Submission

Senate Inquiry into the Administration of the Civil Aviation Safety Authority (CASA) and related matters

Peter Ilyk

TABLE OF CONTENTS

Background

I am grateful to the Senate for initiating an inquiry into the administration of CASA that focuses on the new governance arrangements that were introduced in 2003.

I make this submission as a private citizen who is concerned about the way the regulatory authority has dismissed the hard earned lessons of the past in an effort to befriend the industry it was set up to regulate.

The views expressed in this submission are my personal views.

However, my views are based on my previous extensive experience in the regulatory authority in a number of senior positions:

- Assistant General Manager, Legislation Development Branch, Civil Aviation Authority – (1989 – 1995);
- CASA General Counsel – (1995 – 2006).

In these positions I was responsible for advising the various Boards, Chairmen and Directors on a variety of issues relating to regulatory development, compliance and enforcement, corporate governance, legal duties and responsibilities and regulatory policy.

INTRODUCTION

The recent Congressional hearings into the FAA and its policy of "partnership" with the aviation industry should send a warning to Australia. Yet, this is the same policy that has been pursued by CASA since the new governance arrangements were put in place in 2003.

It is therefore timely that the Senate has focused its inquiry on this period – a period where, in my view, there has been a dismantling of CASA's traditional regulatory role on the basis that regulatory compliance is "unsophisticated" and that CASA needs to be a valued partner with the aviation industry.

CNN reported the situation in the USA as follows:

> WASHINGTON (CNN) — The Federal Aviation Administration is putting the public at risk with lax oversight and a too-cozy relationship with the airlines, a top lawmaker and aviation experts said Tuesday.
>
> The FAA has shown a dangerous lack of enforcement compliance with inspection requirements, resulting in thousands of people flying on potentially unsafe aircraft, said Rep. James Oberstar, the chairman of the House Committee on Transportation and Infrastructure.
>
> This is the most serious lapse in aviation safety at the FAA that I've seen in 23 years, the Minnesota Democrat said in an interview with CNN, a position he restated at a news conference Tuesday.
>
> The result of inspection failures and enforcement failure has meant that aircraft have flown unsafe, un-airworthy and at risk of lives, he said.
>
> Oberstar scheduled hearings to begin Thursday, after a congressional investigation uncovered that discount airline Southwest Airlines kept dozens of aircraft in the air without mandatory inspections — and, in some cases, with defects the inspections were designed to detect.
>
> The FAA inspectors wrote that the airline knew it was in violation of safety rules by continuing to fly the uninspected 737s. At least one of the FAA inspectors wrote that he had been complaining about increasing problems like these for years at the Southwest regional FAA office, which oversees Southwest Airlines.
>
> The two inspectors are to appear before Oberstar's committee Thursday.
>
> Oberstar said that this week's hearings, though focusing on Southwest, were also important to show a larger trend: that the FAA is far too close to the airlines it regulates.
>
> It reflects an attitude of complacency at the highest levels of FAA management, a pendulum swing away from vigorous enforcement of regulatory compliance toward a carrier-friendly, cozy relationship with the airlines, he said. This can lead to accidents and to fatalities.
>
> April 2008

See Attachment 1 for further information about the Congressional inquiry into the "cosy" partnership arrangements between the FAA and industry.

Similar problems are now also appearing in Canada:

Auditor blasts Transport Canada
Says potential risks not evaluated before system was changed to let aviation industry police itself
May 07, 2008 04:30 AM

Transport Canada's dramatic move to let the aviation industry police its own safety has been made with no assessment of the risks involved, Auditor General Sheila Fraser says.

Federal bureaucrats have failed to examine the potential consequences before pushing ahead with the controversial change to let individual aviation firms – not federal inspectors – oversee the safety of their operations, Fraser said in a report yesterday.

She said it was impossible to say whether the changes could mean trouble for airline passengers.

"That's the issue. We don't know because they haven't done the risk assessment and they haven't indicated to us how they are mitigating those risks," Fraser told reporters.

"The department certainly hasn't given us any indication that they have clearly identified and addressed all of those risks.

"Potentially it could be serious but we still think there is time for them to adjust and correct this," she said.

Critics of the program said Fraser's findings show Transport Canada is putting lives at risk by handing over responsibility for aviation safety to the industry.

"When the fox is in the henhouse, what do you expect to have happen?" said John Scott, a retired commercial pilot and former accident investigator.

"Human frailty says that if you can get away with something, you will. It's a hard set of dice to roll in this case. If you think safety is expensive, try an accident."

safety."

Critics say Transport Canada's execution of the idea lacks a crucial element – strict government oversight.

"They're building this structure on quicksand in my opinion," said Virgil Moshansky, a retired Alberta justice who headed a public inquiry into the 1989 Air Ontario crash in Dryden that killed 24 people.

See Attachment 2 for further reports on the Canadian problems.

The purpose of my submission is to show that since 2003 CASA has embarked on a systematic policy of partnership with industry to the detriment of the public interest. To use the words of the US Committee:

It reflects an attitude of complacency at the highest levels of management, a pendulum swing away from vigorous enforcement of regulatory compliance toward a carrier-friendly, cozy relationship with the airlines…... This can lead to accidents and to fatalities

There are 2 aspects of this problem.

The first relates to CASA's compliance/enforcement function and the redefinition of that function by the current CASA management team without any reference to, or approval by, Parliament.

The second relates to the failures of CASA in relation to the development of aviation safety rules.

In both these areas, the new governance arrangements have removed all relevant checks and balances to the point where there is no review or accountability for CASA's strategic direction.

Both of these aspects are dealt with in the pages that follow**.**

THE FAILURE OF CASA'S CURRENT GOVERNANCE ARRANGEMENTS

The Dangers of Regulatory Capture

Regulatory capture is a term used to refer to situations in which a government regulatory agency created to act in the public interest instead acts in favor of the commercial or special interests that dominate in the industry or sector it is charged with regulating.

At a first level of capture, the regulator allows the regulated to breach the law, ethic, good practice rule, moral principal or public interest duty that the regulator is responsible for upholding. At a second level, the regulator assists the regulated to avoid the regulatory consequences after the fact. At a deepest level of development, the 'capture' is so complete that the regulator may assist the regulated to defeat the regulatory regime before the fact.

REGULATORY CAPTURE: CAUSES AND EFFECTS
By G. McMahon, BE, BCom, MEngSc, BSc, BEcon, MEconSt

The Civil Aviation Safety Authority was born in 1995 out of the Seaview and Monarch tragedies – tragedies which highlighted the failure of the then regulatory authority (the Civil Aviation Authority) to properly discharge its regulatory responsibilities under the *Civil Aviation Act 1988* to regulate aviation safety in the public interest.

Following the tragedies there was a much clearer focus on the role and responsibility of the regulator. This focus was reinforced by various subsequent coronial inquiries and Senate inquiries. This safety focus was also reinforced by various Boards because there were checks and balances provided by a multi-member Board which could, if necessary, curb particular idealogical stances from being inflicted on the agency.

With the implementation of the new governance arrangements for CASA the checks and balances were removed and a single individual has been able to impose his personal view on the strategic direction that the organisation should pursue – even if this may to the detriment of safety and not in the public interest. The lessons of Seaview and Monarch have been dismissed as irrelevant, the regulatory function has been trivialised and those who remembered the lessons of the past have been removed from the organisation.

The new mantra espoused under the new governance arrangements has been "industry partnership". Regulatory capture is the result..

Why did this occur?

The simple answer is because the new arrangements removed the appropriate checks and balances to ensure that the regulator's responsibility to the public was always kept at the forefront.

Industry as customer

At the time the CAA was created in 1988 there was a concern expressed from a number of quarters that safety regulation may become degraded if the body responsible for safety regulation was also required to provide "commercial services" to the members of the aviation industry who would be seen to be "customers" of the CAA.

Inquiries reject partnership policy

Immediately prior to the Monarch and Seaview tragedies industry had been complaining (and continued to complain) that the regulator was too harsh, did not work in partnership with industry and failed to provide customer service to industry.

The Coroner investigating the Monarch accident and the Royal Commissioner examining Seaview took the opposite view. Both the Coroner and Royal Commissioner found that the regulator was too lenient and had gone too far towards a "customer" relationship with industry. The Royal Commissioner, in particular, believed that the public was entitled to expect significantly higher enforcement standards from the regulator.

Critics rejects findings of Monarch and Seaview Inquiries

A number of CASA's critics subsequently dismissed (and continue to dismiss) the findings of the Monarch coronial and Seaview Royal Commission as being uninformed and irrelevant.

For example, in the October 2001 edition of the AOPA journal, the President's report entitled *"Little tin gods run rampant"* had the following comment:

> *" The findings of two accident enquiries, referred to as the 'Seaview' and the 'Monarch' enquiries have emboldened CASA, and weakened the resolve of those in control.*
>
> *" These enquiries, both run by non-aviation people, both called for closer supervision of the industry – something to which CASA has taken to with its ears back.*
>
> *" Both accidents were tragedies, and my sympathies go out to those who lost loved ones – but I do not accept that these two accidents should be the cause of such an attack on our industry by CASA….It is well time that someone put a stop to this tyranny…."*

Views of the Senate

In October 2000 the Senate Rural and Regional Affairs and Transport Legislation Committee presented its unanimous report into the Administration of the Civil Aviation Safety Authority on Matters Related to ARCAS Airways.

While some critics have chosen to dismiss the findings of the Monarch coronial and the Seaview Royal Commission, the Senate expressly endorsed the findings of those inquiries.

The Committee stated:

> *" In the broader context, the concerns raised by this Committee relating to CASA's administration of ARCAS echo the concerns raised following investigations into the Monarch, Seaview and Aquatic Air accidents. In each case, the appropriateness of the actions of certain CAA officials, and the diligence and propriety with which they discharged their responsibilities, was called into question.*
>
> *"In particular, the Committee cites the findings of Mr James Staunton AO QBE QC in the report of the Commission of Inquiry into the Relations between the CAA and Seaview Air…."*
>
> *"The Committee believes that the 'institutional timidity' cited by Mr Staunton also characterises CASA's administration of ARCAS….In dealings with ARCAS, CASA management displayed a partial acceptance of unsafe practices and breaches of the Civil Aviation Regulations, despite recommendations to the contrary by subordinate officers."*

The Senate Committee believed that the "institutional timidity" evidenced in Seaview was also evident in the actions of CASA's dealings with ARCAS Airways. The final report of the Committee contained the following recommendation:

> *"The Committee recommends that CASA take steps to recommit itself to strong action through prosecution or suspension of those operators who deliberately breach maintenance, airworthiness and reporting and recording requirements thereby compromising air safety."*

Industry capture

When CASA was being established, the draft legislation was referred to the House of Representatives Standing Committee on Transport, Communications and Infrastructure. In its Advisory report in May 1995 the Committee advised as follows:

> *"We can only reiterate that the establishment of CASA is a step in the right direction. But at the end of the day it is the Board of CASA and its director that must be responsible for the administration of aviation*

safety … CASA should be accountable to the Minister, the Parliament and the courts and to no one else … The very real danger is one of regulatory capture. This could happen if CASA (the regulator) is or is seen to be 'accountable' to industry (the regulated)".

Similar comments about regulatory capture were also made by the Monarch coroner and the Seaview Royal Commissioner.

For example, the Royal Commissioner made the following observation in his final report:

> *"4.24 No doubt the benevolent treatment of industry, and the apparent willingness to overlook quite serious breaches was given impetus by industry's being declared the partner of the CAA. Partnership envisages co-operation. Prosecution, cancellation or suspension are hardly the actions of a partner; they are acts of hostility.*
>
> 4.25 *The partner, as has been seen, became the customer. Officers were encouraged to become "customer oriented". It was not then a large step to embrace what is a commonplace in commerce, that "the customer is always right".*

In a similar vein, the Monarch coroner stated:

> *"… it is clear that had the CAA management paid more attention to the law and less to accommodating their 'customers', NDU would have been grounded and AOC suspended … CAA management bent over backwards to protect the 'industry' from the constraints imposed by the Regulations … The CAA placed the commercial interests of its 'customers' above the safety of the public".*

Additionally, in the Plane Safe report issued by the House of representatives Standing Committee on Transport, Communications and Infrastructure on its "Inquiry into Aviation Safety: The Commuter and general Aviation Sectors" in December 1995 the Committee stated:

> *"The Civil Aviaition Authority was never captured by the aviation industry. On the contrary, the regulator offered itself as a willing captive."*

Recent coronial inquiries highlight the failures of CASA

In the coronial inquiry into the Toowoomba accident, the Queensland Coroner Court stated in his report of 9.08.2007:

Did CASA adequately discharge its obligations in relation to the operator and the incident aircraft?

I have found that the operator did not have an adequate system of maintenance and that a key maintenance person failed to adequately discharge his responsibilities. This naturally calls into question the efficacy of CASA's oversight of the operation.

…….. I do not accept CASA's submission that it no had basis to query whether the operator was diligently following the requirements relating to TBO extensions for the incident aircraft. ….. I also consider that it would have been prudent for CASA to focus on the ECTM procedures when auditing or conducting surveillance of operators who used it to extend TBO, particularly in the case of this operator as it had explicit knowledge of its limitations in this regard.

…….the failure of CASA to make any further inquiries in relation to these aspects of the operator's maintenance systems and performance was, in my view, less than the public could reasonably expect of the authority.

In the coronial inquiry in Western Australia into the accident at Jandakot airport, the WA Coroner was highly critical of CASA and the way it performed its regulatory functions. Amongst other things, the Coroner made the following comments in his report of December 2005:

> *"…it is concerning to note that the extent and quality of CASA's supervision of aviation safety standards in relation to general aviation as exemplified by his case appears to be at a low level……..*
>
> *In submissions counsel assisting made the following observations in respect of CASA's performance:*
>
> > *'In the context of this case and the matters considered during the course of the inquest bearing upon and relating to the crashof VH ANV it would be difficult to imagine a more supine and reactive safety regulator than CASA'.*
>
> *In the context of general aviation and in the circumstances relating to the present case, it is difficult to disagree with that description…..*
>
> *……..CASA's approach to supervision and regulation of general aviation as evidenced by this case has been very disappointing…*

Lessons of the past have been dismissed and trivialised

It is clear from the words of CASA itself that is has forgotten the lessons of the past. Once again, the concept of industry partnership is the dominant feature of the regulator. No longer does its see its role as regulating safety. That is

the responsibility of the industry. Compliance with regulations is ridiculed as being unsophisticated and crude and derogatory expressions such as ‘nanny regulator” are used against those who want to ensure that CASA fulfils its regulatory responsibilities.

In this regard it is significant that CASA no longer publishes details of any of its suspension/cancellation on its website. Such publication would not be in the spirit of partnership. In fact you can now no longer find any references to CASA’s powers of suspension and cancellation on CASA’s webite under enforcement action – it’s as if those powers suddenly disappeared.

