since Mar 20 to date (Feb 22).

In my experience, CASA are adversarial, petty, and vindictive. A criminal waste of taxpayer funds!

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*[1] Submission #17 by the Glider Federation of Australia noted (page 37/48):*

*ANNEX A TO APPENDIX 4*

*EXTRACTS OF DATA FROM DRAFT SASAO ECONOMIC CONTRIBUTION ASSESSMENT REPORT  
PATHWAYS TO IMPROVED FUNDING | SELF ADMINISTERING SPORTS AVIATION*

*Note: Data was gathered to assess the economic contributions of nine Self-Administering Sports Aviation Organisations (SASAOs):*

- *Australian Ballooning Federation (ABF);*
- *Australian Parachute Federation Ltd (APF);*
- *Australian Sport Rotorcraft Association (ASRA);*
- *Australian Warbirds Association Ltd (AWAL);*
- *Gliding Federation of Australia (GFA);*
- *Hang Gliding Federation of Australia (HGFA);*
- *Model Aircraft Association of Australia (MAAA);*
- *Recreational Aviation Australia Ltd (RAAus); and*
- *Sport Aircraft Association of Australia (SAAA).*

*Each SASAO receives a share of \$634,000 in annual funding from the Civil Aviation Safety Authority (CASA) to perform the Compliance, Standards, Services (in some instances licensing and registrations) and Safety promotion functions on behalf of CASA through Deeds of Agreement.*



Kurt Pudniks

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## Re: AAT 2021/5950 - to clarify CASA decision + key corro for context

1 message

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Kurt Pudniks

Thu, Sep 2, 2021 at 11:59 PM

Hello all,

1.  
Thank you for the prompt action in responding to the AAT matter with your letter today, and for providing me with a copy.

I have attached the key correspondence between myself, CASA, the AAT, and the office of Minister McCormack, over recent months. Additionally, your letter from today, for those in cc.

I have provided this summary of correspondence, in an effort to best clarify the specific CASA decision I wish the AAT to review. With minimal chance for any further confusion.

2.  
In your letter today (2 Sep 21) you only mentioned the CASA letter dated 27 May 21 and not the additional email from CASA (SF) to me dated 24 Jun 21. In that email, CASA (SF) makes a decision that the unproven allegations about me, before the CDPP for their consideration, are somehow relevant to CASA's level of motivation / desire / work priority for CASA to review my Part 149 paperwork (pls find the two key docs from my Part 149 application also attached for completeness).

For your ease of reference, and to avoid any further confusion, I have quoted below, the specific paragraph within the email from CASA (SF) to me dated 24 Jun 21 (my bold emphasis added):

*As you have been previously informed, CASA has presented a brief of evidence to the Commonwealth Director of Public Prosecutions regarding your reported recent and ongoing alleged non-compliances with regulatory requirements. These matters are also **relevant** towards both your demonstrated attitude towards compliance with the regulatory requirements as well as any serious behavioural problems.*

This above-mentioned email dated 24 Jun 21 was included in the AAT forms I submitted last week. For completeness, I have attached the AAT form, the above-mentioned email, along with my reply to the email dated 30 Jun 21 which was addressed to the office of Minister McCormack. In my email reply, you may note that I clearly asked CASA (SF) what the next steps would be, to assess my suitability for Part 149 status. Please do note that CASA Sport has not responded to my Part 149 paperwork since this email dated 30 Jun 21 ie **CASA is currently refusing to review my Part 149 paperwork** in good faith.

Please allow me to be clear. **The decision I wish the AAT to review is: CASA's decision that the matter under consideration by the CDPP has any relevance to CASA's review of my Part 149 paperwork.** CASA has made this decision, as stated to me, in the email excerpt above. I cannot state the decision I wish the AAT to review, any more clearly than this.

3.  
The CASA email dated 24 Jun 21 mentions "demonstrated attitudes" and goes on to mention "fit and proper" person tests. Please note I have also raised concerns with the AAT (per attached form dated 30 Aug 21) that in my considered opinion, CASA is seriously unfit to administer, and thereby essentially become the arbiter of such subjective and ill-defined "tests". This is based on the fact (learned via my FOI requests to CASA in recent months) that the key CASA staff named to review my Part 149 paperwork (who have paragliding experience, and therefore who hold SAFA memberships and licences) have not made a declaration that they are free from a conflict of interest (COI) - which is a breach of their own CASA COI Policy.

