

‘Marshall’  
197 Cotham Rd, Kew, Vic, 3101  
Postal address: PO Box 207, Kew, Vic, 3101  
(03) 98174638; (0419) 304640  
[jkimpton@bigpond.net.au](mailto:jkimpton@bigpond.net.au)

Ms Jeanette Radcliffe  
Committee Secretary  
Senate Rural and Regional Affairs and Transport Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Ms Radcliffe,

**Re: Senate Rural and Regional Affairs and Transport Committee:  
Inquiry into the Administration of the Civil Aviation Safety Authority**

**Introduction**

I write with regard to the Committee’s Inquiry into the Civil Aviation Safety Authority (CASA).

Between 1996 and 1998, I chaired regulatory and role reviews of CASA, initiated by the Authority, at the request of the then government. I was Deputy Chair of the then CASA Board between 1999 and 2003. Since 2006 I have served as a member of the Aviation Safety Forum (ASF), which provides strategic advice to the CASA CEO. I have also accepted invitations to undertake Committee work for CASA in that I have chaired two Regulatory Advisory Panels (RAPs) which review proposed regulations before they are submitted to the Executive Council for enactment and am currently member of another. I was a member of the project team that developed the Classification of Activities. I point out that, while Deputy Chair of the CASA Board I was paid a fee and expenses were reimbursed but my current ASF and RAP involvement involves only the payment of expenses. I have provided comments on proposed Parts 103 and 149,

relating to self-administration; this has been done via the rule-making consultative process, independently of the roles just described.

Before my involvement on the CASA Board I was employed in the aviation industry (by Ansett in government relations roles) and had chaired two industry associations: the Board of Airline Representatives of Australia and the Australian Air Transport Association.

I currently edit 'Aviation Briefs' for the Aviation Law Association of Australia and New Zealand.

As a consequence of my past and present involvements, I continue to take considerable interest in CASA. My continued involvement in committee work in the form described reflects my belief in the importance of CASA continuing to develop as it has in recent years.

### **The challenge facing CASA**

The context in which CASA operates is high and increasing expectations as to aviation safety in Australia, particularly with regard to 'fare paying passenger' operations. This is the consequence of a very low, if not perfect, accident rate overall in 'fare paying passenger' operations. As a result, the pressure on CASA to assure an ever-improving industry safety performance is, in turn, ever-increasing, notwithstanding the ever-increasing difficulty of doing so. Nevertheless, in my time on the board, and I am sure since, CASA has sought to rise to the challenge. This is reflected in the statutory framework for CASA as discussed below.

### **Administrative Reforms and related issues**

#### *Rationale for administrative reforms*

In relation to the Committee's terms of reference, the inclusion of **administrative reforms** potentially draws attention to a great number of further worthwhile changes made, in recent years, since I left the Board. The 'drivers' for these changes, as I understand them, include the current CEO's endeavours to:

- emphasise risk-based regulation of the aviation industry
- deploy resources where they can achieve the best value in aviation safety terms
- emphasise education as well as enforcement
- encourage industry to shoulder a greater proportion of the challenge of further improving the industry's safety performance,

- to more effectively and credibly resolve complaints
- place relevant managers and employees closer to the ‘front line’
- reduce inconsistent regulatory decisions
- ensure all responsibilities in the Civil Aviation Act 1988 are fulfilled
- facilitate trade in aviation products and services, and
- streamline processes

with a view to improving CASA’s overall performance in terms of both safety outcomes and industry relations. The key point here is that the need for improvement is recognised and is being aggressively pursued.

*Some issues with which CASA needs to contend*

That said, achieving the intended results and benefits of such changes may take a little time; CASA has a large number of employees, is by necessity dispersed geographically and comprises personnel with an enormous range of skills, education and experience. There is also the need to ensure that in achieving improvements for one of its stakeholders this is done without prejudice to the interests of the others, especially the community at large (of course the travelling public, but also other airspace users and people on the ground under flight paths). Not to be overlooked is that CASA has liability issues which, in certain circumstances, as the law currently stands, it needs to address; the writer some years ago made suggestions that might resolve this last issue.

*The implications of the current thrust of the Civil Aviation Act*

Above all, the Civil Aviation Act’s philosophy of being about ‘maintaining [and] enhancing’ civil aviation safety and the ‘prevention of accidents and incidents’ sets a very demanding standard of itself (Sec 3A : Objects of the Act). It is very different to the ‘foster and support’ framework with respect to industry in which the US FAA operates and with which CASA is often unfavourably compared. Some years ago the writer suggested that CASA be given an additional power by means of amendments to the Civil Aviation Act to ‘facilitate those who are compliant or disposed to be compliant’. It would then be beyond doubt that CASA should take a service approach in its dealings with industry but without prejudice to safety. Industry would have a further incentive to be safe in order to qualify for the facilitation, and new entrants would have to demonstrate that they had a strong safety disposition. Thus even though the proposed words fall somewhat short of the US formulation just quoted they have the capacity to both improve safety and CASA’s relationships with industry. The amendment would not be inconsistent with the retention of the current formulation of Sec 3A.

