

Submission

to

Senate Employment, Workplace Relations and Education
Legislation Committee

Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005

Submission no: 71

Received: 9/11/2005

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1. Preamble

The Australian Licenced Aircraft Engineers Association (ALAEA) represents approximately 4200 certifying Licensed Aircraft Maintenance Engineers throughout the Australian airline, Regional and General Aviation industries.

Whilst the ALAEA is strongly opposed to a number of the changes which would be introduced into industrial relations should the proposed Bill become law in its present form the ALAEA welcomes this opportunity to provide a Submission to the Senate Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005, in particular due to the radical nature of the proposed legislation, the extent of the changes being proposed and the effect the proposed legislation would have on Licensed Aircraft Maintenance Engineers (LAMEs) in the daily discharge of their duties and responsibilities to maintain Australia's enviable aviation and airline safety record.

The vital role of LAMEs in maintaining the safety and security of all who fly in Australian skies is of such significance that the Federal Parliament should be cognisant of the potential for legislative change to impact negatively and seriously on aviation safety within the Commonwealth of Australia.

The potential impact of legislative change, such as that which is the subject of this Inquiry, must be examined and assessed to ensure that significant adverse effects, which are unintended and not contemplated by the legislation, do not arise to the serious detriment and peril of the Australian air traveller.

The aviation and airline industries employs Aircraft Maintenance Engineers, licensed by the Civil Aviation Safety Authority (CASA), who are required by Statute to perform duties of inspection and certification to ensure those who work in the environment of airports and aircraft and those who fly in aircraft do so in the safest possible manner on equipment (aircraft) maintained to the highest possible Engineering and maintenance standards.

This Submission deals primarily with the issue of the possible impact of the proposed legislation on Licensed Aircraft Maintenance Engineers, the nature of their work, the operational needs of the employer, and the inspection and certification of aircraft for airworthiness to ensure those who fly in those aircraft or who work on or near aircraft at airports are safe to do so.

The licensing system of competency, skill, expertise, qualification and knowledge applying to Licensed Aircraft Maintenance Engineers in Australia has proved to be one of the most vital elements in maintaining Australia's enviable airline safety record. The high standards of aviation safety supported by the licensing arrangements in place are the rarely seen, but vital lynchpin in ensuring that aircraft are maintained and provided for the travelling public at the highest possible levels of airworthiness and safety.

It is a fundamental premise of Australia's system of air safety that Licensed Aircraft Maintenance Engineers can carry out their vital statutory responsibilities without unnecessary distraction and, when certifying for the airworthiness of aircraft for flight they are able to do so without threat or fear of dismissal.

- **The ALAEA would be pleased to appear before the Committee to answer any questions the Committee might have regarding this Submission and to provide further evidence and amplification if requested.**

Please note: This Submission comprises a total of 16 pages (including cover sheet).

2. About the ALAEA

The Australian Licenced Aircraft Engineers Association is a registered organisation pursuant to the Workplace Relations Act 1996. The ALAEA was founded in the early 1960s to advance the professional, technical and industrial interests of Aircraft Maintenance Engineers who are licensed by the Civil Aviation Safety Authority (CASA) to certify for maintenance work performed on aircraft within Australia.

Licensed Aircraft Maintenance Engineers (LAMEs) are a vital and fundamental element in ensuring the on-going airworthiness of aircraft operating in Australian airspace. Currently the ALAEA has 4200 members employed in all sectors of the industry – in the major airlines as well as in regional operations and the general aviation sector.

The ALAEA believes that it is in Australia’s national interest to maintain its present excellent record of the highest possible safety standards in the aviation sector, the envy of the global aviation and airline industries.

Due to Australia’s vast expanse and its relatively remote global location, distant from both its markets and visitors, the country is particularly reliant on the reliable and continuing provision of safe, secure and well-serviced aviation and airline operations.

A key factor in the industry being able to provide these operations is public confidence in the safety and security of flying within this country, as well as to and from international ports.

The motto of the ALAEA is:

“To undertake, supervise and certify for the safety of all who fly”.

