

Rural & Regional Affairs and Transport Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Supplementary Budget Estimates November 2013
Infrastructure and Regional Development

Question no.: 131

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: Relationship between CASA and the Rural Fire Service

Proof Hansard Page/s: 52 (18/11/2013)

Senator Heffernan asked:

Mr McCormick: I can give you a notice, if you like, about the relationship between us and the Rural Fire Service.

CHAIR: I think it is not between the pilot and the Rural Fire Service; it has to be between you and the Rural Fire Service. There needs to be some steadying influence in the cowboy attitude at times. I am not alleging anything, broadly, but it is an uncomfortable feeling that a lot of very learned, experienced pilots have. This guy was disgusted that a remark would be made: 'Are you a man or aren't you? Get up there!' I can give you the details.

Mr McCormick: We will look into that.

Answer:

CASA provides oversight of Air Operator Certificate holders, including those who conduct aerial firefighting operations under a commercial relationship with the Rural Fire Service. CASA does not oversight Rural Fire Service organisations directly.

CASA has been advised by the NSW Rural Fire Service that it is undertaking an investigation into the matter raised by Senator Heffernan. CASA has requested a copy of that report when completed, and will consider its content in respect of any aviation safety concerns.

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Question no.: 132

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: Safety – Colour Vision Deficiency

Proof Hansard Page/s: 54 (18/11/2013)

Senator Fawcett asked:

Senator FAWCETT: I will come back to that at another time. Thank you for that clarification today. On another issue of safety, does CASA have any record of incidents or accidents in Australia arising from pilots who have a colour vision deficiency?

Mr McCormick: I will have to take that on notice.

Answer:

CASA's occurrence data files do not show a record of any accident or incident attributable to pilots' colour vision deficiency.

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Question no.: 133

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: AAT Challenge

Proof Hansard Page/s: 54-55 (18/11/2013)

Senator Fawcett asked:

Senator FAWCETT: I recognise that, and if you look at Australian aviation history, with things like DME and T-VASI we have led the world on a number of occasions and the rest of the world now thanks us for that. My concern is that there is considerable talk and concern within the industry that CASA is not only seeking to prevent this person from exercising the privileges of an ATPL but is in fact seeking to wind back the decision to pre-1989—pre the Denison case—to realign itself with the FAA and other people. I am just trying to understand whether there is in fact that intent, but, also, if the evidence base is very clear both in the Denison case and in the thousands of hours of flying since, that pilots can operate safely, then what is the safety case for not actually allowing someone to exercise the privileges of an ATPL?

Mr McCormick: As to the exact nature of the AAT proceedings, I would prefer not to talk about it. We will take on notice your question about whether we are attempting to withdraw anything. The issue around medical standards is that quite a lot of these medical standards are not set by CASA. In fact we do not set any medical standards. We use whatever the expertise in that particular area says is the requirement, unless we have good reasons to do otherwise. The fact that we have had many years without accidents or incidents—and I will assume for moment we have not, but I will take that on notice—I think we are in a situation where, to go even further, we would need more than a safety case. We would most probably need medical science to tell us that that is probably not too far. As I said, we are already out in front of the world on this. So, we are not actively trying to stop anybody doing anything, but we do have to exercise some degree of caution.

Answer:

CASA is not seeking to wind back the colour vision policy or to conduct a de facto appeal of the Administrative Appeals Tribunal decisions in the matters of *Pape and Secretary Department of Aviation [1987] AATA 354* and *Denison and Civil Aviation Authority [1989] AATA 84*.

Each application for a medical certificate is required to be determined by reference to the statutory scheme and the individual circumstances of the medical certificate applicant. From that perspective, the Denison and Pape decisions are not binding on CASA in terms of the way in which it deals with the medical certification of pilots with colour vision deficiency.

Both of those cases were decided over 20 years ago under a different legislative framework and have been largely superseded by advances in aviation medical science and increased use of colour in aviation, especially in the cockpit.

The current aviation medical standards for colour perception are set out in item 1.39 of table 67.150 of the Civil Aviation Safety Regulations 1998 (CASR), which requires a person to “*readily distinguish the colours that need to be distinguished for the safe exercise of privileges, or performance of duties, under the relevant licence.*”

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Regulations 67.150(6) and 67.155(6) of the CASR, which apply to the class 1 and 2 medical standards respectively, require an applicant to demonstrate he or she meets the medical standard by undertaking specified testing in the prescribed order.