The justification for not including details of any suspension or cancellation decisions seems to be that because decisions are automatically stayed it would not be appropriate to include any such details. However, the fact remains that CASA has made a decision based on safety concerns, and whether the decision is stayed or not, the public has a right to know that CASA has made such a decision.

In the past, such notification was accompanied by a note to say that the decision had been appealed to the AAT or stayed. But the public at least was aware that the safety regulator had significant issues with a particular operator and could then make some kind of informed decision.

Under the new partnership policy, the interests of the public in knowing about regulatory decisions taken against operators has been completely ignored. This is in stark contrast to the decisions of the previous CASA Boards in relation to the Senate report into ARCAS where the Board took an appropriate public interest stance on regulatory issues:

CASA Media Release - Thursday, 12 October 2000
CASA responds: Report into ARCAS Airways

The Board was deeply concerned at the Senate findings, recognising that grave doubts had been expressed at the handling of a serious aviation safety matter and that urgent responses were required to the Committee's views.

However, the Board intends to respond swiftly and decisively to the issues raised.

Recommendation 3

The Committee recommends that CASA take steps to recommit itself to strong action through prosecution or suspension of those operators who deliberately breach maintenance, airworthiness and reporting and recording requirements, thereby compromising air safety. The Committee notes the advice from CASA, following a request from the Committee Chairman, Senator Crane, that it has recently undertaken significant reform of its investigative and enforcement processes.

The Board has always made an absolute priority of taking strong action against operators who deliberately breach regulations and jeopardise safety. In recent times, CASA has launched a series of initiatives with this objective in mind:

- successful prosecution in the field of non-recording of mustering hours
- suspension of a number of operators
- **publication of suspension actions taken**

Attachment 3 highlights how far CASA's new partnership policy has displaced the traditional role of the regulator that was established by Parliament to regulate aviation safety in light of the lessons from the Monarch and Seaview tragedies. The Lockhart River accident is a timely reminder of the shortcomings of such a policy.

CASA's Partnership Policy

Some concrete examples from CASA's own publications and media statements reveal the extent of the regulatory capture under the current arrangements. What is interesting about these statements is the generally a lack of reference to CASA's responsibility to the public. Readers will only find a disturbing preoccupation with industry and the need for CASA to remain on friendly terms with the industry it is charged with regulating. CASA's traditional role as a regulator is ridiculed in derogatory terms.

Bruce Byron - CASA Annual report 2005/2006

"the modern aviation industry does not need a heavy-handed and prescriptive regulator…"

Bruce Byron - 25 October 2005

….the most effective means of achieving a positive safety outcome involves the development of a more co-operative working relationship between the regulator and the safety-focused members of the aviation industry……..

In some senses the relationship is a 'partnership', with both parties, the regulator and the industry, having a common safety goal, and in a position of mutual dependence in the achievement of that goal. It only becomes a real partnership if the regulator and the industry can work together in an atmosphere of professionalism and mutual respect, and not as protagonists

Bruce Byron - 2005

Rather than seeking to catch people breaking the rules, we would rather they remedy their operations, if necessary, before we get to them. They have a safer operation, we have a simpler audit, and prosecution is minimised.

Bruce Byron – October 2006

"CASA must no longer be seen or act as a 'nanny-regulator'"

Bruce Byron 2006

Yet in the past there has been a mindset, both within CASA and some people in the industry, that safety was primarily the concern of the regulator and the regulations. For some years safety and operational professionals have recognised that this mind set is flawed and naïve……..

Never-the-less, many people are still focusing on compliance with the regulations…

In short, CASA will not be knocking on your door armed with the regulations and a plan to dig around until breaches are found.

If shortcomings in your safety systems are found, CASA will help you to improve through safety education and support, although you will have to do the hard work to reach acceptable standards…

However, the watchdog will be taking a far more sophisticated approach to achieving safety outcomes: one that will reduce unnecessary burdens on the aviation industry, while working towards an even better air safety record in Australia.

Bruce Byron – November 2006

An unsettling trend in some quarters is for a purely punitive approach following an aircraft accident……..

Bruce Byron -31 January 2007

… the watchdog will be taking a far more sophisticated approach to achieving safety outcomes: one that will reduce unnecessary burdens on the aviation industry, while working towards an even better air safety record in Australia.

Bruce Byron -November 2007

…….that is the regulator's task, to encourage industry to take that role rather than focus purely on regulatory compliance - is something that has really been dear to my heart for some time.

Bruce Gemmell Chief Operating Officer 7 September 2006

During a presentation entitled:

*The New CASA – **Returning Responsibility for Safety to the Industry***

the following points were made about how CASA sees its regulatory role:

CHALLENGE STATEMENTS
2005/2006
***To be a valued partner with the aviation industry** in providing Australia with a world-class air safety environment which has public trust and confidence.*

BUILDING A NEW CASA – 2004
GOALS
***Have good relations with industry where CASA was seen as a valued partner** in aviation safety*

FUTURE
From paternalism
To industry managing risks
CASA not significant to day-to-day industry operations

PARTIES

- *CASA*
- *Industry*
- *Press*
- *Politicians*
- *Investigators*
- *Legal Process*

(Interesting that there is no mention of the public in this list of parties)

Bruce Byron November 2006

Yet in the past there has been a mindset, both within CASA and some people in the industry, that the delivery of safety outcomes was primarily the concern of the regulator and the regulations. This blinkered view grew up in the early days of aviation when the regulator did indeed hold-the-hand of industry whenever safety issues had to be addressed.

Bruce Byron March 2007

There is no point in having a major change program in an organisation like CASA without having some clear goals. In our case the goals are to:

- *Improve industry relations*

Bruce Byron – November 2006

In short, the CASA of the future will not focus on digging around until breaches of the regulations are found……

CASA will be taking a far more sophisticated approach to achieving safety outcomes, one that will reduce unnecessary burdens on the aviation industry.

Bruce Byron – March 2004

….I see fences and barriers between the regulator and the aviation industry as being things of the past… we also need to operate cooperatively with our stakeholders, and with as much harmony and common purpose as is reasonably possible.

One of my highest priorities is to work towards establishing the best possible professional working relationship between CASA and the aviation industry and also between myself personally and industry players.

About CASA

The Civil Aviation Safety Authority (CASA) takes the lead in maintaining and improving Australia's high air safety standards. ***CASA works to be a valued partner with the aviation industry*** *in providing Australia with a world-class air safety environment which has public trust and confidence.* (From SEEK – Australia's #1 job site)

The challenge To be a valued partner with the aviation industry *in providing Australia with a world-class air safety environment which has public trust and confidence* (From:About Us Wikiweb page)

Such a "sophisticated" approach to regulation misses the point of regulation. As is the case in the USA, the pendulum has now swung too far back to protecting CASA's partner rather than protecting the Australian public.

It is no wonder that, according to a recent media report, ICAO has been highly critical of CASA. The following appeared in the media on 25 June 2008:

Australia in danger of losing its aviation safety rating?

Ben Sandilands writes:

Deficiencies in air safety in Australia have been uncovered in an audit by ICAO, the International Civil Aviation Organisation, and must be fixed by the end of the year to avoid risking the loss of its Level 1 rating as a nation in full compliance with the highest standards.

ICAO debriefed the relevant public servants and AirServices Australia, the Civil Aviation Safety Authority, the Australian Transport Safety Bureau and other parties three weeks ago. It gave some of these parties a period of months to devise and implement a corrective action plan pending its publication of a final audit report by the end of the year.

This report will be posted after a draft version is circulated to and discussed with the Federal government and the safety bodies with ICAO having the last word over as to its contents or conclusions.

A spokesperson for CASA confirmed that the debriefing identified areas where Australia doesn't conform to the various rules or annexes of ICAO but declined to give specifics.

He said, "There are no shock horrors in it. It did not identify any immediate threats to aviation and any suggestion that it does are an exaggeration."

Crikey understands the debriefing strongly endorsed some aspects of air safety procedures in Australia, including technical excellence in making recommendations arising from issues with faulty components. However it was described as being sufficiently confronting over certain deficiencies to put Australia's over all ICAO level 1 rating at risk.

It is not difficult to guess where it found them, within an air traffic control system that doesn't continuously control even at major airports, an air safety investigator that doesn't always investigate, and an air safety regulator that not only doesn't always regulate, but according to departing chief executive officer Bruce Byron, sees its role as encouraging rather than enforcing compliance.

Such spectacles as Qantas refusing to take off or land at Australian airports because AirServices Australia can't fulfil its responsibilities haven't escaped notice. Nor, it is understood, has the absurd exposure of larger scheduled aircraft to light aviation movements around airports where passenger numbers are rapidly growing.

If Australia loses its Level 1 ICAO rating it also drops from a Level 1 to a Level 2 nation under the US Federal Aviation Administration's safety assessment rules.

The tactics of justification

Captured organisations exhibit particular characteristics. These have been identified as follows:

- The principals of the captured organisation act in breach of the relevant laws morals / ethics, but they rationalise and cover-up that breach by invention of policies or legal interpretations that circumvent their sin or illegality – in their contrived rationale, they are following a policy or legal opinion or protocol or procedure, not breaking a law
- The need of the policy or adversarial legal interpretation can be born from a perception, within the captured organisation, that there is some perceived 'impossibility' about the strategic situation of the organisation that is promoted by the captors. The perception can be readily shown to be a false perception
- The captured organisation selects its internal and external 'referees' – auditors, legal advisers, inspectors, investigators, consultants, researchers, ethicists, archivists, and similar - for their compliance with the policy and for their silence about the breach
- The fore-ordained result of the organisation's regulation, with respect to highly strategic events for the organisation, robs the regulator of its expertise and of its drive for the responsibilities that the captured organisation carries
- The captured organisation can pursue low level events with great vigour, even to the point of illegality, so as to convey the pretence of a dedication to duty that the captured organisation surrendered when it ignored the rules during the more strategic events.
- The captors will prefer the sham of pretending to comply with the rule rather than do away with the unwanted rule. The captors will exercise this preference because doing away with the rule would be unmarketable to the participants.

From an article entitled

REGULATORY CAPTURE: CAUSES AND EFFECTS
By G. McMahon, BE, BCom, MEngSc, BSc, BEcon, MEconSt

According to McMahon:

> *The generic tactic is to downgrade the offence by the party under the protection of the regulator to no offence, or even to spin it into good*

government as part of a deceptively named policy. The purpose of the tactic, however, is to make the breach the argument rather than the non-prosecution of the breach, as it is the latter that is the greater threat to the regulator – for the latter proves 'capture'.

[the captured organisation]*……runs PR articles claiming a course of continuous improvement ……*

…..where capture has been effected, persons who do enforce the rule will not be chosen for the role of rule enforcer, and officers who start to enforce the rule will be placed in other places or with other duties.

One only has to read the justifications provided by CASA for its new partnership policy to see that it exhibits the characteristics of a captured organisation.

A similar situation exists in the USA where the FAA similarly justifies its close partnership relationship with the industry. In a letter dated 12 March 2008 to the House Committee looking at the FAA, the Executive Director, Project On Government Oversight (POGO) voiced concerns about the FAA attitude of justifying its non-enforcement of safety requirements. The FAA justifications are eerily similar to those used by CASA.

Though industry and the FAA have offered public assurances that they are addressing problems identified by the IG, some of their statements have been highly disturbing.

In response to a CNN segment on the IG report, the FAA deflected criticism, rather than embracing the findings as constructive. According to the CNN transcript:

> *In a conference call with CNN officials from the FAA made it clear final responsibility rests with the companies. Quote, "Safety in aviation first and foremost rests with the manufacturers, not the Federal Aviation Administration. Courts have made that clear."*

Those same officials also said they're satisfied with the way the companies assure the quality of parts, noting that an inspector general's report is never positive and always harsh in tone.

The FAA's response is misleading since they are the government entity responsible for overseeing the manufacturers.

Despite numerous cited instances of defective parts making their way onto planes, some even failing in flight due to quality control problems, the FAA simply sought to minimize the safety concerns raised. To the Washington Post, FAA spokeswoman Alison Duquette said, "There are absolutely no imminent safety issues raised by the report."

Industry priority

When the head of a regulatory agency is seen to spend the bulk of his or her time listening to complaints about the agency's compliance and enforcement practices and seeking advice from the industry on how best to deal with those issues, then it is inevitable that the organisation will be captured. According to Mr Byron:

> *One of my highest priorities is to work towards establishing the best possible professional working relationship between CASA and the aviation industry and also between myself personally and industry players.*
>
> *Each month I meet with about ten aviation organisations or individuals to listen to a range of perspectives relating to CASA and its functions. There is an open invitation for you to participate in that process.*

At the same time Mr Byron has assiduously avoided speaking with his own officers and shuns visits to CASA staff. One former senior manager put it this way:

> *……staff usually got word about the substance of them (that is any that had substance) from the industry first. Byron was rarely seen by staff and he would avoid the field offices and spend most of his time with industry. It was my job to pass on communications to Regional staff about changes as they unfolded. This was an uneasy thing for me to do because I was getting printed briefing notes to talk to without any briefing myself.*
>
> *The communications/briefings appeared to me to be spin doctoring without any substance or any plan.*

Current staff say the same thing. The CEO has visited their offices perhaps once or twice in 5 years. At the same time he is said to visit industry representatives (which are located in the same city) and listen to their complaints about CASA on a regular basis – as he admits himself. This is a classic regulatory capture symptom, where the industry you are regulating become much more relevant and important than the agency staff whose job it is to regulate the industry.

In times of criticism, captured organisations turn to their captors for support. After all, it would not be in the interest of either the captured organisation or the captors to change the new arrangements. Accordingly, during the Senate Inquiry CASA will be looking to its industry partners to support CASA's new partnership policy. According to CASA's Deputy Chief Executive Officer, Shane Carmody:

> *The fact is, however, CASA also has a lot of support from industry, more so perhaps than ever before. Hopefully the inquiry will be hearing from them as well.*

Issues for the Inquiry

The Australian travelling public and their families should normally have 3 safety nets to protect them from unsafe aviation operators. These safety nets are:

- the safety laws enacted or approved by Parliament
- the regulator which was established by Parliament to regulate the industry and secure compliance with the safety regulations
- a vigilant Parliament that keeps an eye on how the regulator is performing its job.

As a result of the new CASA partnership policy the first 2 safety nets have been lost to the public.

The new CASA policy decrees that the first protection ie compliance with the regulations is "simplistic", is a "blinkered view" and is no longer "viable". The safety rules are irrelevant under this policy because *“CASA will not be knocking on your door armed with the regulations and a plan to dig around until breaches are found”*.

Similarly, the second protection has now been subordinated to helping industry by using "motivation and education".

CASA must not be a “nanny regulator” There is now a need to be a partner with industry and it is not CASA's role to be knocking on industry's door "armed with the regulations and a plan to dig around until breaches are found". If breaches of the law (approved by Parliament) are found then it is not CASA’s role to enforce them as required by Parliament through the Act, rather CASA will "help" and "support" you. This is called the "sophisticated" approach. Any view that CASA is meant to vigorously enforce safety rules is considered to be a “blinkered” view. The new “sophisticated” approach misses the point about why CASA was actually created and ignores the ashes of the burning wreckages that resulted in the creation of CASA.

