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Submission to the Senate Rural and Regional Affairs and Transport Legislation Committee

Civil Aviation Amendment Bill 2003

28th April 2003

Senate Rural and Regional Affairs and Transport Legislation Committee

Civil Aviation Amendment Bill 2003

1) Executive Summary

The Australian Licensed Aircraft Engineers Association (ALAEA) represents certifying Licensed Aircraft Maintenance Engineers throughout the Australian airline, regional and general aviation industry. The ALAEA participates in various CASA consultative committees.

The authority for Aircraft Maintenance Engineers to certify for maintenance and airworthiness is issued by CASA as licence endorsements for each category of maintenance and type of aircraft, and can be revoked by CASA. Refer to "*Division 3A – Subdivision B*" amendments.

Of major concern to the ALAEA is that procedural fairness and natural justice be afforded to individual Licence holders, who may have an authority suspended or revoked by CASA, before such action is effected.

The proposed amendments appear to be aimed at AOC holders but may catch and place an individual LAME in the invidious position of having to take costly action in the Federal Court whereas a more affordable Tribunal would be appropriate.

The amendments should be modified to include a process specific to Licence authorities, that is a distinguishing between action on the AOC holder and a Licence holder by applying r.28BA to an individual and not applying r.30DC.

We would appreciate the opportunity to answer any questions the Committee may have in regard to our submission.

As the peak representative body of Licenced Aircraft Maintenance Engineers in Australia, the ALAEA presents this submission for consideration by the Committee.

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2) Board Abolishment and Director of Aviation Safety to become CEO

It is not clear as to why the Board has been abolished other than as a restructure of the Federal Government's corporate governance of CASA. A more comprehensive explanation of the outline comment '*providing the Minister with stronger and more direct control over CASA's governance and accountability in the areas of CASA's policy directions and priorities, performance standards, reporting and consultation processes, and stakeholder and industry advisory machinery*' whilst providing a transparent structure of reporting and accountability lines would alleviate many misgivings that have developed through the handling of some industry calamities of recent years.

A more delineated term of office for the Chief Executive Officer than 'at the Minister's pleasure' would be more appropriate whilst obviously retaining the Minister's right to terminate the appointee.

The ability for greater involvement by the Portfolio Secretary is also questionable. What is the purpose of this escalation in oversight by a non-Aviation professional? Given the Chief Executive Officer's direct accountability to the Minister, it seems pointless to place another level of bureaucracy between the two other than to act as a political buffer which defeats the stated purpose of providing the Minister with '*stronger and more direct control*'.

Also the proposed structure may rob CASA of some of its protection from political interference in what should be objective safety airworthiness functions. Therefore to keep some objectivity and maintain the 'independent watchdog' concept the ATSB should be given powers of implementation for its recommendations resulting from objective risk analysis and incident/accident investigation.

3) Automatic stay of CASA decisions regarding cases other than serious and imminent air safety risk

CASAs perceived heavy handedness is an issue, which has caused a great deal of consternation, particularly in General Aviation for many years. The proposal of an automatic stay appears to be an appropriate measure to ensure natural justice being available to smaller organisations and individual authorisation holders.

It would be expected that industry would be comprehensively advised of their rights under the new legislation regarding the appeal process through the Administrative Appeals Tribunal.

In an effort to standardise the response time, we would seek that the period of appeal lodgement for which the automatic stay remains valid be extended to 14 days as is typical for most reporting requirements of CASR 1998.

4) Division 3A – Subdivision B Immediate Authorisation suspension regarding serious and imminent air safety risk

We concur with and welcome the concept behind this proposal to deal with immediate air safety risk. We are however, concerned with the inability to review the merits of CASAs decision to suspend an authorisation in the case of an individual LAME. This immediate suspension has the ability to threaten the employment of the individual, whilst preventing him from having CASA reconsider it's decision. This constitutes in our view, a denial of natural justice.

Added to this is the significant cost to the individual of a Federal Court case, in some cases with the threat of having costs awarded against the defendant.

We suggest there be further clarification of the process and that there remains a method of reviewing the merits of CASAs case prior to an individual having an authority revoked.

5) Demerit Point Scheme

Again we commend the demerit point system as an appropriate structure for dealing with minor infringements.

We would expect that the proposed penalty points for particular infringements be discussed with the relevant Standards Consultative Committee Sub-Committee as to their appropriateness prior to the new legislation taking effect.

6) Protection from Administrative Action following voluntary reporting

We support Voluntary Reporting and the provision of protection from administrative action is central to the scheme viability.

Of concern is the following: *'CASA will not be able to use a report of a reportable contravention; the fact that the report has been made; or a receipt given to it by*

an authorisation holder, as evidence in criminal proceedings against the person who reported the contravention, if at the time the proceedings commence, the contravention is still reportable. This allows for post-reporting legislative changes to invalidate the protection afforded by 'reportable contraventions' by later deeming them to no longer be 'reportable'. We would expect this to be rectified prior to legislative implementation.

The obvious candidate statutory body to act as the reporting agency would be the Australian Transport Safety Bureau. We feel that this proposal would go 'hand in glove' with the current Confidential Aviation Incident Reporting system. May we also take the opportunity at this point to raise for consideration the issue of providing the Confidential Aviation Incident Reporting system with more effective legislative power by empowering ATSB to mandate remedial action by CASA or industry as contrasted with the current advisory status of their recommendations.

7) Enforceable Voluntary Undertakings

We feel that this proposal has particular merit for LAMEs when coupled with our previously expressed concern regarding the potential lack of natural justice for Licence holders when faced with immediate authorisation suspension. We would encourage the Committee to consider Enforceable Voluntary Undertakings as a viable alternative to immediate authorisation suspension in the case of individual licence holders whose livelihood and continued employment may be dependent on the validity of their licence.

In closing we would commend the proposal for legislative implementation in anticipation of the above concerns being addressed in a satisfactory manner