The first level of testing an applicant must undertake is the Ishihara Pseudo-isochromatic 24 Plate (PIP) colour vision test.

If the person fails that test then he or she must undertake a second level of testing, the Farnsworth Lantern (FALANT) test.

If the person fails the second level of testing, then an applicant may be required to correctly identify all relevant coloured lights in a test, as determined by CASA that simulates an operational situation.

If a person fails this third level of testing, then no statutory provision is made for the person to be further tested.

Some international regulators have more recently funded research into the development of aviation specific tests for colour vision. One such aviation specific test, which has now been adopted by the United Kingdom Civil Aviation Authority, is the Colour Assessment and Diagnosis (CAD) test which is based upon aviation specific colours and operational requirements.

CASA is presently considering the use of the CAD test for the third level of testing as a more targeted and appropriate method of testing to simulate an operational situation. CASA will seek and consider the views of aeromedical specialists before any final decisions are taken on this matter. Although no rule changes are envisaged at this time, any rule changes would be consulted with industry in accordance with CASA's normal regulatory development process.

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Question no.: 134

Program n/a

Division/Agency: (AAA) Aviation and Airports

Topic: Public Scrutiny of FRMS Approvals

Proof Hansard Page: 60 (18/11/2013)

Senator Xenophon asked:

Senator XENOPHON: That is why I am hoping to see that document sooner rather than later. Can I just move to the new fatigue rules. Will each FRMS approval be available for public scrutiny to ensure that CASA is not creating a commercial advantage for some operators over others, because that is one of the concerns. This is an issue that has been ventilated with you, both in this forum and in other forums, Mr McCormick.

Mr McCormick: Publishing of the FRMSs on a public site?

Senator XENOPHON: Yes.

Mr McCormick: Again, I do not think we have formed an opinion. We will take that on notice.

Senator XENOPHON: It is a pretty important issue, and I might be guided by Senator Fawcett given his expertise in this. For an FRMS approval, again, what harm would there be for that approval to be available for public scrutiny?

Mr McCormick: Again, there are safety issues. We have not turned our mind to this. I will take it on notice. Is it your view that they should be published?

Senator XENOPHON: No, I am asking you: do you consider that each FRMS approval be available for public scrutiny? Surely there is nothing there that would be commercially in confidence.

Answer:

The formal CASA approval of a Fatigue Risk Management System (FRMS) is a one page document which could be published although there is no obvious safety benefit in doing so. The full FRMS is discrete to each organisation and its circumstances. CASA does not normally publish such documents (nor release them under the *Freedom of Information Act 1982*) on this basis. CASA does not intend to publish the specific FRMS of individual operators.

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Question no.: 135

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: CASA IT System

Proof Hansard Page/s: 64 (18/11/2013)

Senator Fawcett asked:

Senator FAWCETT: In question 3 of those notices, you were asked whether the advice of the chief information officer sought prior to the decision being taken. The answer was yes. Perhaps the question was not well framed; what was the advice of the chief information officer? Did he indicated that he thought that Pentana may in fact have a case to claim for breach of IP?

Mr McCormick: I will just ask the deputy director, who was more involved, to answer that.

Mr Farquharson: The CIO raised questions about IT security, in terms of the language in which the platform was originally written in. The first amount of money went to rewriting the code into a SQL database. The advice that we received from trying to do our due diligence was that in any case the code was not even remotely like Pentana's code itself and was written in quite a different code and manner.

...

Mr Farquharson: Yes, I think he may well have.

Mr McCormick: That was always part of the due diligence process—that we would review that.

Senator FAWCETT: On what basis was his opinion as your chief information officer overridden?

Mr McCormick: No, he raised it as a point, from my memory. In actual fact, when we explored the IP and—through legal—we took outside legal advice on it, he was satisfied that there were no IP issues. That is my recollection.

Senator FAWCETT: Could you clarify that for us and come back with a trail?

Mr McCormick: We certainly will give you a time trail in our responses. I have got them here now for those questions. We have tried to outline them as clearly as we could regarding how it has gone forward.