There is a strong argument that CASA has, unilaterally, and without any reference to Parliament, simply discarded the 2 main protections that were put in place to protect the travelling public.

The only protection left now is the vigilance of Parliament to ensure that the rules it has enacted and approved are not ignored by a regulator that appears to have lost its way and that appears to have shirked the responsibility imposed on it for the sake of better relationships with the industry it was set up to regulate.

In any review of CASA, the lessons from all the coronial and parliamentary inquiries into aviation safety must be kept in mind. Any review must not be,

and must not be seen to be, driven by industry complainants who inevitably act in their own interests rather than the interests of the public.

CASA should not be accountable to the industry it is meant to regulate.

The *Civil Aviation Act 1988* does not require CASA to be a partner with industry. CASA was not created to promote the aviation industry. The Act rt requires CASA to discharge it regulatory functions in the public interest.

The existing governance arrangements for CASA have allowed a single individual, without any checks or balance, to override the clear statutory mandate vested in CASA by the Australian Parliament.

In looking at the proper role of CASA it would be well to consider a general philosophy of aviation safety regulation.

Since writing this, there have been a few interesting developments on the eve of the Senate inquiry.

CASA has suddenly included some basic information on its website about its administrative powers of suspension and cancellation (27 June) after being questioned about their removal.

Suddenly CASA heralds an "unannounced" blitz on NT operators – but just lets everyone know it is on and when it will occur.

Suddenly on 27 June CASA suspends Lip Air – even though the show cause was apparently issued in about August 2006, but regulatory staff couldn't get management interested. Now, on the eve of the Senate hearings it becomes critical – and CASA is very happy to suddenly publicise its actions. As one former manager put it:

> *This is amazing, XX and YY have been trying to get action on this for some considerable time. The show cause was issued just before I left [November 2006]!*

In addition, it is alleged that CASA management hired private investigators to conduct an investigation into CASA staff for actually taking regulatory enforcement action on a number of operators, including Lip Air. The investigation was instigated because of complaints from industry. But now suddenly there is a serious and imminent risk to safety.

A sceptic may well query the timing of all these events. But they are reminiscent of exactly what the FAA did in the light of the Congressional inquiry. Suddenly enforcement action is critical. These actions also exhibit the tactics of justification described by McMahon above.

REGULATORY PHILOSOPHY

The role of governments in the regulation of all manner of safety standards has generally been accepted for many years. The purpose of any government regulation (and aviation regulation is no exception) is to guard against actions which are potentially detrimental to society. Enforcement of the regulations becomes necessary when regulations are not being adhered to and society suffers as a result.

In a perfect world, merely setting of standards by the regulator would suffice and all participants in the system would, out of self-interest, take all safety measures that have higher benefits than costs. In such a case, there would be no need for regulation of the civil aviation system and enforcement of safety requirements.

There are, therefore, some who argue that those who conduct commercial air operations should be self-regulating and that the responsibility for deciding and enforcing safety standards should be left to the individual operators or to the operators collectively. The theory behind this point of view is that in the end competitive forces will prevail and the unsafe carrier will lose its customers and give way to the safe operator.

Market forces not sufficient

However, it is unlikely that market forces alone could be expected to elicit from all airlines at all times a sufficiently high and consistent degree of attention to air safety standards. It is true that in the long run a good accident record would serve an airline well commercially, but it would be unthinkable to most people that government should abandon the principle of prevention based on regulation and certification and wait for an airline to disqualify itself through its accident record from the confidence of its customers.

There are also those who argue that privately owned aircraft should be free of regulations on the basis that private owners are in a better position than the regulator to determine the continued airworthiness of their aircraft and their ability to navigate safely. However, it is apparent from the accident statistics that privately owned aircraft should continue to be subject to regulation. Such regulation is intended to protect not only the owner and his passengers from harm but also to protect others using the airways. Regulation is also intended to protect the public in the event of a privately owned aircraft failing to observe the safety standards.

Need for regulation

In our imperfect world, therefore, there are many considerations that justify regulation.

First is the view of the travelling public who want to feel they are safe in the air. It is probably not sufficiently reassuring to these people to say that

airlines will always take every precaution because it is the airlines which will suffer most if they are found to be responsible for an accident. Even with the steadying influence of insurance underwriters, history has shown this approach not to be entirely reliable with operators being found to be least partly responsible for accidents and suffering commercially as a result.

Following an accident, the travelling public and in particular those affected directly, invariably scrutinize the role played by the safety regulatory authority. With perfect hindsight they see the regulator as being there for the public good and therefore able to offer a measure of protection. Such scrutiny shows that the public want (and demand) an effective regulator which is empowered to take appropriate and timely action when safety is threatened.

Secondly, the industry itself demands a watch-dog. All operators want to operate on a level playing field where all participants are required to abide by the same safety rules. A dim view is invariably taken when a less responsible competitor seeks to operate without going through the entry procedure other had to or relaxes their safety standards in order to reduce costs and prices. Clearly it is important that care is taken in dealing with complaints from operators where the motives may not be based on safety but on minimizing new competition.

Thirdly, an accident involving the loss of a wide-bodied jet aircraft is a catastrophe which justifies taking significant steps to avoid. If the existence of the regulator prevented just one such accident every 50 years, it would probably be enough to justify the regulator's existence in economic terms alone. There is no scientific way of knowing the effect of a watch-dog authority in helping avoid such a catastrophe, but how could anyone take the chance of doing away with the watch-dog or disempowering it in such a way that it could not act in appropriate cases?

Reason for Enforcement

For whose benefit does CASA undertake its regulatory activity?

One of the best answers to these questions appeared in the Aviation Safety Digest, issued by the Department of Civil Aviation in March 1964 – some 44 years ago. It is as relevant today as it was then:

"It is fundamental to the administration of any statutory discretion, such as this [referring to the power to suspend, vary or cancel licences] that the person upon whom power is conferred shall act first and foremost 'in the public interest'. It follows, therefore, that where there is reason to suspect that a licence holder may menace the welfare of any member of the community, while exercising the privileges of his licence, the Director-General must take steps to limit the activities of the licence, until there is no continuing ground for the suspension.

Responsibility 'in the public interest' is a sometimes overworked and often derided phrase, but if the Department or the industry ever overlook its

responsibility to the people who comprise the community which it serves, then justifiable criticism….will surely follow".

The Monarch crash in 1993 was a startling reminder of the validity of these words. It was primarily the public reaction to this crash which led the government of the day to rethink its position about including the regulatory authority in a "commercial" organization that saw industry as its customer. In the process, the government acknowledged that safety was not simply one among many services to be bought and sold in the market place. The view expressed in the Monarch coronial (and subsequent inquiries) was that safety is one of the rights of Australian citizens, which Australian governments have a corresponding duty to uphold. Speaking of her husband who died in the Monarch accident, the widow of one of the passengers on the Monarch flight put it succinctly when she said:

> *"….he, like every other citizen of this country boarding an aircraft flying a scheduled service, was entitled to assume that he was being carried to the highest possible standards of safety, crew competence and aircraft maintenance"* (The Canberra Times, 31/11/94).

In any inquiry into the administration of CASA, it is essential that the public interest aspect is considered thoroughly. The views of industry should not be the sole determinant as to how industry is to be regulated. There is a clear conflict of interests in the aviation industry deciding how it should be regulated and in having a major role in determining the structure, and enforcement processes, of the regulator. The rights of the flying public must always be paramount.

What is the role of the regulator?

In the Special Review of The Safety Performance of United Kingdom Airline Operators in 1968, the responsibility of government in regulating aviation safety was stated as follows:

> *"In general it can be said that it is the duty of the State to regulate air navigation and it is the responsibility of the operator and the aircraft commander to comply with the statutory requirements and to ensure good operating practice and thereby flight safety. The State, however, has an over-riding responsibility to see that the operator discharges his responsibilities adequately".*

In the Canadian case of *Swanson v. Queen in right of Canada* (1991) 80 DLR (4^{th}) 741 the Federal Court of Appeal quoted with approval the following statement by the trial judge, Mr Justice Walsh:

> *"The flying public has no protection against avaricious airlines, irresponsible or inadequately trained pilots, and defective aircraft if not the Department of Transport and must rely on it for enforcement of the law and regulations in the interest of public safety. Its expressed policy is, as it must be, to enforce these Regulations, but when the extent and*

manner of the enforcement is insufficient and inadequate to provide the necessary protection, then it becomes more than a matter of policy but one of operation and must not be carried out negligently or inadequately".

In the Australian case of *Sutherland Shire Council V. Heyman* (1985) 157 CLR 424, the High Court of Australia explained that one of the factors a court will look at to determine whether there is a duty of care owed by a public authority to the public is the object (or purpose) of the legislation creating the authority and the powers given to the authority to regulate the activity. The Court stated:

"statutory powers are not in general mere powers which the authority has the option to exercise or not according to its unfettered choice. They are powers conferred for the purpose of attaining the statutory objects, sometimes generating a public expectation having regard to the purpose for which they are granted, that they will be exercised. There is, accordingly, no reason why a public authority should not be subject to a common law duty of care…in relation to performing, or failing to perform its functions…"

When CASA was created in 1995, the Civil Aviation Act was amended by the inclusion of an objects clause which provided that the object of the Act was to establish a regulatory framework for maintaining, enhancing and promoting the safety of civil aviation, with particular emphasis on preventing aviation accidents. At the same time a new section 9A was inserted which required CASA to regard safety as its most important consideration when exercising its powers or performing its functions.

While some elements of the industry complain loudly about the fact that CASA exercises the regulatory powers given to it by the Parliament, the fact is that those powers are exercised in the public interest in accordance with law for the purpose of attaining the objects of the Civil Aviation Act.

The powers of CASA are not unique (either in the Commonwealth, State or International arena) and are subject to myriad forms of legal and administrative review.

Self-regulation?

Safety is a somewhat vague and nebulous concept. No-one can really say for certain how much the actions of a safety regulatory authority affect the level of that which is known as aviation safety or reduce the probability of a catastrophe.

However, it is universally recognised that such a regulatory authority is necessary and that free-market forces and the concept of self-regulation cannot be entirely trusted to do a completely satisfactory job in protecting aviation safety.

Aviation may be a world of its own but it must operate in the world at large. In that real world, standards of obedience to the law and safe practices are invariably enforced in some way. To a large extent, the responsibility of those within the civil aviation system to act safely has been recognised and most participants accept that responsibility and comply with safety requirement by effectively regulating their own behaviour. However, this is not always the case and it remains incumbent on the regulatory authority to enforce the law to ensure that safety is maintained.

Unfortunately, this does not occur where the regulator views the industry it is meant to be regulating as its "partner" and trivialises the importance of compliance with safety regulations. If the regulations have no relevance to safety then there are unnecessary and should simply be repealed.

And yet, CASA has now embarked on a policy of self-regulation with the GA sector – **see attachment 5**. On what basis can CASA devolve its responsibility for safety regulation in this way without any accountability? In fact, what is the point of a regulator that is unwilling to regulate and would prefer the industry to regulate itself?

CASA has already devolved responsibility for sports aviation and Warbirds. It is now proposing to divest itself of responsibility for GA and has adopted a policy of "returning responsibility for safety" to the industry it is meant to regulate.

Any objective observer could legitimately ask what relevance CASA has to aviation safety? What is its purpose and why does the taxpayer provide CASA with a budget of $112 million if it devolves all of its regulatory responsibilities to industry and does not believe it has a crucial and significant role in aviation safety?

In the past, CASA's strategic direction was determined by a Board comprising individuals with varied backgrounds who acted on the basis of advice provided by CASA's technical aviation safety experts. The Director could not unilaterally impose his or her will on the organisation. There existed an appropriate system of checks and balances where issues were discussed, advice sought and differing views welcomed. Decisions were made only after full consideration of the safety issues involved and the underlying responsibility of the Authority to act in the public interest.

A point of pride highlighted by the existing CEO is that all senior managers who were in the organisation when he commenced in December 2003 have all been removed.

> *"…..by the end of June 2007 we had new executives in all our senior management positions. There is no one in a senior management position now who was in that position when I arrived at CASA in December 2003" (Bruce Byron 2006/07 Annual Report)*

In an answer to a Question on Notice (2832) published in the Senate Hansard on 14 June 2007, Parliament was advised that:

> *CASA advises that 24 managers left CASA between 1/12/03 and 30/11/06.*

How many more managers have “left” CASA since 30 November 2006?

Most organisations would be seriously concerned about such a loss of corporate memory, expertise and experience. A Board would not have allowed such a deliberately managed exodus of technical expertise. But under the new governance arrangements such a loss is a matter of pride.

The problem is that the current governance arrangements do not provide any such protections – the word of a single individual becomes the law and quickly establishes a culture of fear within the organisation about speaking out in the public interest. Those who do speak out are ostracised and often removed – often under the guise of restructuring to justify the means. Rather than valuing different view points, the organisation actively pursues those who speak up in the public interest.

It is indeed timely to see that an almost identical situation has arisen in the USA with the Congressional inquiry into the FAA.

Only a full inquiry, where CASA staff are protected from management recriminations, will reveal the depth of CASA’s regulatory capture

CASA's FAILED REGULATORY REFORM PROGRAM

Under paragraph 9(1)(c) the *Civil Aviation Act 1988* CASA is required to conduct safety regulation by means that include:

> *"(c) developing and promulgating appropriate, clear and concise aviation safety standards".*

CASA's discharge of this responsibility during the past 5 years has been an abject failure.

At **Attachment 4** is a documented summary of this failure which shows the lack of accountability of the organisation on this issue. **All members of the Committee are encouraged to read Attachment 4 closely**. Most of this material is taken from CASA's own publications and public forums where concerned individuals have expressed their frustrations with CASA' management of the regulatory reform program.

During the past 5 years, no timetable has ever been met in relation to the regulatory reform program, no product has been produced and promise after promise has been swept under the carpet to hide the inability of the organisation and its management of this issue.

Statements made by CASA over the last 5 years in relation to the form of the new regulations, the content of the new regulations, the drafting of the regulations and the timing and progress of the regulations show a lack of any proper management and accountability of the re-write process.

Why has this occurred?

Key problems in the development of aviation safety standards

In my view, problems and delays in regulatory development can be traced to a number of inter-related factors:

- totally inappropriate consultation processes; and
- an incorrect mix of skills in the people engaged in regulatory development; and
- insufficient active involvement and understanding by senior management.

Inappropriate consultation processes

"GOLD PLATED" CONSULTATION

One of the major problems in CASA's regulatory development is that there is too much input coming from too many avenues. As a result, it is difficult to discern valuable input from "white noise". There is no centralised method of dealing with various sources of input. This stems from the industry partnership policy and the need to avoid criticism at any cost. Rather than meaningful consultation CASA has adopted a policy of trying to achieve consensus.

CONSULTATION AT THE WRONG LEVEL WITH THE WRONG PEOPLE

One of the problems with the consultative process is that the input from industry is provided by technical experts with particular vested interests, not policy developers.