3. Executive Summary

- Public confidence needs to be maintained in the safety and security of travel by air within, from and to Australia.
- Licensed Aircraft Maintenance Engineers (LAMEs) bear statutory responsibilities to ensure aircraft are airworthy in relation to aircraft maintenance and servicing before flight. LAMEs provide inspection and certification in accordance with their training, qualifications and detailed knowledge and experience that an aircraft is safe to fly.
- LAMEs must be afforded certain protections by law in their employment to ensure that they may perform their statutory responsibilities free from unnecessary distraction and pressure that may be applied to them in the discharge of their vital air safety duties.
- Many elements of the proposed legislation have real potential to place LAMEs in the invidious position of having to choose between their employment or exerting the privileges of their Licence to uphold airworthiness safety standards.
- Licensed Aircraft Maintenance Engineers, due to the safety-critical responsibility they hold and exercise, should be exempt from the application of certain provisions of the proposed legislation. Alternatively, these provisions should be removed or amended for all employees, including LAMEs. These provisions

include the restrictions contemplated on the availability of protections afforded currently under the terms of s170.

- Federal Parliament should exercise the greatest possible vigilance in ensuring that legislative changes, in any area, do not impact negatively on Australia's world-renowned aviation safety record.
- The proposed amendments to s.170CE should not be made.
- If amendments are made to s.170CE, bearers of statutory responsibilities, such as Licensed Aircraft Maintenance Engineers, should be exempt from the application of these provisions where it can be demonstrated that undue and improper pressure has been or is likely to be exerted on a LAME in the discharge of their vital air safety responsibilities. (The onus of proof in this regard ought to rest with the employer/aviation or airline operator.)

4. Submission

4.1 Nature of a LAME's Statutory Duty

The relevant Commonwealth legislative provisions are set out in the Civil Aviation Regulations 1988 (CARs) made pursuant to the Civil Aviation Act 1988.

Licences are issued to appropriately competent and suitably qualified applicants pursuant to CAR 31. CAR42ZC, 42ZD, 42ZE, 42ZN outline the provision in relation to who is legally authorised to certify for airworthiness in respect of aircraft maintenance. A certification for the completion of maintenance carried on an aircraft, aircraft component or aircraft material must not be made unless the maintenance is carried out in accordance with the approved maintenance data (see CAR 42ZP).

The following is an excerpt from the Civil Aviation Safety Authority's website and outlines privileges attached to the issuing and holding of an Aircraft Maintenance Engineer's licence:

“What a maintenance engineering licence allows you to do

Anyone can maintain an aircraft as long as they are aware of their legal obligations, are employed by a maintenance organisation approved to carry out the maintenance and have the skills and experience to do the work.

What they are not allowed to do is to certify that work is completed to the regulatory requirements and standards; or to supervise another person doing the work.

As a holder of an Aircraft Maintenance Engineer's Licence you can:

- *Maintain an aircraft for which you are licensed*
- *Certify or sign for maintenance covered by your licence.*
- *Supervise another person working on the aircraft, provided that you are permitted to do that work yourself - for example, a LAME licensed for engine work can supervise an unlicensed person doing engine work.*

The scope of the aircraft maintenance licence allows you to do all work which falls within your licence category, as well as basic maintenance in other categories. In many instances, a licensed engineer can carry out and sign for maintenance in areas not normally associated with the area their Licence covers – for example, an airframe LAME can do some (restricted) work on electrical systems, instrument systems and radios. This is detailed in CAO 100.90 available on the CASA web site or at your local CASA office.

The licence holder's responsibilities

In civil aviation, Licensed Aircraft Maintenance Engineers are fully responsible for the work that they do and often for work done by others. Just as a pilot has a responsibility to ensure that a flight is performed safely and in accordance with the law, the licensed engineer has similar responsibilities for maintenance.

LAMEs must ensure that any work they perform or supervise is carried out in a way which maintains the integrity, airworthiness and safety of the aircraft.

This means that LAMEs will do the work using the approved maintenance manuals with the right tools and approved parts.

The LAME certifies that the maintenance, test or inspection has been carried out to approved data and that the aircraft is airworthy and still meets its type design standard.”

4.2 Licensed Aircraft Maintenance Engineers - State or Federal Coverage

The relevant safety net employment terms and conditions for the coverage of LAMEs is through Federal Awards. Further, approximately 90% of LAMEs are covered by the terms of current Agreements, certified in the Australian Industrial Relations Commission (AIRC).