Senator FAWCETT: I am asking on that particular point, if you have received advice that his concerns were not valid, could you present the committee with a document to demonstrate that?

Mr McCormick: Yes, we can take that on notice.

Answer:

The IP concerns raised by the CIO in early 2010 were considered during the remainder of 2010 when CASA undertook the due diligence process in regards to the potential use of AWS. This included two external reviews; potential copyright infringement risks (November 2010) and a software comparison report between AWS and PAWS (January 2011).

The CIO concerns were not 'overridden' or considered 'invalid', as the November 2010 external review noted that there may be a potential for copyright infringement and that CASA should seek a software comparison of the AWS and PAWS systems, which was provided in January 2011.

The January 2011 software comparison review provided that, while the look and feel of AWS and PAWS was very different, there was similar functionality and the menus were inherently the same structure. However, the January 2011 report noted that both systems had been designed to manage audits of entities, and the similarity in menu structure and navigation in this area was to be expected. CASA considered any risk of IP infringement to be low.

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Question no.: 136

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: Investigation into Airservices Australia – Heads of Power Issue

Proof Hansard Page/s: 64 (18/11/2013)

Senator Xenophon asked:

Senator XENOPHON: Yes, the 172 report was quite critical. It was quite significant that you renewed ASA's license on a conditional basis. That is right, isn't it?

Mr McCormick: Yes.

Senator XENOPHON: During this investigation, were you sharing information with the ATSB about your investigation into Airservices Australia?

Mr McCormick: The review that we were doing with Airservices was looking at the fact that we also have difficulty in regulating the government entity, as Airservices, in that there is not too much we could do.

Senator XENOPHON: Because of a head of power?

Mr McCormick: That is a legal issue as well, which I could ask to give you some more information on if you would like.

Senator XENOPHON: Maybe, because of time constraints, if we could get that on notice from you about issues of heads of power with respect to your ability to regulate or to give directives to Airservices Australia.

Answer:

CASA may cancel or suspend an Air Traffic Service (ATS) provider's approval in certain circumstances, as set out in Division 172.F.5 of the Civil Aviation Safety Regulations 1998 (CASR).

However, the only offence provision in Part 172 is CASR 172.020 (that a person that is not an ATS provider must not provide an air traffic service). Therefore there are no offence provisions in Part 172 for not complying with required standards when providing an ATS. This means that CASA cannot issue, for example, infringement notices for such non-compliance.

However CASA can, and has, issued directions to employees of Airservices Australia in accordance with the general direction making power in CASR 11.245. A contravention of such a direction is an offence against CASR 11.255.

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Question no.: 137

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: Investigation into Airservices Australia – Internal Process

Proof Hansard Page/s: 65 (18/11/2013)

Senator Xenophon asked:

Senator XENOPHON: Yes, but there is that little issue of a MOU that came up during the Pel-Air inquiry—about the importance of the memorandum of understanding. I do not want to have to refer to the specific clauses, but that was quite clear in terms of its requirements for information relating to the air-safety issues to be shared between the two organisations. In the course of your investigation—your overview, your review—of Airservices Australia, were you keeping the ATSB updated in respect of that?

Mr McCormick: In terms of the internal process I will have to take that on notice. I was not involved closely enough to be able to tell you that.

Senator XENOPHON: Again, that raises the vexed issue as to whether the memorandum of understanding was being complied with.

Mr McCormick: The memorandum of understanding, although it deals with an exchange of information, has, up until recent times, been viewed to be about incidents and accidents or other matters that we have information about. A lot of the 172 report does not refer to any particular incident.

Senator XENOPHON: The MOU is broader than that, though. It is not about specific incidents.

Mr McCormick: It is, but I think it generally has a germination point—something to start it or kick it off. The 172 process—I am taking on notice what we did with the report—was about what we thought of Airservices Australia outside of the specific information we received on audits.

Senator XENOPHON: Sure. I will not take it any further than this but please take those issues on notice. If, in the course of your investigation or your review of Airservices Australia, you uncovered issues of concern to CASA—and the report did disclose issues of concern; I thought it was quite damning of Airservices Australia—then surely, insofar as the report related to aviation safety, which I think is axiomatic, given the damning nature of that report, isn't that something that the ATSB should have been kept apprised of on a very regular basis?