This results is consultation directed at the content of the regulations, rather than on tactical policy. These people want to write the regulations without having any overarching policy framework and without any real understanding or training in legislative development. As a result, they seek to substitute their views for those with extensive experience in legislative development and legislative drafting.

In my view, the SCC has a disproportionate influence on standards development but these are the people that have been speaking directly to PAGO and the Director. There is a lack of engagement on regulatory reform by senior "managers" in industry. For example, where are the CEOs and board members, those with significant public policy experience? Where is the ASF and what has it been doing in relation to regulatory development?

Equally, the Department should be providing a high level contribution to the standards development process. However, representation by the Department in the regulatory process is largely undertaken by junior staff who have little input and cannot provide any "moral support" to CASA. Without the Department stating unequivocally the Government's position on specific regulatory issues, CASA is left to defend policy decisions which should be being made by Government but are being left to CASA.

At the end of the day, the regulations are the Minister's regulations but there seems to a lack of any pro active participation by the Department in the development phase. Generally the involvement only occurs at the end of the process and then generally only in response to industry complaints. And then generally to accept the complaints rather than taking an objective approach to the underlying safety issues.

EXCESSIVE EMPOWERMENT OF INDIVIDUALS

What usually happens in relation to industry consultation is that CASA receives the personal views of particular Individual rather than the representation of identifiable interest groups.

"Fringe groups" are generally given excessive "airplay" and the views of groups of significance to public policy on aviation safety are given only the same weight as the views of fringe groups.

This provides an implied authorisation to individuals to halt standards development which is not to their liking.

EXCESSIVE LAYERS OF REVIEW

The current consultative system provides for excessive layers of review, to the point that it is virtually impossible to move forward with any regulatory development process. Compare this with the commitment to moving forward with security legislation. This same commitment is lacking in relation to the development of safety regulations and one has to ask why there is such a difference. Is it simply because the regulatory development mechanism for security is located in the Department? Why the fundamental difference in approach? Surely aviation safety is equally as important as security – at least to the travelling public.

Insufficient leadership by senior management

In my view, CASA's senior management have contributed significantly to delays in standards development through insufficient leadership, which can be demonstrated in a number of ways.

INCONSISTENCY – MOVING OF GOAL POSTS

A sure-fire way to increase the length, cost, and risk of any project is to change the objectives, and the procedures for obtaining those objectives, during the project. There have been several shifts in direction of the Regulatory Reform Program since its inception. Prior to 2000, the objectives of the RRP were unclear and the endeavours of Standards Division were unfocused. Between 2000 and 2003, the objectives of RRP were clear, but were not being achieved, with the looming deadline of the end of 2003 being the driving force behind regulatory development.

> In 2004, a supposedly more measured approach for regulatory development – "getting it right, not getting it made" – was adopted, and the initial objectives of clarity, simplicity, harmonisation, enforceability etc. allegedly came to the fore. Since then, the CASA organisational restructure and several CEO directives have resulted in further changes to the objectives of regulatory reform.

LACK OF ENGAGEMENT

Standards development has been done largely in a silo. There has been little engagement in the process by the people who will 'use' the standards. There has also been lack of engagement by legal counsel who have an understanding of legal issues and how the law works. Legal input is seen as

unnecessary because CASA's lawyers are criticised as having an "enforcement mentality". Rather than recognising that the regulations are the law and require legal input, the trend has been to reject legal input from the legal areas for fear of industry criticism. CASA would prefer to rely on the expertise of bush lawyers from industry groups – many of whom have little understanding of the legislative process.

There is now no dedicated expertise for regulatory development. As one former senior manager recently put it:

> *[Regional compliance staff] staff were pulled away from surveillance activity to do standards development work after standards staff in Canberra were sacked.*

In future, it remains to be seen whether operational Groups in CASA will maintain a serious focus on standards development. Although this is probably expected, there is an obvious risk that Groups focused on day-to-day operational objectives such as surveillance and provision of services to industry will divert scarce resources away from standards development.

In my view, there has also been insufficient material input from the Department into the objectives for RRP. The Department is acting as an "interested bystander", treating RRP as a "CASA project" rather than putting it squarely on the Government's policy agenda.

LACK OF SUPPORT

CASA senior management is rarely seen to actively support standards development. This has two aspects. Firstly, senior management rarely defend standards development against external criticism. The general position is that if there is any industry criticism then CASA must be wrong. There is an unhealthy preoccupation with placating industry complaints and those who complain loudest generally are the most successful in getting their ways – even to the point of having particular CASA staff removed from a regulatory project.

Secondly, there is perhaps a need for senior management to revalue standards development as a key function of CASA by according it the status of a project which has the capacity to reform the Australian aviation industry (and CASA along with it).

Incorrect mix of skills in those engaged in regulatory development

EXTERNAL SKILLS

See "Consultation at the wrong level with the wrong people" above. The skill set present in the people from industry being consulted through the SCC is at the operational and technical level. Understandably, their focus is on the specifics, down to the wording of regulations (which is completely

inappropriate). There are few "strategic thinkers", and there are few people with cross-sector expertise.

INTERNAL SKILLS

The CASA officers "at the coalface" of standards development are people with considerable technical expertise, and are often people with considerable operational experience in both CASA and industry. Some have project management skills. Nevertheless, these skills are not the only ones needed for standards development. There is a dearth of skills in the key area of policy formulation and its legislative implementation.

ARE THERE ANY SOLUTIONS?

Policy development

STRATEGIC POLICY ON THE AUSTRALIAN AVIATION INDUSTRY

It is not possible for CASA, in isolation, to determine or advise upon the Government's policy in relation to the Australian aviation industry. Safety regulation is just one part of this policy. Nevertheless, safety regulation should be critical to the achievement of the Government's policy objectives. What are the Government's industry policies, regional support policies, trade and international relations policies, workplace relations policies, environmental protection policies etc. and how do they impact on the aviation industry? Whatever safety regulatory scheme is established needs to support, or at least not interfere with, any of the Government's other policies.

To be successful in regulatory development, CASA needs to obtain clear and concrete guidance from the Minister and Department on the Government's policies in a variety of areas and how they impact the work of aviation safety standards development.

TACTICAL POLICY ON AVIATION SAFETY REGULATION

CASA needs to formulate high-level principles and objectives for aviation safety regulation within the overall scope of Government aviation policy. This could be done by a body much like the present ASF, but chaired by the Department and involving representatives of key Government agencies, including CASA, Airservices and Defence, with other Government agencies (eg. DFAT, DITR, AGD) co-opted for particular issues. Non-government representatives on this body should not only include representatives from the aviation industry, but people with experience and background in public policy development in other industries. Ideologues and representatives of single-interest groups should not be included. Support for the group should be provided by appropriate professional staff (operational, technical, policy and legal) from Government agencies.

FIXING OF POLICY

Once tactical policy on aviation safety regulation is determined, it should be signed off by the Minister. It should thereafter be largely fixed for the purposes of the reform of aviation safety standards. Lobbying for change by interest groups may be countenanced, but must be put through the process of consideration by the aviation safety policy group chaired by the Department, which will recommend to the Minister whether there is any change necessary. The purpose of the process is to ensure that changes to policy are done in a controlled fashion, having full regard to the Government's objectives. Knee-jerk shifts in policy in response to self-interested lobbying should be discouraged.

Management of standards development

SUPPORT FROM SENIOR MANAGEMENT AND GOVERNMENT

If standards development is taking place in accordance with Government policy, signed off by the Minister, senior management must actively support that development. Senior management must critically analyse any objections to standards development before either changing processes or recommending changes to policy.

Those in charge of managing the regulatory reform process should have extensive experience in regulatory development and should fully understand the legislative process. After all, we are talking about making law. No one currently in charge of the process has any relevant experience or background.

Consultation

CONSULTATION ON POLICY

Consultation on aviation safety regulation policy should be done through the mechanism of the body set up by the Government for that purpose. Input to that committee can be sought in whatever form the committee considers appropriate. However, as a rule, there should be no open invitation to any person to put in their two-cents-worth. Input should be managed with the objective of ensuring the committee has sufficient relevant information to make its policy recommendations to the Minister.

General public comment on policy is typically sought by way of Discussion Paper. And it should be noted that consultation should not be taken to mean consensus – which is what happens today.

CONSULTATION ON REGULATORY FORM AND STRUCTURE

Determining regulatory form and structure to achieve defined policy outcomes is a specialised task. For the most part, this task is done by Government in-house by relevant subject-matter experts; typically lawyers and policy

development units. It is unlikely that there are many in the aviation industry with skills in this area. Consultation on matters of regulatory form and structure to achieve the Government's policies will typically be within Government, that is, between officers of CASA, the Department, and experts in other Government agencies with valuable insight into the workings of various models.

Valuable input can also be sought from overseas agencies and public policy analysts in Australia (so-called "think tank" consultancies, legal experts in different regulatory regimes, etc.).

The consultation is managed in-house, either by an appropriate area in CASA (eg the new Standards Development Management Branch in LSG), or by a unit within the Department.

That unit should decide who to speak to, about what, and when.
General public comment on regulatory form and structure is typically sought by way of the same Discussion Paper which discusses the policy which it is seeking to give effect to.

CONSULTATION ON TECHNICAL MATTERS

Clearly much expertise in operational and technical aspects of aviation lies outside of CASA in the aviation industry. It is on aviation operational and technical matters that the aviation industry can have the greatest impact on standards development. Thus, it is appropriate that this expertise be actively sought by CASA in standards development. One way in which this can be done is to include a small number of experts from industry on standards development project teams.

But, it is important to note that the role of these experts is to provide their professional operational and technical input to the development of safety standards. It is not their role to engage in either of the processes mentioned above (development of policy and regulatory structure), nor is it their role to advise on the drafting of regulations.

General public comment on technical matters would typically be sought by way of an NPRM, in which the technical matters are discussed in the context of proposed regulations addressing a pre-determined policy.

USING THE EASA APPROACH

Much has been made by CASA about the new EASA approach to regulatory development. This has been touted as the panacea for regulatory reform program (prior to this the same enthusiasm was shown for the FAA approach). Unfortunately, those who have been singing the praises of the EASA model appear to have a lack of understanding as to how that regulatory process works.

In fact there has been significant criticism of the EASA model by leading aviation countries such as the UK.

The United Kingdom House of Commons Transport Committee in its November 2006 report had the following to say in relation to the EASA model:

> *6. It is with dismay that we have learnt of the chaotic state of the European Aviation Safety Agency (EASA), which at this time is not able to fulfil its declared purpose. EASA is an accident waiting to happen—if its problems are left unchecked, we believe it has the potential to put aviation safety in the UK and the rest of Europe at risk at some point in the future. (Paragraph 36)*

Conclusion on rule making

CASA already has rules in place and so the contribution that the rewrite program will make to CASA's new focus is probably minimal. Of themselves, the new rules will probably have little impact on aviation safety over and above the existing rules.

And clearly the new rules will have little relevance under CASA's existing partnership policy where there is no desire to enforce the rules and where there is a view that the regulations don't really add anything to safety.

As the current CEO stated on 9 November 2006:

> *Something I am keen to see an end to, is the philosophy that 'as long as we meet the requirements of the regulations we will be safe'.* .

With this sort of attitude to the regulations, it is unclear what real value the current CASA CEO sees in progressing any regulatory development. This attitude may go a long way to explaining why nothing has happened in this area for the past 5 years.

As such, the Committee needs to consider the overall contribution that spending significant time and resources on a complete rewrite of the regulations will make to aviation safety. How much has CASA improved aviation safety since 1999 with the rule rewrite and at what cost (probably between $100 million and $200)? Any objective review would probably find little added safety benefit in the rule rewrite program at such a significant cost – particularly when no tangible product has been delivered.

It may be time to reconsider the cost-benefit of such an exercise and look at alternative ways of undertaking standards development.

ATTACHMENT 1

Lawmakers blame FAA for mass flight cancellations

MORE ON THIS STORY

By Dave Montgomery | McClatchy Newspapers

WASHINGTON — Outrage over mass cancellations of American Airlines flights spilled into Congress on Thursday as lawmakers blamed regulators at the Federal Aviation Administration for indirectly contributing to the hardships shouldered by thousands of stranded travelers.

Nicholas Sabatini, the FAA's associate administrator for safety, endured relentless questions by members of a Senate subcommittee on aviation, who took turns denouncing "systematic" regulatory failures by the FAA. Several suggested that the cancellations may not have been necessary if the agency had been tougher in the past.

In the past three days, American Airlines has grounded nearly 2,500 flights to repair wiring bundles in the wheel wells of its MD-80 fleet. The repairs were ordered after the FAA toughened its oversight of commercial airlines following allegations that FAA officials in Texas allowed Dallas-based Southwest Airlines to fly potentially unsafe airplanes that were overdue for inspections.

"I don't think there is any question that the FAA has been lax in enforcing safety regulations," Rep. Jerry Costello, D-Ill., chairman of the House aviation subcommittee, said in a telephone interview.

A congressional inquiry that evolved from allegations by FAA whistle-blowers, he said, has prompted FAA regulators "to kick it into higher gear, and the airlines are beginning to dot the I's and cross the T's."

"They could have been doing these inspections over a longer period of time," avoiding the need for the abrupt mass cancellation of flights, Costello said.

The FAA announced last week that four airlines, which haven't been identified by the agency, are under investigation for possible safety violations and could face fines. Southwest has been slapped with a proposed $10.2 million penalty for the inspection lapses.

Sen. Jay Rockefeller, D-W.Va., chairman of the Senate subcommittee, called the cancellations an economic catastrophe and an "embarrassment to the nation" that has resulted in "a volcanic disruption" of air travel. He also suggested that heads should roll at the FAA, saying that "sometimes you've got to fire people to make a point."

The political backlash has clouded the prospects for Senate confirmation of Robert Sturgell as FAA administrator. Sturgell is now the agency's acting administrator.

Rockefeller scolded Sabatini for the agency's regulatory failings, at one point telling the official, "I'm not satisfied with your answer." Sabatini bristled at Rockefeller's assertion that he and other top FAA officials weren't stepping up to their responsibilities.

"I want you to know I take what has happened very seriously," Sabatini said. "I do hold myself accountable."

Sen. Kay Bailey Hutchison of Texas, the senior Republican on the subcommittee, said the flights are being canceled "out of an abundance of caution." But she called on airline officials "to do everything in their power to help the passengers who have been stranded."

The Department of Transportation's inspector general, Calvin L. Scovel, presented subcommittee members with a previously released report that said that problems unearthed by the Southwest case "underscore system-wide weaknesses in FAA's oversight" of air carriers. The FAA's regional office developed "an overly collaborative relationship" with Southwest that led to the inspection lapses, Scovel said.

"It's clear that passenger safety was put at risk," said Sen. Olympia Snowe, R-Maine. "Clearly this is a crisis."

The head of the union that represents 11,000 aviation safety specialists in the FAA and Department of Defense said the FAA is "relying more and more on the airlines to regulate themselves" because of a shortage of personnel.