The General Aviation Award covers some 475 aviation companies, the vast majority of which have 100 employees or less. LAMEs work for these companies and certify for the airworthiness of aircraft in accordance with the privileges of their CASA-issued licence and in accordance with the approved maintenance system of the operator or “approved maintenance organisation” which employs the LAME. It is worthy of particular note that this (General Aviation) sector experiences many more significant incidents than occur at major or regional airlines and operators. Most companies involved in the major and regional airlines sectors employ over 100 employees. In recent years there has emerged a trend to establishing separate, subsidiary separate legal entities to act specifically as the employer entity for a number of commercial and operational reasons, including the minimising of liability on the parent (or holding) company.

4.3 Protecting LAMEs From Dismissal or Victimisation for Exerting or Not Certification Privileges for Airworthiness of Aircraft

The ALAEA believes that it is important that the Government demonstrate in the national interest that it is serious about promoting and fostering a safety culture in aviation. Such a culture is one which promotes the prime objective of safe and secure travelling for the public on Regular Public Transport and other aircraft. To achieve this objective the Government must adopt the fundamental principle of protecting Licensed Aircraft Maintenance Engineers from the threat of dismissal where this arises because they have chosen to certify – or, indeed, have chosen not to certify - for the airworthiness of an aircraft. The matter of aviation and airline safety and the support of Australia's globally-recognised high standards of safety in the air needs to be addressed directly in the proposed legislation.

A LAME is deemed as a competent person for the maintaining, inspection and certification for airworthiness of an aircraft under the Civil Aviation Act 1988 (and its related Regulations). Within that competence resides the necessary discretion to make decisions on airworthiness. Under the proposed legislation an extremely undesirable effect is that the employer may terminate or threaten to terminate the employment of the LAME in circumstances where the employer/operator disagrees with the LAME's decision. It would be inimical to the interests of aviation safety should the LAME have no or limited recourse to independent and impartial unfair dismissal proceedings or adequate protection from the threat of dismissal.

It is undesirable that the LAME as an employee is faced with the dilemma of standing up for the airworthiness of the aircraft and safety of the travelling public or maintaining their employment. (Note: As a practical example the ALAEA, in the interests of aviation safety, has been required had to take the currently available unfair dismissal proceedings against an employer who terminated the employment of a Chief Engineer for taking issue with the employer for not complying with its own maintenance system as required by the Civil Aviation Act 1988 and its Regulations.)

The ability of LAME employees to access unfair dismissal proceedings is a fundamental protection, which assists a LAME maintain the integrity of their

certification privileges exercising on behalf of CASA and in the interests of the safety of the Australian travelling public. It is through LAMEs competency, expertise and the exercise of the appropriate professional authority that aircraft safety in Australia is sustained and enhanced.

Aircraft safety in Australia does not happen by accident.

The LAW Reform Commission of Canada, in 1990, noted:

As important as inspection is for the safety of aviation, many other aspects of the system merit attention as well. For example, the consistently high safety record of Australia has been attributed to short “power distance”, that is, the extent to which crew and staff can argue with the boss. This factor is also important for aviation safety inspection, whether performed by Government personnel or private contractors. (Ref. “INSPECTION - A case study and selected references.”)

Unlike within the State Occupational Health and Safety Acts there is no provision within the Civil Aviation Act 1988 or its Regulations to prevent an employer from terminating the employment of an LAME employee because that LAME chooses to certify - or not certify - that a particular aircraft is airworthy and therefore safe to fly. The sole protection currently afforded to a LAME is under the unfair dismissal provisions of the Workplace Relations Act 1996 (s.170). The proposed changes to the existing legislation, if applied to Licensed Aircraft Maintenance Engineers, would remove this (small but effective) employment protection that LAMEs have now.

The flaw in the current proposed draft that directly affects Licensed Aircraft Maintenance Engineers is that it provides for dismissal without protection of right of appeal based on “operational” needs of the employer (Ref: “*Workplace Relations Amendment (Work Choices) Bill 2005*” para. 112 page 355). This exclusion may come into play even in situations where “operational” factor(s) are minor or insignificant, provided they are present. A LAME exerting certification privileges for the airworthiness of aircraft is invariably and inevitably directly engaged in relation to the operational need of the employer. An aircraft is not permitted (by statute) to fly if it is not certified as airworthy by a LAME. A LAME can therefore prevent the operation of the aircraft on the grounds it is not safe to fly. The exercise of such authority clearly affects the “operational” need of the employer.