### *CASA - Australian Transportation Safety Bureau (ATSB) relationship*

At the risk of moving from generality to specifics, to the extent that it was decided to institute this inquiry because of the discussion of CASA-ATSB relationships at a recent Estimates Committee hearing, the CEO issued CEO directives that will implement for CASA those recommendations of the Miller Inquiry into this matter that can be dealt with by CASA administratively. This was done very promptly after that report was issued. I was consulted by Russell Miller in the course of his review and one of the points I made was that a degree of tension between CASA and the ATSB may be unavoidable given their relative roles, even if at times that tension surprises observers. That said, the tension should be no greater than necessary and the report's recommendations are constructive in that regard.

### *Regulatory Review*

There is the question of the regulatory review, which is keenly awaited by industry. Delays are understood to be due to a shortage of drafters, preventing legal drafting of proposed rules, even though there is apparently a 'queue' of regulatory proposals ready for that step. As a stop-gap CASA has sensibly implemented some changes via Civil Aviation Orders. The Minister's release of the Aviation Safety Regulatory Review Taskforce's report in the last few days suggests that thought has been given to expediting the Regulatory Review's completion and a plan exists for finalising rules the Taskforce considered as 'priority areas of focus' within three years, provided the shortage of drafters is overcome. The Taskforce has recommended accordingly. The Minister's acceptance of the 'broad thrust of the recommendations' is welcome and hopefully this means that the resources which the report acknowledges are required, particularly in the legislative drafting area, will be made available as soon as possible; as the report implicitly acknowledges this will require cooperation from OLDP in the Attorney-General's Department. The CEO's directives with respect to rule-making appear to cover relevant issues and, assuming they are followed, the resulting rules should be well received.

### **Strengthening relations with industry and meeting the community's expectations of a firm regulator and governance**

In relation to these terms of reference, the writer has been involved in the preparation of a response by the ASF to the questions relating to safety in the Government's aviation issues paper which overlap with these terms of

reference. This has been provided to the government and would, I am sure, be available to the Committee.

*Civil Aviation Act's implications for CASA's relationship with industry and community expectations of a firm regulator*

The comments above regarding the Civil Aviation Act relate, I suggest, to the question of strengthening relations with industry and meeting the community's expectations of a firm regulator.

**Governance and the Board Question**

*Possible return or revival of a Board*

Given my past experience, I feel I should comment on the question of **CASA's governance arrangements** and the possible return of a board. The comments that follow assume the statutory mandate for the board would be concerned with CASA's performance of its functions in a 'proper, effective and efficient manner' as was the case during my time as a member of it and as currently applies to the CEO. The return of a board was canvassed in the government's election policies.

This would seem appropriate if it is borne in mind that CASA's governance requires the consideration of the whole range of issues which a major enterprise has to face, as well as its specific aviation-related responsibilities. As I recall, these include, in the case of CASA, such matters as finance, personnel, facilities, corporate plan, external relations, risk management directly and via an audit committee and so forth. At least some board members' knowledge and experience would desirably be relevant to these issues. For instance, during the writer's time on the Board a considerable amount of time was spent on a significant information technology (IT) project. The experience of several individual members of the board with major IT projects and their governance was invaluable in that regard.

That said, more than a passing acquaintance with aviation issues on the part of some members of the Board is important in considering such matters as regulatory reform, industry education, industry oversight and enforcement, although the involvement is generally at the 'policy' rather than the 'detail' level and/or in ensuring that the process being followed by management will ensure all relevant issues are identified and addressed. Non-aviation members gain a perspective on aviation-specific issues relatively quickly and their freshness to the industry can assist in the board as a whole seeing things that might otherwise be missed; they, of course, can immediately bring to bear their 'consumer' perceptions and expectations as members of the 'travelling public'.

Under current conflict-of-interest requirements it may be difficult, if not impossible, to appoint people currently involved in aviation activities to the board. The need for aviation experience can be met by appointing people with recent (but not current) industry experience; the writer resigned from Ansett to accept appointment as Deputy Chair.

The corollary to this situation with regard to the board is that two consultative mechanisms used by CASA are of importance. The ASF includes senior experienced and expert industry personnel currently involved in the industry and provides strategic advice to the CEO. Individual members have been able to rise above corporate or sectional interests and provide constructive advice to the CEO either in response to industry concerns or matters raised with them by CASA. The Standards Consultative Council (SCC), as the over-arching industry consultative body with regard to regulatory reform and change, again includes currently-involved industry personnel and, along with RAPs on individual rule-sets, ensures that CASA's and industry's position with respect to proposed rules is clearly understood and, where appropriate from a safety point of view, reflected in proposed rules. Whether or not the Board is 'restored' the continuation of the ASF and SCC will be important, as will CASA's willingness to 'listen' to them.

The above comments are in response to the term of reference regarding governance, in the context of the government's election policies. My reaction when the announcement was made by the former government that the Board would be disbanded was that if the Minister felt CASA had reached sufficient maturity to no longer need a Board, that was a matter open for him to decide.

## **Conclusion**

In sharing the above thoughts, I hope the foregoing is of assistance to the Committee. They are my personal views.

Yours sincerely,

James Kimpton AM

30/06/08