"It is time for the FAA to once again make safety its priority," said Tom Brantley, national president of Professional Aviation Safety Specialists.

Washington Post 2 April 2008-06-07

Crossed wiring led two United Airlines jets to skid off runways.

Federal inspectors blew the whistle on Southwest Airlines for flying planes after learning that critical safety checks had not been conducted on schedule.

A 20-square-foot piece of wing broke off a US Airways jet over Maryland.

Two other carriers discovered problems with the way they were supposed to bundle wires inside jets, leading them to ground scores of planes and cancel hundreds of flights.

Those recent disclosures have raised concern in Congress and among safety experts about airlines' maintenance practices. They said they were also worried about regulatory oversight of an industry that has been outsourcing increasing amounts of its repair work, which makes it more difficult for inspectors at the Federal Aviation Administration to keep tabs on carriers.

Rep. James L. Oberstar (D-Minn.), chairman of the House Transportation and Infrastructure Committee, told reporters yesterday that the recent flurry of maintenance problems is partially a result of "a cozy relationship between the FAA and airlines and a lack of an enforcement mind-set" by regulators.

"We need a change of attitude at the highest levels of the FAA," said Oberstar, who is to hold a hearing tomorrow on the issue.

FAA officials denied that they are too friendly with air carriers and said the industry has done a good job of complying with often complex directives requiring them to fix items as varied as wiring and windshields.

A recent sampling of airline records and inspections of hundreds of planes has found a "very, very high compliance rate" with safety directives, said Laura J. Brown, an FAA spokeswoman. The FAA is expected to release the results of that study today.

The controversy over airline maintenance comes during the industry's safest stretch in history -- there has been only one major fatal U.S. airline crash since 2001. Even the agency's toughest critics in Congress, including Oberstar, have said air travelers should not be nervous about stepping onto a jetliner.

Still, lawmakers and safety experts said they worry that they are witnessing the same types of problems that dogged the industry a decade ago. That is when the FAA and carriers came under fire for lax maintenance practices that led to crashes.

Many of today's reporting and monitoring systems -- which rely heavily on airlines reporting problems to regulators -- were developed to fix such lapses.

In exchange for disclosing errors or other mistakes, airlines are generally not subjected to fines or other forms of punishment. Some experts and members of Congress worry that the approach may need to be recalibrated.

"The pendulum has swung too far in the direction of partnership with the airlines," said Ken Mead, a former inspector general at the Department of Transportation.

Sen. John D. Rockefeller IV (D-W.Va.), chairman of the Senate aviation subcommittee, added: "Well, if you view airlines as your customers, I am not sure that is the appropriate relationship, particularly when it gets into safety."

The recent disclosures of maintenance problems surfaced last month in media reports about Southwest Airlines.

FAA inspectors approached investigators on the House Transportation and Infrastructure Committee and the U.S. Office of Special Counsel, alleging that the airline did not conduct proper inspections for cracks in the fuselages of dozens of Boeing 737 jets. Such inspections were required after a 1988 accident in which the top of an Aloha Airlines 737 tore away due to cracking.

Southwest told regulators in March 2007 that it had not done the appropriate inspections on more than 40 of its 737s but kept flying them for as many as eight days before being able to inspect them for cracks. Mechanics found small cracks in five of the planes, the airline said.

A month later, the airline made a similar admission about late inspections of a critical rudder system. The airline continued to fly the planes for up to nine days after disclosing the problem. A top FAA official in the office that monitors Southwest was a friend of at least one airline employee and improperly gave the carrier permission to fly the planes even after it learned of the missed inspections, according to members of Congress and investigators with the special counsel's office.

The FAA has removed the employee from his job overseeing Southwest.

Special Counsel Scott J. Bloch, whose office investigates complaints by whistle-blowers, said in an interview that he believes "there are significant issues with the FAA commitment to oversight and safety compliance."

"The FAA has a culture of coverup and complacency," Bloch added.

Last month, nearly a year after the initial problems were discovered, the FAA levied a $10.2 million fine against Southwest. The vast majority of the fine was imposed because Southwest had certified that it stopped flying the planes as soon as it learned of the missed inspections, FAA officials said.

Southwest representatives said that the late inspections never endangered the public and that they thought they were following proper procedures after learning of the missed checks.

Southwest's chief executive, Gary Kelly, has apologized for any potential safety lapses.

Southwest last month grounded 38 jets to make up for late inspections for potential cracking on another part of the airplanes. Four of those jets had minor cracks that required repairs, the airline reported.

Southwest's disclosures prompted airlines and the FAA to look for other problems across the industry. Inspectors and mechanics found problems with how wiring bundles were attached in the wheel wells of McDonnell-Douglas jets operated by Delta Air Lines and American Airlines. The airlines grounded scores of planes and canceled hundreds of flights until they could correct the wiring. Airline representatives said the problems did not pose a safety hazard.

On March 22, a 20-square-foot section of composite material separated from the wing of a US Airways Boeing 757 on a flight from Florida to Philadelphia. The airline quickly discovered that improper repairs had been conducted on seven of its 43 757s. That work probably led to the wing breaking over Maryland, the airline said.

The National Transportation Safety Board is investigating what led two United Airlines Airbus planes to skid off runways in recent months. On Feb. 22, one of the planes ran more than 100 feet off the end of a runway while landing at the airport in Jackson Hole, Wyo. Investigators blamed crossed wiring on sensors that operate an anti-skidding system. A similar incident occurred Oct. 9 at Chicago's O'Hare International Airport, investigators said.

United representatives said that they have found no similar problems in their Airbus fleet and are trying to figure out why tests did not uncover the faulty repair work before the planes were put back into service.

Ground Bill C-7: Letting airlines rule over passenger safety is a really bad idea

GREG HOLBROOK

Special to Globe and Mail Update

June 17, 2008 at 11:16 PM EDT

News Flash: U.S. airlines knowingly carried millions of passengers on planes that were so poorly maintained they were not fit to fly. Should Canadian travellers care about this alarming revelation and other signs of trouble Stateside?

You bet. The same economic motives and regulatory opportunities that have led to the crisis in aviation safety south of the border exist in Canada today. Canadian airlines face the same soaring fuel bills, which run anywhere from $50,000 to $100,000 with every trip to the pump. Meanwhile, Transport Canada is being even more aggressive than its U.S. counterpart in its headlong rush to offload responsibility for aviation-safety oversight. Canadian airlines are now supposed to identify and fix safety problems with little intervention from the regulator.

Transport Canada calls this new approach Safety Management Systems (SMS). Just like the cozy relationship between the regulator and the aviation industry south of the border that is now the subject of a special congressional investigation, SMS is a partnership between Transport Canada and the aviation industry here.

Safety levels, among other decisions that affect the bottom line, are now set by Canadian airline executives, not by government in the public interest.

SMS relies on airlines to self-report violations of the safety regulations. To encourage this, Ottawa is proposing changes to the Aeronautics Act. Bill C-7 would exempt airlines from enforcement action and fines they once were subject to when safety rules were broken. As further incentive to induce self-incrimination, Ottawa would guarantee confidentiality to airlines that turn themselves in after a cabin fire, near-miss or other incident.

This get-out-of-jail-free provision would make these safety reports more secret than cabinet documents. No one needs to know that Airline X has had those nasty safety problems in the new world of SMS.

The theory behind SMS anticipates reams of new data will pour into Ottawa as a result, making aviation safer and costing government less.

The only trouble is all this data will be unverified.

In other words, the door is open to airlines to sugarcoat their reports in order to keep their planes in the sky earning money. Under SMS, Transport Canada inspectors

increasingly will become desk-bound, inspecting more paperwork than airplanes and relying on the assurances of the airlines that everything is okay.

That's exactly what has happened in the United States. Consider Southwest Airlines. This major carrier knowingly operated aircraft without conducting mandatory inspections for fuselage cracks; FAA reliance on voluntary reporting and correction of safety violations failed to detect and fix these problems for an entire year.

This is only one example of dozens of potentially fatal safety problems that have been inflicted on trusting passengers. Hundreds of U.S. flights have been grounded in recent months amid allegations that collusion between the Federal Aviation Authority and the airlines it is supposed to regulate has stalled safety inspections.

Cracks are already starting to appear in Canadian aviation safety. Business aircraft like the corporate plane that crashed recently near Wainwright, Alta., have operated without independent safety oversight for more than five years, according to documents obtained via the Access to Information Program.

On Jan. 1, 2003, Transport Canada delegated licensing and safety oversight of business aviation to an industry lobby group called the Canadian Business Aviation Association (CBAA).

According to the Transport Canada March, 2007, assessment, which has just come to light, the CBAA Safety Management System failed to meet a majority of regulatory requirements. Most alarmingly, the assessors found that the CBAA does not provide any planned or structured oversight of private operators.

In short, no one is minding the store, a cause for concern to all air passengers because business aircraft share the same airspace as commercial airlines.

The transition to SMS has come under the microscope of Canada's Auditor-General. Sheila Fraser found that in the rush to hand off responsibility for safety to the airlines themselves, Transport Canada failed to assess the risks inherent in this approach and failed to maintain safety.

For a regulator that is supposed to make decisions based on an assessment of the risks involved, this is a sweeping condemnation.

Here's a troubling scenario: Now that the airlines are able to set the level of risk that's acceptable to them, one can imagine airlines deciding that it's acceptable to travel with a smaller surplus of fuel, what with skyrocketing prices. This might save money on gas but the consequences of running out because a flight has been extended due to bad weather, traffic, or emergency could be calamitous.

According to Virgil Moshansky, the judge who conducted the inquiry into the crash at Dryden, Ont., that killed 24 people in 1989, the same lax oversight conditions that existed pre-Dryden are in play today. Only worse.

Every Canadian who travels by air should be demanding a rewrite of Bill C-7 to put safety and transparency first.

Greg Holbrook is national chair of the Canadian Federal Pilots Association

Auditor-General accuses Transport Canada of being slack over aviation safety

Aviation Correspondent | June 2, 2008

Transport Canada, the department within the government of Canada which is responsible for developing regulations, policies and services of transportation in the country, has been found guilty of laxity in overseeing the aviation industry properly.

In the audit report, obtained under the Access to Information Act, Auditor-General Sheila Fraser also found that “Transport Canada does not know what is the appropriate mix of proper safety oversight of the industry and how many aviation inspectors are required to deliver it.”

The problems arising out of Transport Canada’s sloppiness “could have sweeping implications for air safety in Canada as the federal government looks to transfer an increasing amount of responsibility for oversight and inspections to airlines,” the audit report added.

The Auditor-General faulted Transport Canada in the audit report thus: “Despite the absence of a clear and established safety oversight programme at Canadian Business Aviation Association and evidence of serious problems, including a lack of penalties for pilots who fail to schedule safety audits, Transport Canada found the organisation could continue operating and issued directions to address the problems.”

The Globe and Mail quoted Virgil Moshansky, a retired judge who led an inquiry into the 1989 plane crash in Dryden, Ontario, in which 24 died, as remarking on the audit report: “There’s nobody minding the store, so to speak. It suggests to me that we are approaching a crisis state in Canada if this direction is continued to be followed by Transport Canada.”

For one year now, the newspaper pointed out, Moshansky has been protesting against a federal proposal to bring a reduction in government supervision of commercial airlines.

ATTACHMENT 3

CASA's relationship with industry – a new definition
11 October 2006

Fundamental changes are being made to aviation safety regulation in Australia.

These changes result from several years of hard work and thinking within the Civil Aviation Safety Authority about how to achieve better safety outcomes, while lifting unnecessary burdens on the aviation industry.

At the heart of the changes being implemented by CASA is a fresh definition of the relationship between the regulator and the industry.

CASA must not be seen or act as a 'nanny-regulator'. CASA cannot and should not take complete responsibility for safety outcomes.

It is obvious that CASA does not fly or maintain aircraft, manage aerodromes or train pilots and engineers.

Yet in the past there has been a mindset, both within CASA and some people in the industry, that safety was primarily the concern of the regulator and the regulations. For some years safety and operational professionals have recognised that this mind set is flawed and naive.

Never-the-less, many people are still focusing on compliance with the regulations, not whether CASA and the industry are achieving the best possible safety outcomes.

This blinkered view grew up in the early days of aviation when the regulator did indeed hold-the-hand of industry whenever safety issues had to be addressed.

In the 21st century it is certainly no longer a viable approach to safety as it is simplistic and not based on any analysis of the ever changing risks the aviation industry faces.

Indeed, risk analysis is one of the keys to understanding why CASA must change the way it works with industry.

Risk cannot be managed solely by measuring whether regulatory standards are being met or not. Risk management has to be focussed on the safety outcomes, not the processes.

All this means both CASA and people in the aviation industry have to think more critically and deeply about safety and whether or not risks are currently being managed in the best possible ways.

CASA's plan

The good news is that CASA has developed a plan to change the way it operates and behaves to embrace these concepts of risk management and safety outcomes.

However, CASA cannot do this alone and the Australian aviation industry has to accept the challenges being thrown up by this new approach to safety.

People in the industry must accept they have the core responsibility for managing their own safety risks.

Air operators, maintenance organisations, aerodromes and training organisations – large and small as well as individuals – must identify their own safety risks and develop systems to manage those risks.

Many organisations already do this, some better than others, while there are still more that have yet to understand and accept this responsibility.

While CASA cannot manage the day-to-day operational safety risks of industry, there is, of course, much we can and will do to support and foster risk management across the various sectors of aviation.

CASA will still be the safety gatekeeper by using entry control mechanisms, such as issuing air operator certificates, certificates of approval, licences and other permissions.

These mechanisms make sure that organisations and people entering the aviation industry meet the minimum required safety standards and where necessary have appropriate safety systems in place. In other words, that they accept their responsibility to actively manage their own risks.

With aviation organisations being required to manage their own safety risks, CASA will take an even harder analytical look at prospective industry participants during the entry control process.

At the other end of the regulatory spectrum, CASA will continue to remove organisations or people from the industry who are unable or unwilling to accept their safety responsibilities.

This will be done promptly where organisations or people demonstrate they do not have the capability to deliver the safety outcomes CASA and the community expect.

But between entry control and enforcement, CASA will take a very different approach to its role.

CASA's main emphasis will be on helping organisations and people to manage their own risks, by using motivation and education.

Although the amount of industry surveillance has and will continue to increase, there will be far less emphasis on getting involved in the operational detail of organisations through issuing administrative notices such as requests for corrective action, as this is in effect CASA doing the work of managing safety for industry.

Instead, CASA will look at the risk management systems organisations have developed and implemented and assess whether they are adequate or suitable.

Accept responsibility

Organisations and individuals must also be given the ability to accept more responsibility for safety by reducing the number of permissions CASA issues. If you are operating successfully and properly managing risks, you should not need to come to CASA for many of the permissions that are currently required.

In short, CASA will not be knocking on your door armed with the regulations and a plan to dig around until breaches are found.

When CASA carries out an audit or other surveillance the focus will be on your safety systems, safety culture and how you manage your risks.