I would also like to briefly mention that "demonstrated attitude" appears to be an oxymoron and surely cannot stand up to any serious scrutiny in a court of law, or even to everyday lived experience. How exactly does a person "demonstrate" through behaviour, the internal constellation of their mental "attitude". To spell this out, one could demonstrate the right behaviour, but their attitude is deemed wrong by CASA. Or vice-versa, one could demonstrate the wrong behaviour, but their attitude is deemed right by CASA. I wonder, does CASA have mind-reading surveillance technology we should know about.

The mind boggles at how such "junk terminology" can enter into the conversation regarding civil aviation safety in Australia. I have read ahead and I found that the CASR 1998 Part 149 amendments (2018) also include further junk terminology such as the below (my bold emphasis added):

149.630 *Review procedures and review decision*

(1) *In conducting a review of an internal review decision of an ASAO:*

- (a) *the **procedures** for conducting the review are within the **discretion of CASA**; and*
- (b) *CASA is **not bound by the rules of evidence**; and*
- (c) *CASA may **inform itself in any way it thinks fit**; and*
- (d) *the review is to be conducted with **as little technicality and formality**, and as quickly and economically, as a proper consideration of the matters permit.*

When I read this, CASA's behaviour towards me over the last year or so, suddenly made sense! CASA clearly thinks that it can:

- Make up the procedures as they go along.
- Deny natural justice to me.
- Ignore the behaviour of the criminal gang known as SAFA, who use vandalism and violence to get their way.
- Not be bound by the rules of evidence.
- Use surveillance and listen to the rumour mill to both make, and entertain, baseless accusations at will.
- Review their own case, with as little "technicality" (ie I presume, to be specific about the alleged offences!) as CASA sees fit - all at the ultimate discretion of CASA!

What a wonderful (yet sadly delusional) world CASA must live in. I cannot imagine how this regulatory scheme could possibly go wrong. To think that this will stand up to any sort of legal review, including the AAT review which I trust will indeed be "enlivened" soon. Noting that the Australian Constitution says only a court (not CASA) shall decide how the laws of the land are applied to citizens.

4.

In summary, I will try to outline the key facts:

- I have 500 hours of paragliding experience, mostly in challenging, inland, Aus summer conditions.
- SAFA unlawfully "banned" me for no reason around March 2020, with no right of reply, and no right of appeal.
- CASA ignores the behaviour of SAFA, then proceeds to harass me, and delay my Part 149 paperwork as much as humanly possible, including the CASA letter of today which completely misses the key decision point (which I have thoroughly clarified above).
- Then I learn via FOI that CASA is hopelessly compromised regarding paragliding activities, because key CASA staff are currently subject to the same unlawful "bans" by SAFA that I am!
- Apparently, I am meant to now patiently wait for CASA to do nothing, while the CDPP may take years to reach a simple decision to drop the case or not, all while my private property is held indefinitely without charge, based on false accusations which are clearly founded in unlawful behaviour by the criminal gang known as SAFA.

5.

For CASA to refuse to review my Part 149 paperwork, waiting for the CDPP to take action first, is a breach of the principle of "innocent until proven guilty". This is the initial decision I wish the AAT to review.

6.

I have also raised concerns above, that CASA is currently unfit to review my Part 149 paperwork fairly in any case. A good start would be for key CASA staff to comply with their own CASA COI Policy. This is the context I also wish the AAT to review.

7.

This matter has been dragging on since March 2020. In the early days, I had hoped that CASA and Minister McCormack would take a much more active role in reviewing the situation. At this early stage, my dealings with the AAT have been good. I look forward to the ongoing review by the AAT, and I would be happy to discuss the matter further with both CASA and the AAT as required.

Cheers,  
Kurt.

PS. Your letter today at paragraph 4 contained a phrase "currently is" which I believe should be changed to "might be". If I am currently under CDPP prosecution action, I am yet to see the court attendance notice (CAN) which CASA (Noel Saffery) once clarified would be the next step, if the CDPP were to move ahead with such a prosecution action. You may wish to review this paragraph if you draft a new letter, which I imagine you likely will do, to address the matters above. I do realise you likely meant the "future circumstances that might be" or perhaps "CDPP investigation" rather than "CDPP prosecution" action.