Mr McCormick: What was given to ATSB I will have to take on notice. I understand the thrust of your comments; I do not disagree.

Senator XENOPHON: The MOU may not have been complied with. I am not sure whether it was or not; I just want to know whether the spirit and the letter of the MOU has been complied with in relation to this investigation.

Mr McCormick: If parts of that report were started as a result of electronic incidents—from memory, I think a few of them are referenced in there—that information came from the ATSB to start with. So all we were doing was looking at how those issues hung together or created a bigger picture. Individual issues should be known. As I said, we will take it on notice and I will find out what was said.

Answer:

The ATSB research investigation report AR-2012-034 into loss of separation between aircraft in Australian airspace to which the question refers was not an investigative report into an individual event as contemplated by paragraph 4.4.6 of the Memorandum of Understanding between CASA and the ATSB which states:

4.4.6 CASA agrees that if a CASA Officer is known to have information that could assist the ATSB in the performance of its investigative functions, CASA will undertake to advise the ATSB of the existence of the information.

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The draft version of the research report was released for comment to CASA on 12 April 2013 and a response made to the ATSB on 13 May 2013. A further final draft was issued to CASA for comment on 22 July 2013 and a response was provided to the ATSB on 7 August 2013.

The final ATSB report containing recommendations for CASA was released on 18 October 2013 and CASA's response to those recommendations is under consideration.

The report of CASA's Review of CASR Part 172 Air Traffic Service approval of Airservices issued in January 2013 was provided to the ATSB as part of a Section 32 request for information as per the *Transport Safety Investigation Act 2003*. This request was in relation to an ATSB investigation AO-2012-047 into a loss of separation assurance near Curtin Aerodrome, Western Australia on 30 March 2012.

The information was provided to help finalise the investigation into the Traffic Information Broadcast by Aircraft (TIBA) procedures. The ATSB requested the CASA Review report on 18 October 2013 and it was provided to the ATSB on the same day.

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Question no.: 138

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: Twin Otter Audit

Proof Hansard Page/s: 66-67 (18/11/2013)

Senator Fawcett asked:

Senator FAWCETT: Do CASA hold any records of what the content of those verbal outbriefs are?

Mr Campbell: I think you are talking about an exit meeting. I believe that we still have an exit meeting under our current processes and our current surveillance manual, and I believe there would be records of that meeting.

Senator FAWCETT: Are you able to provide those to the committee? Again, I am only getting one side of the story at the moment, and my understanding is that the exit meeting did not indicate any serious problems that would indicate a show cause notice forthcoming.

Mr Campbell: I would not expect our inspectors to be talking about show cause at an exit meeting, quite frankly. I think that is a decision that we make as part of our coordinated enforcement process, and it requires input from more people than just the inspectors to start talking about things like a show cause notice. I would expect them to say, 'We found this and this and this,' and we will be in touch with them.

Senator FAWCETT: I believe Horn Island was the area where the most concern was. I think there was an audit done—I think Twin Otter was the aircraft that was of concern. Can you tell me how many defects were found on that aircraft when you did the audit?

Mr Campbell: I do not recall the Twin Otter. I will have to take that one on notice.

Senator FAWCETT: My understanding is that it was less than a handful of things like landing lights. Again, there is no AAT process we can look at to understand the balance of this argument. Are you able to provide me—even if it is in confidence—with a record of what the deficiencies were that caused the concern in CASA, because I am certainly not seeing the same story from the other side that would lend weight to a grounding situation, which is essentially what has occurred?

Mr McCormick: Yes, we will take that on notice and provide you with all the documentation we can. I am cognizant that the committee had a discussion earlier today with Mr Mrdak about FOI versus committee requests, and we acknowledge that anything we give to you will be in confidence. We will do our utmost to give you anything we have available on that, and we will certainly find the reports you refer to and the recommendation paperwork that came to me which led to the serious and imminent risk decision. Is it satisfactory that we go up to that decision point?

Senator FAWCETT: Yes, that would be good.

Mr McCormick: We will do that. We will take that on notice.