This does not mean CASA will stop examining how you are operating. Audits and surveillance, for example, will still include observations of line-flying, maintenance work and training.

But this will be done as a way of measuring the practical outcomes of safety systems – not as an end in itself.

If shortcomings in your safety systems are found, CASA will help you to improve through safety education and support, although you will have to do the hard work to reach acceptable standards.

Failure by anyone in industry to accept and act on their safety responsibilities will continue to bring appropriate action from CASA, as the role of the safety policeman cannot and will not be abandoned.

It should be very clear the new approach to managing safety risks is certainly not about the regulator lowering standards or walking away from its role as the safety watchdog.

However, the watchdog will be taking a far more sophisticated approach to achieving safety outcomes: one that will reduce unnecessary burdens on the aviation industry, while working towards an even better air safety record in Australia.

Bruce Byron AM
Chief Executive Officer
11 October 2006

Attachment 4

CASA Rule Making – A Documented History of Failure

Overview of CASA promises

29 May 2003
CASA Media release

Timetable for new safety regulations

A timetable for the introduction of a range of important new aviation safety regulations has been released by the Civil Aviation Safety Authority.

The timetable outlines the proposed effective dates for groups of regulations that will make up the Civil Aviation Safety Regulations.

Under CASA's regulatory reform program, older Civil Aviation Regulations are gradually being replaced by the new rules.

The timetable shows that 24 Parts under the Civil Aviation Safety Regulations are scheduled to be made effective by the end of 2003.

A further 14 Parts are scheduled to be effective by the end of 2005, with the timetable for four other Parts yet to be determined.

Bruce Byron - 3 February 2004

I have today issued fourteen Directives. The first four Directives relate to the need to review elements of the Regulatory Reform Program. This will involve a delay in the bulk of the overall Program, although hopefully **the delay will not extend beyond 30 June 2004.**

Bruce Byron, 14 February 2005:
Quote:

> **I would be hopeful that it would not be long after early 2006 that most of the draft rules are delivered to the minister.**

Bruce Byron 12 February 2006:
Quote:

> I have also set specific deadlines and introduced a new approach to the management and delivery of the regulatory reform program.

A CASA press release issued around 16 February 2006:
Quote:

> Regulatory reform program **refined**
> ...
> During 2006 the maintenance suite of regulations will be finalised, along with rules relating to aerial work application and the sports aviation suite. The majority of the remaining rules will be completed next year.

SCC Meeting 3 May 2006:

Quote:

> The CEO stressed priority would be applied in particular to CASR Parts relating to sport and recreation aviation operations, 103, 105, 115 and 149; the maintenance suite alignment to the EASA rule set, Parts 43, 145, 66, 147, 144, 183 and Subparts M to 91, 121, 135, 133, 132; and CASR Part 137 (Aerial application operations) for completion in 2006.

21 March 2007:

Quote:

> Senator O'Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 10 November 2006:
>
> With reference to evidence by the Civil Aviation Safety Authority (CASA) Chief Executive Officer, Mr Bruce Byron, to the Senate Rural and Regional Affairs and Transport Legislation Committee on 13 February 2006, that he had 'set specific deadlines and introduced a new approach to the management and delivery of the regulatory reform program'.
>
> (1) Can the Minister outline the: (a) specific deadlines; and (b) new approach to the management and delivery of the program.

...the dissembling answer to which appeared to be:

Quote:

> In November 2005 CASA established the Planning and Governance Office (PAGO). ... PAGO provides a focal point for coordination and project management of the RRP but relies on subject matter experts from other CASA offices for the policy and regulatory development work to be completed on a timely basis. The RRP under PAGO **should be more successful** than under the old Aviation Safety Standards section but progress will depend on the availability of subject matter experts from other parts of CASA.

It's now 4th quarter 2007. Tomorrow's the 13th anniversary of Seaview.
This process goes in endless, expensive circles, so I might as well recycle my own material:

Quote:

> It is patently obvious that CASA no longer has the corporate competence to fix the regulatory trainwreck this side of the end of the decade, if ever, and no longer has the corporate integrity to be honest about it.

It is now the middle of 2008 and still the reform program stumbles on with nothing to show despite countless talkfests and the assurance in CASA's press release of February 2006 that the " majority of the remaining rules will be completed next year" (ie 2007).

More words from their own mouths

CASA Media Release - Monday, 18 October 2004

A better set of maintenance rules

A comprehensive set of clearer and easier to use rules covering aircraft maintenance and maintenance personnel is being proposed by the Civil Aviation Safety Authority.

The proposed new rules provide a better focus on safety, are in line with international best practice, reduce unnecessary regulatory requirements and grant wider privileges to the aviation industry.

In addition, the proposed rule changes will help the Australian aviation industry win a greater share of business in international markets.

The new 'maintenance package' of rule changes is contained in notice of proposed rule making 0407MS – Maintenance and Maintenance Personnel Requirements.

Four years on (July 2008), and they still haven't appeared

May 2005

Oh dear. Nine months after it was made, CASA is still trying to work out what CEO Directive 16/2004 actually means. (copy here: http://www.casa.gov.au/corporat/ceo/...ir016_2004.pdf)

Hmmmm. What to do ….. What to do ……

I know: let's have some training!

Here are some extracts from the notes of the Standard Consultative Committee meeting held on 18 May 2005 (copy here: http://rrp.casa.gov.au/meeting/meet_scc_19notes.pdf)

Quote:

> 4.2 Rowena also noted that a training day for participants involved in the CEO Directive 16/2004 review was foreshadowed at the 16 March SCC meeting. Rowena said that the scope of this training was narrowed down from the prospective 300+ participants to approximately 40 CASA staff.
>
> The focus of the information session will be on safety risk assessment and outcome-based regulation with the aim being to enable a unified view of these issues. Rowena suggested the training would also be extended to the chair of the SCC, the aviation industry Sub-Committee co-chairs and one or two other key personnel to be nominated by the Sub-Committee co-chairs. Rowena stated the outcome of the training day will be captured on a CD so that it can be broadcast widely and used as further information/training to CEO Directive 16 participants. Rowena said the training date is provisionally scheduled for Thursday 2 June 2005 in Canberra. The SCC considered the training day should proceed with priority, and recommended that an overview of the training be provided at the next SCC meeting in August.
>
> Later comment: The training date has been re-set to 5 July 2005 due to unavailability of presenters.
>
> 4.3 Rowena noted that work on applying CEO Directive 16/2004 to the maintenance suite of CASRs is temporarily suspended until after the training day has been conducted. …

Perhaps we need an action item to develop a plan to forward to the minister about when we plan to have the training day to form a united view about what we were supposed to be doing in the last ten years….

26 October 2005

So depressingly predictable:

Quote:

> Target dates [have been] **re-established** for operational CASR Parts to reflect ongoing CEO Directive 016/2004 safety risk/outcome process.

See: http://rrp.casa.gov.au/download/05_status.asp#oct

Budding spin doctors should note the new euphemism for “delayed again”. E.g. “Passengers on flight AB23 please note that the departure time has again been *re-established*. It will now be departing at 7.25.”

The target date for commencement of some of the ‘new’ rules is 1st quarter 2008, and it won’t be long before those dates are “re-established” again. And they’re still fooling around with the 1988 regulations (see for example the CAR 166 farce).

Appropriate adjectives elude me.

---

1 November 2005

Readers may recall the thread I started around this time last year to commemorate the 10th anniversary of the loss, on 2 October 1994, of VH-SVQ and all nine souls on board. In that thread I stated among other things:

Quote:

> The report of the $20 million Commission of Inquiry into the Relations between the Civil Aviation Authority and Seaview Air followed 2 years and later. The Minister for Transport at the time the report was handed down noted in Parliament:
>
> Quote:
>
> > Honeymooners Leeca and Anthony Atkinson were setting out on the first day of their new life together. Reg and Pam Drayton were setting out on what was for them a second honeymoon; Stephen and Carol Lake and two of their five children, Judith and Benjamin, were setting off on a family holiday. The report paints a picture of the young pilot, Paul Sheil, as also being a victim of this unsafe organisation. These are the tragic consequences of wanton operators and an incompetent and timid regulator. They are not just statistics.
>
> Commissioner Staunton's fifth recommendation was:
>
> Quote:
>
> > *That in respect of Civil Aviation Regulation 206 (relating to various forms of commercial operations, including regular public transport operations) urgent consideration be given to amending or replacing the Regulation to overcome the problems identified in the course of the Commission.*
>
> That recommendation was made **eight** years ago. Today, all of the problems identified by the Commissioner in Regulation 206 remain. The definition of the operation specifically mentioned at recommendation five - regular public transport - is in exactly the same terms.
>
> According to sworn evidence by regulators, time and time again, in front of Senate Committees, the new classification of operations rules have always been 'in development' and 'just around the corner'. The current 'target date' is 4th quarter 2004.

It's now **nine** years since that recommendation was made, and the 'target commencement date' for the new classification of operations rules has now been delayed – sorry, 're-established' – to 1st quarter 2008.

The CEO of CASA delivered a speech, entitled *The CASA Safety Program - New Initiatives in a Time of Change* at the 2005 Safeskies Conference on 27 October

2005. A transcript is available from the CASA website. In that speech the CEO said, among other things, that:

Quote:

Some New Initiatives

Having described some of the principles that have guided the approach to change at CASA, it may be appropriate to say something of the individual changes.

Regulation Development

The making of safety regulations is one of our significant functions. In terms of lessons learned the history of regulatory development in CASA has not been one bathed in glory. There have been a number of programs aimed at regulatory reform over the near decade that CASA has been in existence. And each failed to deliver, for a variety of reasons. That represents quite an expenditure of resources for limited output, and that is unacceptable.

The most recent attempt involved a 'big bang' approach aimed at getting the whole spread of regulations reviewed and re-launched as a package. This approach was understandable because many regulations are cross-linked, so to develop one suite without another related suite meant potential difficulty. But the result was a massive effort tying up substantial resources across CASA and severely limiting the availability of those resources to be directed to endeavours which arguably might have a more direct and immediate influence on safety. And regulations were being produced which were overly prescriptive, excessively complex and in many cases offered minimal contribution to safety. I wasn't prepared to accept that.

So the lesson here was that unless luck is on your side, a 'big bang' risks a subsequent implosion. The initiatives arising from that have included restructuring the way we do things to place the people working on regulatory development into the operational areas that work directly with the relevant industry sectors. Rather than trying to solve all the regulatory issues at once, we will be using small focussed teams to tackle individual regulatory packages, without ignoring the inter-relationship issue. We will also be careful reviewing, in association with industry representatives, all new regulations to make sure that they are outcome based, are simple, and make a genuine contribution to safety.

Maintaining the regulatory development focus, in the past we had an aversion to looking overseas for guidance. The line usually run was that the Australian aviation environment is special, and it was not feasible to pick up the regulatory structure of another aviation nation and apply it here. And in fairness there were limited options for suitable models. However, the newly formed European Aviation Safety Agency is taking a fresh approach to regulatory development, embracing a number of the rule-making priorities mentioned earlier, so we have established a small industry / CASA team to work with EASA on a trial program to test whether one particular set of their new rules may have some application here. This is something of a change for us, and a further recognition of the need to learn from past lessons.

Well may the CEO say that the expenditure of resources on 'regulatory development' with limited output is "unacceptable", but he's already presided over nearly 2 years of it, with more to come, and the people involved will continue to get paid buckets of money whether they do nothing, do lots, achieve nothing or achieve lots, produce nothing or produce lots.

The lessons have been learnt before; the approach has been tried before.

Adjectives continue to elude me.

Quote:

> I doubt that CASA has the expertise to complete the process and produce a satisfactory outcome.

The correctness of your view depends upon the timeframe in which the process is supposed to be completed and what constitutes a satisfactory outcome. Neither of those parameters has ever been defined, and no one has a hip pocket nerve connected to them.

CASA has the expertise to have completed the process 3 times over, in satisfaction of whatever differing criteria anyone wanted to choose. The real problem is that despite what its critics might think, the folks in CASA aren't stupid. The people in CASA know perfectly well when there's a policy decision to be made, and they know perfectly well that the people who are supposed to make those decisions are hoping that some other muggins will make them instead.

The recent history of regulatory 'reform' is a litany of Ministers, Ministerial staffers and advisors, dabblers and others, who want someone *else* to make and take responsibility for their decisions. The people at the coal face in CASA aren't that dumb.

They say: "Here are your options, here are the risks and benefits of each option, now **you** tell us which option **you** wish to take, because it is **your** decision."

Ouch! That could mean that a CEO, or a staffer or some other politician might be held **accountable** for a decision!

We can't have that now, can we.

So, let's just drift around year after year, spouting motherhood statements, and hope that everyone stops noticing the obscene waste of time and money that's left in our wake.

---

2 February 2006

This appeared a few days ago...

Quote:

> Regulatory reform program **refined**
> The framework for the development of Australia's aviation safety regulations is being refined by the Civil Aviation Safety Authority.
>
> The framework will make it easier for the aviation industry to comply with the safety rules, as well as streamlining the process of updating regulations.
>
> At the heart of the new approach to regulatory development are two tiers of legislation, underpinned by supporting safety advisory material.
>
> The tiers of legislation are the Civil Aviation Act and the Civil Aviation Safety Regulations.
>
> CASA plans to support the legislation with material which will provide guidance to

the aviation industry on how to comply with the regulations and Act.

CASA's preference is to replace the current three tiers of legislation: the Civil Aviation Act, Civil Aviation Safety Regulations and Civil Aviation Orders.

The big advantages of this framework are that the supporting guidance material will be written in easy-to-follow technical language rather than legal language and there will be flexibility in how the aviation industry complies with the rules.

CASA chief executive officer Bruce Byron says the approach is one used in other leading aviation nations and has a proven track record.

“This means we can make the regulations shorter, with a clear focus on safety outcomes, while leaving the detail about compliance to the supporting material,” Mr Byron says.

“The supporting material will consist of an Acceptable Means of Compliance, advisory circulars and other documentation as required.”

CASA will also be establishing a simpler process for developing the new regulations, while maintaining a high level of consultation with the aviation industry.

“We are forming small industry/CASA teams to develop the supporting material for each set of regulations. These teams will start with the safety outcomes we need to achieve and work out the best and most practical ways of delivering the safety results.

“CASA will then review the relevant regulations to determine what changes need to be made.”

During 2006 the maintenance suite of regulations will be finalised, along with rules relating to aerial work application and the sports aviation suite. The majority of the remaining rules will be completed next year.

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26 May 2006

Good news - Mr Byron has been consulting very widely on regulatory reform issues

From the Proof Committee Hansard of the 23 May 2006 hearings of the Rural and Regional Affairs and Transport Legislation Committee, at pages 47-48 (copy here: http://www.aph.gov.au/hansard/senate/commttee/S9338.pdf)

Quote:

Senator O’BRIEN—I want to return to an issue we have examined in the past, which is your travel, Mr Byron. Thank you for your apology for failure to answer during the previous estimates the question regarding the May to June trip. After this you may want to review the *Hansard* a little more closely so we do not arrive at misunderstandings again. According to the answer I eventually received, the cost of the trip was $47,646.11, made up of airfares for you and your wife of $28,951, European travel of $8,443, accommodation of $7,533, and meals and

other expenses valued at $2,418.79. I had to extrapolate the total cost of the airfares for you and your wife from the answer to question on notice 1417. I assume I have got that figure right?