On Thu, Sep 2, 2021 at 3:24 PM

wrote:



Kurt Pudniks

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## letter to DAS/CEO Pip Spence re CASA engagement and listening (14 Sep 21)

1 message

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Kurt Pudniks

Tue, Sep 14, 2021 at 12:18 PM

TO: Director of Aviation Safety, Pip Spence, CEO CASA.

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Good afternoon Pip,

I have been reading up extensively on the 30 year history of CASA nee CAA in general aviation matters.

I sincerely wish you well on the transformative culture change that is clearly desperately required.

I also read your recent briefing to industry and I have formatted my letter as a response to your briefing (please find your text in green below).

*I have made it clear to everyone in CASA that a key part of our job is engagement and listening.*

CASA Investigators called me up and made allegations of illegal flying. They **refused** to identify their qualifications, or legal powers to do so, or the process ahead. By contrast, CASA Investigators ignore the unlawful behaviour of SAFA at every turn. I made a complaint to your ICC and his initial weak finding was that "I did not rely on the information and views of CASA". When I clarified the issue further, your ICC is so slow to investigate (currently underway on this issue), he is practically useless.

*We must have effective and productive working relationships with people and organisations across all sectors of Australian aviation so that we engage on issues in a timely and meaningful way.*

CASA has taken over 12 months to stall their review of my 20 page document for Part 149 self administering organisations (SAO). Faced with pressure to do something after one year, **CASA now outright refuses** to review my paperwork, having deemed the pending CDPP investigation "relevant" for some reason. So much for innocent until proven guilty, CASA knows better apparently. This is the same pending CDPP investigation that CASA has delayed at every turn since 1 Aug 20. I am taking this matter to the AAT, with an Interlocutory hearing set for **Fri 24 Sep 21**.

*CASA needs to know about the challenges being faced by the aviation community and be made aware of emerging and evolving safety risks.*

CASA overlooks the unlawful behaviour of SAFA, who can suspend and cancel licences for "no reason" just like CASA can. This creates a worlds-worst-practice safety culture where no one would dare to raise safety issues for fear of being banned by the club "in group" of so-called leadership. The SAFA constitution is illegal under Australian law, specifically the Administrative Appeals Tribunal Act 1975 which states a person receiving an unfavourable decision must be informed of their right of reply. Yet CASA tolerates this situation within SAFA, and within CASA, for years on end, with no explanation. This situation is inexplicable and deeply disturbing, from a modern safety culture point of view, in line with basic world safety philosophy.

*To translate this engagement into practical outcomes, it is our job to listen. By that I mean we must not make judgements on the views of others before asking questions and making sure we really understand the issues being raised. And, of course, we must be ready to act.*

CASA is currently making judgements on my views, without asking any questions of the unlawful behaviour of SAFA. CASA has not been acting; rather **CASA refuses** to review my 20 page paragliding operations manual (PGOM) in support of my Part 149 SAO application. The document is exactly structured against the CASA compliance matrix framework for ease of reference.

*CASA already engages widely with the aviation community and my emphasis is intended to build and improve on these existing formal and informal communications. My intention is not to create a whole new way of operating, but rather to strengthen the relationships and communication between CASA and the aviation community.*

The typical response time of CASA to a simple question is one month. So far, **CASA has taken over 1 year to ponder, and now outright refuses**, to review my 20 page Part 149 paperwork! I have reluctantly taken the matter to the AAT to force CASA to "do their day job". This situation is a disgrace, and by my understanding, CASA's behaviour has adversely affected all aspects (including safety) of general aviation in this consistently adversarial, petty, and vindictive manner for the last 30 years. Honestly, you do need to "create a whole new way of operating". Any reasonable person can see that.

You may believe this is a minor matter to do with fringe, recreational sports aviation such as hang gliding, paragliding, and skydiving etc. I have included some news links below to highlight that the CASA inaction and dysfunctional regulation of sporting clubs like SAFA and APF is costing lives every year, and it will continue to do so until addressed head on.

Yours Sincerely,  
Kurt Pudniks BE (Hons) BSc (Hons) MIEAust CPEng

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<https://www.abc.net.au/news/2021-09-09/husband-sues-over-wifes-queensland-skydiving-death/100447064>

<https://www.abc.net.au/news/2015-01-20/complaints-against-paragliding-instructor-ignored-before-deaths/6028476>

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