It is not unknown for commercial pressure to be brought to bear on LAMEs by airline operators to compromise certification, take short-cuts, use available parts disregarding correct certification for these components, and or to breach established approved practices and procedures for the sake of economic expediency and operational needs.

It is true to say that under current legislation the LAME can find some degree of ability to secure protection and a shield from undue and improper company influence in the fact that they have recourse to unfair dismissal provisions, in the circumstance where an unscrupulous employer dismisses or threatens to dismiss them for not applying their “discretion” in a manner which suits the employer rather than in accordance with at the LAMEs statutory obligations are.

4.4 Certification and Other Safety Legislation

The certification for airworthiness of an aircraft before flight is directly related to the protection of those who fly in that aircraft it may not on any one particular day relate the safety of the certifying LAME who may not be flying in that aircraft and therefore may not be considered as an Occupational Health and Safety risk to the LAME involved and therefore not enliven the employment protection provisions of the relevant Occupational Health and Safety Act or considered to be a safety issue under the Workplace Relations Act. (For reference and as an example, the provisions of the NSW Occupational Health and Safety Act 2000 are reproduced below):

“22 Employer not to charge employees for things done or provided pursuant to statutory requirement

An employer must not impose a charge on an employee, or permit a charge to be imposed on an employee, for anything done or provided in pursuance of a specific requirement of this Act or the regulations.

Maximum penalty:

(a) in the case of a corporation (being a previous offender)—3,750 penalty units, or

(b) in the case of a corporation (not being a previous offender)—2,500 penalty units, or

(c) in the case of an individual (being a previous offender)—375 penalty units, or

(d) *in the case of an individual (not being a previous offender)—250 penalty units.*

23 Unlawful dismissal or other victimisation of employee

(1) *An employer must not dismiss an employee, injure an employee in his or her employment or alter an employee's position to his or her detriment because the employee:*

(a) *makes a complaint about a workplace matter that the employee considers is not safe or is a risk to health, or*

(b) *is a member of an OHS committee or an OHS representative, or*

(c) *exercises any functions conferred on the employee under Division 2 (whether as such a member or representative or otherwise).*

Maximum penalty:

(a) *in the case of a corporation (being a previous offender)—375 penalty units, or*

(b) *in the case of a corporation (not being a previous offender)—250 penalty units, or*

(c) *in the case of an individual (being a previous offender)—225 penalty units, or*

(d) *in the case of an individual (not being a previous offender)—150 penalty units.*

(2) *In proceedings for an offence against this section, if all the facts constituting the offence other than the reason for the defendant's action are proved, the onus of proving that the dismissal, injury or alteration was not actuated by the reason alleged in the charge lies on the defendant.*

Note. See sections 210 (j) and 213 of the Industrial Relations Act 1996 for remedies (such as reinstatement or reimbursement) arising from a breach of this section."

In addition a LAME is obliged to report any breaches or potential breaches of airworthiness compliance requirements to the appropriate authority. Currently unfair dismissal provisions provide some comfort and operate to encourage people to report (sometimes serious) non-compliance free from the fear of retribution from their employer.

The problem with the circumstance described above is that in many instances the reporter is one of few personnel who would have operational knowledge of a specific event and is therefore, in many small organisations, readily identifiable to the employer.

5. Recommendations

- 5.1 The ALAEA strongly recommends the making of an amendment to the proposed s.170CE(5C) and 5(D) (or, alternatively, a Regulation be made) to ensure those who are best placed to identify breaches of the Civil Aviation Regulations can report these in a timely and direct way without fear of retribution or withdrawal of their employment. It should be legislated that LAMEs cannot be dismissed for exerting their discretion in whether or not to certify for the airworthiness of an aircraft before flight. (Legislation in terms similar to that in the NSW Occupational Health and Safety Act 2000 ss.22 and 23 is respectfully indicated for consideration in this regard.)
- 5.2 The ALAEA strongly recommends the making of an amendment to the proposed 170CE(5E) in words to the effect that this provision will not apply to employees engaged in occupations, professions or callings in the Aviation and Airline industries, where the employee(s) are required to exercise statutory responsibilities with regard to the safe operation of aircraft in Australian skies.

6. References

Civil Aviation Regulations 1988 (CARs)

Civil Aviation Act 1988

NSW Occupational Health and Safety Act 2000

7. Authorship

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