Mr Byron—That sounds about right, yes.

Senator O'BRIEN—It was two first-class fares?

Mr Byron—Yes.

Senator O'BRIEN—Did taxpayers get good value from this trip?

Mr Byron—I believe they did. Having been in the organisation at that time for over 18 months, in planning that trip I looked at the travel requirements that had been on the previous director and the board and I noted that a number of trips had been conducted in the period of a year, and I tried to consolidate everything into one trip. I have now been in the organisation for two and a half years, and that is the only overseas trip I have done. I did try to incorporate a number of issues, such as the annual requirement to talk to the insurers, the need to start to develop relationships with the directors of civil aviation in other regulatory regimes and particularly, in terms of the changes that I was likely to make in CASA, the need to look at how things were done in other regulatory regimes and how operators operated in those parts. So it was a very broad requirement, I suppose, that I have put on myself that I wanted to do.

Since meeting some of those directors-general, I have established quite regular correspondence
with them, the Americans in particular, on a range of issues such as the changes to the regulatory reform program, the targeted way in which we are conducting our surveillance, the considerations of self-administration that we are looking at talking to industry about and developing those links. I correspond on a regular basis in terms of the future of surveillance activities and regulatory reform. So, in my view, the organisation received certainly benefit from my experience.

Senator O'BRIEN—How long did you stay at the Champs Elysees Plaza in Paris? It just seems a large account for that accommodation.

Mr Byron—I would need to double-check that. I believe it was three nights, but I would need to check.

And those new rules are still out there on the horizon - keep trudging lads (same link, page 28):

Quote:

Senator O'BRIEN—Has the principle of 'acceptable means of compliance' resulted in any change to CASA's procedures?

Mr Byron—Not at this stage, no. The acceptable means of compliance concept, as I briefed the committee, will become effective once we are successful in introducing new aviation safety regulations, which will be based on safety outcomes. It is something that I am personally particularly keen on. As an industry operator for many years, I felt that we needed that sort of clarity in the regulations and to give the flexibility to the industry so that things can be done differently but with the understanding that there has to be a bottom-line safety issue.

The acceptable means of compliance is a procedure that is applied in other regulatory regimes in aviation safety overseas. I would expect to see us start to

> roll those out in a proposed form for the maintenance regulations by the end of this calendar year.

Meanwhile, back at HQ, meetings continue (see: http://rrp.casa.gov.au/meeting/meet_...evUpdate.pdf):

Quote:

> **REGULATORY DEVELOPMENT EVENTS/ACTIVITIES SINCE PREPARATION OF THE SCC MEETING 3 MAY 06 AGENDA PACKAGE**
> **FYI- from last update report.**
>
> **CASR Part development priorities set by CASA CEO**
>
> The CASA CEO announced that the continuation of the RRP was a high priority and would be based on the EASA rules project concept of dedicated project teams/working groups consisting of industry specialists and CASA staff working on the development until completed. The project teams would be centrally managed through Project specialists attached to the Regulatory Development Management Branch (RDMB). The CEO stressed priority would be applied in particular to CASR Parts relating to sport and recreation aviation operations, 103, 105, 115 and 149; the maintenance suite alignment to the EASA rule set, Parts 43, 145, 66, 147, 144, 183 and Subparts M to 91, 121, 135, 133, 132; and CASR Part 137 (Aerial application operations) for completion in 2006.

Standby to be underwhelmed at the end of 2006. Only 136 drafting days 'til Christmas!

If you think this is anything other than an expensive journey in circles, the above link also states that:

Quote:

> It is anticipated that Grant Mazowita will commence mid May with CASA, as Branch Head, Regulatory Development Management Branch.

Talk about groundhog day. Perhaps Leroy Keith will pop back in as well!

Welcome to 4th quarter 2006 and the inevitable failure to deliver

As predicted, the schedule has been delayed – sorry, 're-established' - again. In one fell swoop the 'target date' for some of the rules to be made has blown out by a further **year**.

What I find particularly sleazy is the fact that the regulatory 'development' Status Reports for June, July and August 2006, in which the inevitable truth is revealed, were not published at the end of those months. If you go here: http://rrp.casa.gov.au/download/06_status.asp you will notice that the June, July, and August 2006 Reports have, at least as at 1 October 2006, a flashing cursor denoting 'latest information'. They were all published together with the September 2006 Report!

When the flashing cursors disappear, it will look like the Reports were published consecutively rather than together. The evidence of the unpalatable truth having been known but withheld by CASA for months will be conveniently airbrushed out of history.

Meanwhile, the Minutes of the 16 August SCC meeting are not yet available, 6

weeks later.

The money spent on the regulatory 'reform' hoax is an obscenity.

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6 October 2006

Well, it's now more than 12 years since Seaview and 10 years since a $20 million commission of inquiry which recommended:

Quote:

> That in respect of Civil Aviation Regulation 206 (relating to various forms of commercial operations, including regular public transport operations) **urgent** consideration be given to amending or replacing the Regulation to overcome the problems identified in the course of the Commission.

My bolding.

The document at the link is merely a tarted up version of a proposal that has been 'on the table' for about 8 years.

The problem is that someone has to **make a decision** whether to implement the proposal or not, and if not, what to implement instead.

Someone has to **take responsibility** for making that decision and implementing it.

Someone has to **set and enforce a deadline** for making and implementing the decision, and **take responsibility** if the deadline is not met.

In short, someone has to **actually produce an outcome**.

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23 December 2006

Well, the last working day of 4th quarter 2006 (at least for CASA) has sailed by.

Output?

Noise: lots.

Product: nil.

Good news though! Lot's of things will be done "soon". Quotes from the November SCC talkfest draft 'meeting record' here: http://rrp.casa.gov.au/archive/meeti...rd_061121.pdf:

Quote:

> Airservices Australia have recently conducted a review of ARFFS. As part of this review Airservices have used the Directive 16 risk assessment model. A discussion paper has been published by DOTARS recently which seeks to address deficiencies in the current regulations. CASA is preparing a submission to this paper and that CASA will be registering a new Legislative Change Project shortly [really?] through the Airspace Users Group Sub-committee.

How many years has ARFFS been under review?

Quote:

> Graham Edkins advised that the CASA appointed Project Manager, Stephen

> Phillips is currently working on other projects. When available the Project Officer will review CAO 48, and further develop the partially completed guidance material as well as establish an industry working group.

How many years has the CAO 48 camel been under review? There are more exemptions from CAO 48 than compliances!

Quote:

> Grant Mazowita advised that a Draft paper will be posted to the Discussion forum very shortly [really?].

Of course it will. And then we'll discuss it for a few years and decide nothing.

Quote:

> Grant advised that CASA is still awaiting a final settled legal draft of CASR Part 137; there have been some outstanding legal issues.

Who'd have thought – legal issues in regulations! Classification of operations has, of course, gone backwards and sideways. I won't bore you with the blurb.

Those maintenance regulations projects are going gangbusters, though.

Quote:

> Hondo advised that incomplete drafting instructions for Part 42 have been sent to the Office of Legal Drafting and Publication (OLDP), in the hope these will assist OLDP with the drafting of Parts 66 and 147.

Such child-like naivety!

Quote:

> Hondo advised that policy work on Part 145 was well underway.

and was supposed to be finished years ago. But the camel that is the maintenance regulations now has 3 humps and two heads:

Quote:

> Hondo advised that the Draft CAO 100.66 was almost finished [really?], and will be provided to the Maintenance sub-committee for comment very shortly [really?]. He advised that it is equivalent to an EASA style licence system and uses a Maintenance authority to fill the gap between a normal and EASA licence. This system will be available voluntarily to industry early in 2007.

No it won't. And I thought there weren't going to be any CAOs under the new rules. Meanwhile, on Part 91:

Quote:

> Ron advised that the sub-committee established the Part 91 Control Board, which was to consist of Gavin Turner, Paul Middleton and Bill Hamilton, with Dick Thompson on standby, if required. The Control Board will be announced to the SCC on the discussion forum and plan to meet in March 2007 to review the AIP material as well as any proposed changes.

That's at least another year's talkfest. Meanwhile, we're progressing backwards on FCL:

Quote:

> Roger advised that the sub-committee revisited the status of Parts 61 and 141. Members were advised that during March–May 2005 Directive 16 Working groups convened on both parts. The recommendations from the Part 61 working group have not been incorporated into the Part. Members identified issues on Part 61 which still require resolution ...

But let's not rush this; heaven's no:

Quote:

> There was great discussion on the minimum regulated number of solo hours which was included in the CAR 5 amendment. A discussion took place on whether CASA should regulate or provide a flexible arrangement in the regulation. Members were reminded that CASA is aiming to regulate for the future. The

meeting discussed competency issues which were included in the CAAP and how they would be measured. Concern was raised regarding undue haste, and the need for a controlled trial by CASA and the panel.

But we're very close to nearly being a year from finishing!

Quote:

Members were advised that there are quite a few number of CASR parts which are very close to being fully drafted [sure there are – there have been for years, or so we were told] and also a number which have high priority already placed on them [wow!]. Bruce advised that by placing a higher priority on this Part it would effectively have to take priority off another Part [oh no!]. Members were advised that unless additional drafting resources are provided it may take up to twelve months for legal drafting of Part 61, after drafting instructions were submitted to OLDP.

Cert standards are going nowhere:

Quote:

Jim Coyne, acting Manager, MCANTO and CASA Co-Chair, advised that there has been very little activity with the sub-committee in the last quarter. Jim advised that Part 146 is still with OLDP and is being given low drafting priority.

Rec aviation standards will be out 'soon':

Quote:

Joe advised that Parts 149 and 115B continue to develop. It is anticipated that Part 149 will be ready for NPRM early 2007 [really?], with 115B to follow.

That maintenance camel is coming soon!:

Quote:

Hondo advised that the next MSC meeting will be held mid-December [did that meeting happen?] to discuss the comments received back on the NPRM, consultations on which close 27/11/2006. In the meantime Hondo advised that the CAO 100.66 is nearly complete [of course it is!] and will be pre-released to the sub-committee, prior to its release. Hondo advised that the consultation is going very well [of course it is!].

And as a final irony, the item 'SCC efficiency' action item was:

Quote:

a) To make this an Agenda item at the next meeting. SCC members to consider prior to the SCC meeting, whether changes to the SCC are required to improve its efficiency and effectiveness. b) Pass 'Future role of the SCC' paper to Chair.

An action item to develop a plan on what the SCC should do to deal with its action items more efficiently.

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18 February 2007

Good news! The camel just sprouted another hump!

My apologies for doubting CASA's capacity to produce rushed, stop-gap solutions.

The new 'interim' maintenance personnel licensing and training org CAO is out. From the *Explanatory Statement* (copy here: http://casa.gov.au/download/orders/C...0066Explan.pdf) for new CAO 100.66 (102 pages, copy here: http://casa.gov.au/download/orders/CAO100/10066.pdf);

Quote:

New CASR Parts and new CAO

This new regulatory framework for licensing will [eventually – keep trudging lads -] fall within proposed Part 66 of CASR 1998, and the framework for

maintenance training organisations will [eventually – keep trudging lads -] fall within proposed Part 147 of CASR 1998.

These regulatory proposals are in various states of preparation, some under development and many already at the legislative drafting stage. [But hang on a sec'. CASA put out a press release a year ago that said the 'maintenance suite of regulations will be finished during 2006' – see Icarus' post above.] However, because of the time frames involved in finalising all elements of the package [keep trudging lads], CASA has decided to make a CAO that would immediately implement proposed changes in 2 areas, namely maintenance personnel licensing and maintenance training organisations. This would make new rules in these specific areas available for the aviation industry to take up voluntarily, if they so desired, by way of preparation for the forthcoming changes [they're just around the corner – keep trudging lads] or to gain the benefits of the new system as soon as possible.

To achieve these outcomes, it was necessary for CASA to devise a legislative means of accelerated implementation of the EASA training and licensing arrangements, one that would fall within the existing legislative scheme in CAR 1988 and CASR 1998 and lend itself to expedited preparation of an interim solution. …

CAO 100.23 and 100.24 for existing MAs are in no sense revoked and continue to apply to persons who apply for, or already hold, MAs specifically under them.

So we can't do it properly at a snail's pace, but we can come up with a rushed, stop-gap solution.

Now *there's* a recipe for success!

Let's see if I've got the structure of the rules correct.

1. An Act; plus

2.1988 regulations; plus

3. part-complete 1998 regulations to replace the 1988 regulations – will be 10 years old soon; plus

4. CAOs made under the 1988 regulations before the 1998 regulations were made, and which were to be rendered redundant by the oh-so-simple outcomes-based 1998 regulations; plus

5. a brand new concept – CAOs under the 1988 regulations, that try to achieve, on an interim basis, what has yet to be achieved in the 1998 regulations.

Masterpiece!

So much for the two tier concept spruiked in CASA February 2006 media release:

"At the heart of the new approach to regulatory development are two tiers of legislation, underpinned by supporting safety advisory material.

The tiers of legislation are the Civil Aviation Act and the Civil Aviation Safety Regulations."

19 February 2007

CASA media release

…….CASA is aiming to complete the maintenance suite by the end of 2007.

(What happened to completion during 2006??)

March 2007

We now have an even more bizarre concept – a regulatory policy that is not supported by legislation, even though the requirements for classification of operations are specified in the legislation (CAR 206). But if you can't change the regulations just implement a contrary policy:

Bruce Byron

Another really good example of our new approach to regulatory development is in the production of something that is not a regulation at all, although it will certainly be reflected in regulations. It is the Classification of Operations. There is a need to define broad operational categories, an apparently simple enough task, but one that tends to go off the rails when it comes to working out what specific activity goes into which category……..

I believe that in the new Classification of Operations we have a document which places Australia at the forefront of progressive thinking on defining aviation activity in a manner consistent with this country's aviation safety priorities, and in the small team approach I believe we have a process that produces first class outcomes in reasonable timeframes and with a minimum of fuss……...

Under the new system there will be three broad classes of operations: passenger transport, aerial work and general and freight activity. Passenger transport will cover what are now known as regular public transport and charter flights. These will continue to require an air operators certificate. Aerial work will cover operations such as emergency and medical flights, law enforcement, aerial survey and aerial agriculture. Some of these activities will require an air operators certificate, while others will be regulated using other permissions or operational limitations, depending on the level of risk. General and freight only will cover most private flights, flying training, freight-only flights and others where only the crew is on board an aircraft. Air operators certificates will be required for some activities in this class, such as large freight operations, while others will not require a permission from CASA.

It's just a pity that it is not supported by the legislation. But what the heck, if you can't change the law, just make it up as you go along……..