Answer:

CASA is not aware of any Twin Otters operating in the Torres Strait/Horn Island area and have not carried out any audit or aircraft inspection on any Twin Otters in that region in recent years. It is possible that the question may be referring to another aircraft type, the Britten Norman BN2 (Islander), which was operated by Barrier Aviation (Barrier) at their Horn Island base.

A number of aircraft including the Britten Norman BN2 were found to have defects during CASA audits and subsequent investigations, and details of those matters were considered with regard to CASA's serious and imminent risk decision.

As a result of a special audit of Barrier from 29 October 2012 to 12 November 2012, a total of eleven Aircraft Survey Reports (ASRs) were issued in relation to aircraft operated by Barrier. ASRs are directions

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relating to the maintenance of Australian aircraft for the purposes of ensuring the safety of air navigation. Of significant concern was that four of the ASRs were issued under Code A which requires the serious maintenance issues identified to be rectified before any further flight of the aircraft.

It should be noted however that it was not simply the identification of aircraft defects which led CASA to decide to suspend Barrier Aviation's Air Operators Certificate (AOC). Barrier's practice of preventing its pilots from complying, or directing them not to comply, with their legislative obligations, and flying aircraft on numerous occasions in charter passenger carrying operations with known airworthiness defects, many of which were major defects, gave rise to a serious and imminent risk to air safety.

The view was reinforced by the systemic deficiencies identified during CASA's audit activities, the serious aircraft defects identified and Barrier's poor safety record as evidenced by numerous safety incidents. This was also corroborated by the contents of the diary which was seized on 18 December 2012 when a search warrant was executed on Barrier's Horn Island offices.

Justice Rares of the Federal Court of Australia on 22 February 2013 delivered a judgement stating he was satisfied that Barrier Aviation had engaged in conduct that either constituted, or contributed to, or resulted in, a serious and imminent risk to air safety, and as such the Court made an order that prohibited the holder from doing anything that was authorised by the AOC. Barrier Aviation did not oppose Justice Rares making such an order.

The results of further investigation and analysis were considered in relation to subsequent actions, including the cancellation of Barrier Aviation's AOC on 13 March 2013 and the refusal to re-issue an AOC on 31 July 2013.

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Question no.: 139

Program: n/a

Division/Agency: (AAA) Aviation and Airports

Topic: Report on Aviation Accident Investigations

Proof Hansard Page/s: 58 (18/11/2013)

Senator Xenophon asked:

Senator XENOPHON: Mr McCormick, today marks four years to the day since the ditching of the VH-NGA off Norfolk Island and nearly seven months since the references committee issued its report on aviation accident investigations. Has CASA formulated a response to the recommendations in the report?

Mr McCormick: The part that we had to do has been completed. The documents are no longer with CASA.

Senator XENOPHON: But there were various recommendations and you have given your views as to those recommendations to the department?

Mr McCormick: Yes, we have.

Senator XENOPHON: When did you do that?

Mr McCormick: I would have to take the exact date on notice. It was before the election.

Answer:

In response to a request from the Department, CASA provided initial comments on the recommendations to the Department on 7 June 2013. Formal comments on the proposed response were provided to the Department on 19 August 2013.

After the election, CASA received a draft Government response on 25 September 2013 from the Department inviting any final comments and CASA advised it had no further comments on 26 September 2013.

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Question no.: 140

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: Safety – Colour Vision Deficiency

Proof Hansard Page: Written

Senator Fawcett asked:

1. What resources has CASA provided in the AAT investigation of colour vision deficiency in the current AAT investigation? Please provide details in terms of:

	Current AAT case (to date)
CASA dollar inputs	
Number of CASA personnel involved	
Total CASA man hours	
Third party man hours	
Third party costs	

2. What is CASA's total allocated budget for the current AAT hearing- forecast or approved as per table above?
3. How do all the above figures compare in broad terms to the AAT Denison case of 1989?

Answer:

1.

	Current AAT case (as at 4 December 2013)
CASA dollar inputs	\$10,200 (employee costs)
Number of CASA personnel involved	3
Total CASA man hours	146 hours
Third party man hours	115 hours
Third party costs	\$33,510 (expert report fees)

2. CASA does not allocate a specific Budget to individual litigation matters.
3. CASA has not been able to locate sufficient material which would allow such a comparison to be made.