Bruce Byron March 2007

The need for new regulations to meet the new guiding principles initially slowed the regulatory development process, but there is no question that better and more effective safety focussed rules have been the result.

Easy to say, but the problem is that there have been no new regulations. Could we have some concrete example of these "better and more effective" regulations – in the new fangled two-tier format????

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23 March 2007

Senate Question on Notice No. 2722 has been answered at page 95 of the Proof Senate Hansard of 21 March 2007 (here: http://www.aph.gov.au/hansard/senate...s/ds210307.pdf)

Note especially the (non)answer to the question as to what Mr Byron's 'specific deadlines' are, and that no one knows how much this journey in circles has cost or will cost:

Quote:

Civil Aviation Safety Authority: Regulatory Reform Program

(Question No. 2722)

Senator O'Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 10 November 2006:

With reference to evidence by the Civil Aviation Safety Authority (CASA) Chief Executive Officer, Mr Bruce Byron, to the Senate Rural and Regional Affairs and Transport Legislation Committee on 13 February 2006, that he had 'set specific deadlines and introduced a new approach to the management and delivery of the regulatory reform program'.

(1) Can the Minister outline the: (a) specific deadlines; and (b) new approach to the management and delivery of the program.

(2) When did the regulatory reform project commence.

(3) What has been the cost of the project to date, by year.

(4) What outcomes can be attributed to the project to date.

(5) Has the CASA restructure announced in February 2006, enhanced or diminished CASA's capacity to meet Mr Byron's specific deadlines for the regulatory reform project.

(6) What is the estimated total cost of the project.

Senator Ian Campbell—The Minister for Transport and Regional Services has provided the following answer to the honourable senator's question:

(1) (a) The maintenance suite of regulations, the rules relating to aerial work application and the sports aviation suite will be progressed during 2007, along with rules relating to aerial application work and the sports aviation suite. Work

on the Operational rules (Parts 91, 121, 135, 119) will also continue through 2007.

(b) In November 2005 CASA established the Planning and Governance Office (PAGO), which is responsible for coordinating and communicating CASA's corporate and operational strategies and plans. PAGO includes a Regulatory Development Management Branch which is responsible for managing the Regulatory Reform Programme (RRP). The Branch is also responsible for managing consultation with the aviation industry on regulatory development proposals through the issue of Discussion Papers (DPs), Notices of Proposed Rule Making (NPRMs) and Regulation Impact Statements (RIS). The Branch also liaises with the Office of Best Practice Regulation (formerly the Office of Regulation Review) in relation to new regulatory proposals.

Prior to the establishment of PAGO, the RRP was managed through the Aviation Safety Standards section of CASA.

To develop safety regulations under the RRP, CASA forms small combined industry/CASA teams to establish the direction of the regulations and their detail. Wherever appropriate, these new rules are to be based on overseas regulations to ensure harmonisation and Australian competitiveness. These new rules will be written expressly to address safety outcomes.

(2) The RRP was initiated in December 1999 and was launched at the beginning of 2000.

(3) RRP costs cannot be distinguished from other costs associated with the CASA area responsible for the activity.

(4) During the period 2000 – 2006:
• 15 Civil Aviation Safety Regulations (CASR) Parts were made and commenced: CASR Parts 11, 13, 39, 45, 47, 60,
65, 67, 92, 101, 139, 143, 171, 172, 173.
• 57 Advisory Circulars were issued.
• 9 Manuals of Standards (MOS) were issued.
Examples of secondary outcomes are aircraft registrations, aerodrome certification/registration, navigation approvals granted and airworthiness directives issued as a result of the CASR Parts being made under the RRP.

(5) PAGO provides a focal point for coordination and project management of the RRP but relies on subject matter experts from other CASA offices for the policy and regulatory development work to be completed on a timely basis. The RRP under PAGO should be more successful than under the old Aviation Safety Standards section but progress will depend on the availability of subject matter experts from other parts of CASA.

(6) See (3).

So: don't know how much it's cost or is going to cost, and don't know how long it's going to take. What *superb* project management!

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10 April 2007

So who's actually supposed to be driving the train?

Mr Vaile's 'Aviation Regulation Review Taskforce' election stunt was right on cue - it will keep Dick safely distracted for at least 6 months and, depending on the outcome of the election, maybe a year.

I was intrigued by Mr Vaile's press release. It says, among other things that:

Quote:

> Following discussions with Mr Byron, I have decided to establish the Aviation Regulation Review Taskforce to assist me guide the CASA regulatory reform programme to a successful conclusion.

I thought Mr Byron was being paid to 'guide the CASA regulatory 'reform' programme to a successful conclusion. Now it appears Mr Vaile is going to drive the train.

The scene: A smoking, mangled mess of twisted metal, barely recogniseable as railway track, rolling stock and engines. Mr Byron and Mr Vaile survey the wreckage, scratching their heads.

Mr Vaile: Geez Bruce, what happened?

Mr Byron: Well Mark, I was at the front of the train, issuing directives and restructuring the crew, when the next thing I know, we're bearing down on the back of our own train! We wuz going around in circles!

Mr Vaile: Geez Bruce, why were you going in circles?

Mr Byron: How would I know? I don't know how to drive one of these things mate. Sure, I've been on some expensive trips to see how they drive these things overseas, but geez Mark, these things are complicated and dangerous!

Mr Vaile: Geez Bruce, if you weren't driving this thing, who was?

Mr Byron: Buggered if I know Mark. Wasn't it you?

Mr Vaile: Geez Bruce, you're in charge. You were supposed to be driving for the last 3 years!

Mr Byron: Sure Mark – pull the other one, it plays Jingle Bells!

Mr Vaile: Whadda we do now?

Mr Byron: What are you trying to achieve?

Mr Vaile: I want to retire quietly with my snout snugly in the public trough.

Mr Byron: You need a 'taskforce' mate.

Mr Vaile: A 'taskforce'? What's that going to achieve?

Mr Byron: Nuthin. But we'll both be long gone before the voters realise just how big this mess is. Now let's get out of here.

Mr Vaile: Which way is out?

Mr Byron: Just sneak past that confused and angry pack of aviators who were on the train, wade through that quagmire of regulations and orders, then climb over

that mountain of manuals of standards, and you're there.

Mr Vaile: Geez Bruce, what are our chances?

Mr Byron: Don't worry Mark, I'll issue a directive and we'll be right.

17 May 2007

Bruce Byron

…….we are working hard to finalise a complete new set of maintenance regulations by the end of this year [but weren't they meant to be finalised during 2006???].

26 May 2007

Yes. This farce started years before 1999, it's nowhere near complete, and the current status is a camel that's 4 times the size and has many more humps than what they started with.

Meanwhile, the important work of the task force (keeping Dick distracted during the lead up to the election) has begun. It's had a **meeting**!

Quote:

Senator O'BRIEN—What will the reporting relationship be between the task force and CASA?

Mr Mrdak—Mr Byron is a member of the task force. The task force will report to the minister. Mr Byron, as a member of the task force, will have a part to play in its advice.

Senator O'BRIEN—Has the task force met yet?

Mr Mrdak—Yes, it has.

Mr Ford—The task force has had one meeting. It was on 14 May.

Senator O'BRIEN—A week ago. Does it have terms of reference?

Mr Mrdak—Yes, it does.

Senator O'BRIEN—Are they public?

Mr Mrdak—They are not. I can take that on notice. The minister has written to the chair of the task force setting out his expectations and the area he wishes to have the task force cover. I will take that on notice to see if that can be made available to the committee.

Senator O'BRIEN—Thank you for that. Do you know if it has yet established a work program, who it will consult and when it will report?

Mr Mrdak—The initial meeting of the committee last week did establish a meeting schedule and initial areas of focus for its work—initially looking at parts of the civil aviation regulations which are under development, particularly, and I will check this with Mr Ford, part 91.

Mr Ford—Yes, it is part 91. The task force has decided to focus initially on some high priority areas of the regulatory framework. Part 91 is one of those.

Senator O'BRIEN—Remind me what is in part 91.

Mr Mrdak—It principally covers general flying rules and procedures.

Senator O'BRIEN—What is the term of the appointments of the members of the task force?

Mr Mrdak—They have been asked to provide a report to the minister by December this year.

Senator O'BRIEN—Are sitting fees paid to members of the task force?

Mr Mrdak—Terms and conditions are yet to be settled. It is yet to be finalised what remuneration will be made available to the task force. We are currently working through that.

Senator O'BRIEN—But some will?

Mr Mrdak—We are looking at options to do that, yes. It is envisaged that there will be some remuneration for their time involved or at least a meeting of their costs.

Senator O'BRIEN—Is there a standard fee for the chair of such a task force? Mr Mrdak—There are provisions through the Remuneration Tribunal for such special purpose tasks, and we are currently doing some work with the rem tribunal to ascertain what is the most appropriate remuneration for the task force chair and the members.

Senator O'BRIEN—Will you take it on notice to supply the committee with those details when they are established, or do I have to do it through another process?

Mr Mrdak—I would be happy to advise the committee when those arrangements are finalised and established.

Hopefully the first meeting was taken up with the important work of setting an action item to develop a plan to forward to the minister about when they plan to have their report to the minister, and that the action item will hopefully be completed in the next couple of months.

If there's any substantive output from this before the election, I'll run nude through the Tabernacle.

June 2007

Yet another hump

"CASA is moving to implement the requirements [SMS] through amendments to CAO 82.0 due to significant and unexpected delays in developing Civil Aviation Safety Regulation Part 119. Since 2002/2003 both CASA and industry have been

working in anticipation of Part 119 being enacted into legislation…..To avoid further delaying……..CASA will now progressively make amendments to CAO 82.0 in relation to passenger carrying operations. These amendments will be consistent with planned requirements being developed for the future in Part 119."

Wow, 6 years and still not enough time. And so much for the wonderful concept of two-tiering so proudly announced in CASA media statements.

But why bother with the truth or accountability. This can go on forever……

November 2007

And the latest is Part 119 as an appendix to CAO82.

But only the major tuff - SMS and accountability!
What a joke, we will now be getting regulation by CAO, all touch and feely mumbo jumbo works and no substance so it will be up to the individual CASA inspector to "Interpret" as he sees fit! All done to "Risk Management" science! We already have 2 areas that don't work.

1. Fatigue Management, non descriptive, some work, most don't, but CASA and the Uni of SA still say it is better because it has Science behind it. Risk Managemnet "Science" is a bit like statistics, it can be made to fit an outcome!

2. NAS, non descriptive and no one has any idea what the other aircraft is doing. Prediction: The first mid air involving an RPT aircraft will be in Kununurra! No "Risk Management" involved in the design, only, if it works in the US, then it must be safe! The only "Risk Management" was if it differed from the US design, not the Australian design. I have still not seen any US or freign aircraft flying around Australia for as PVT ops!

This then bring up the question of Cabin Safety. No "Risk Management" science from this department of CASA, just the fundamentalist written word of CAO20.11

Its a wonder they have not mandated fires to be lit inside an aircraft for every candidate on every 20.11 renewal!

CASA cannot get its own house in order, one would have thought that would be its major priority!

5 years ago we had to do everything in line with the new regs!, Well the new regs never eventuated. Now we will have to re-write everything to 119 by CAO.

New people come into CASA from all parts of the world and they wonder why the hostility and dought from the industry. We have heard it all before.

November 2007

Quote:

> And the latest is Part 119 as an appendix to CAO82.

The regulatory camel sprouts another hump

November 2007
(From SCC Minutes)

Hondo Gratton also advised that drafting is currently at Part 66- 80%, Part 147- 50%, Part 42- 40% and Part 145- 40% drafted. Hondo advised that CAO 100.66 has been an excellent vehicle to develop AMC and GM material for CASR Parts 66 & 147.

*Hondo advised that the regulations, when released, must be supported by this material. Hondo advised that Part 147 also provides a very good basis for Part 145 in terms of structure, and drafting instructions are nearly finalised for CASR Part 42. Hondo advised that given the CAO is currently meeting the needs of 66/147**, a target release of a complete package may be available around March 2008.***

Well that date has certainly come and gone and no package (complete or incomplete) has been provided). And weren't these meant to be finished in 2006 …..and then in 2007….. and now in March 2008…and it is now end of June 2008…….

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16 January 2008

It's only been 5 months since the meeting ….

The 'final record' of the SCC's 27 July 07 meeting was finally published on 11 January 2008: http://www.casa.gov.au/newrules/scc/...C27_record.pdf

Executive summary: lots of activity and little productivity, as usual.

I note that:

- the 'SCC efficiency' action item has been airbrushed out of history

- the drafter of the minutes has the grammatical skills of a Year 10 dropout – perhaps a pilot drafted them.

- CEO Directive 16/2004 "had recently [back then] been repealed and replaced with CEO Directive 1/2007 which included 'provisions to ensure unnecessary cost burden is not placed on industry, as well as greater harmonisation with international standards'".

No doubt there will have to be a complete review of the 'new' and 'developing' regulations, to make sure they comply with the 2007 directive rather than the 2004 directive. (Doesn't time fly? The poor buggers only had a couple of years to complete the 1998 regulations in accordance with the 2004 directive, and now there's a new, superseding directive.)

Perhaps a program of training on what the new directive means is in order.

Even better: Australia should produce some 2008 regulations which, in conjunction with the existing 1998 and 1988 regulations, plus Civil Aviation Orders, will constitute world's bestest-practice, harmonisedest, simplest, clearest, cheapest-to-implement-and-comply-with rules ever! In other words, Australia should produce a mess that looks like a freight

train full of dog food that's hit a herd of camels at high speed!

Go Australia! Go!

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18 March 2008-

One day to go to scheduled SCC meeting No. 29, and the Agenda hasn't been published. The Minutes of the 14 November 2007 meeting are not yet published.

If only the 'SCC efficiency' action item hadn't been airbrushed out of history.

Will be 'celebrating' the 10th anniversary of the making of the 'new' but still uncompleted regulations soon.

It is patently obvious that CASA no longer has the corporate competence to fix the regulatory trainwreck this side of the end of the decade, if ever, and no longer has the corporate integrity to be honest about it

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30 April 2008

How about this one, that goes right to the heart of the subject matter of this thread:

Quote:

> How can the Australian Government and industry ensure CASA completes its longrunning regulatory reform process as soon as possible, to give clarity to industry and to clear the way for new approaches to meeting the regulatory challenge?

Answer: If the new government has to ask that question, it continues to be part of the problem, not the solution.

I am appalled that CASA will now have yet another excuse for not completing the regulatory 'reform' process. Naturally it will have to wait for the 'Green Paper' to be finalised, so that it knows what to do during this lap around the merry-go-round. Perhaps some more 'CEO Directives', and training in what they mean, will be in order. Of course, the end date of the process will have to be 're-established'.

I note that the Department's description of the process contains precisely the sort of spin-doctored, passive-voice weasel-words as CASA has used to avoid meeting any 'deadlines':

Quote:

> It is anticipated that the Green Paper will be released for industry comment in the latter half of 2008.

Who anticipates that, and who cares what they anticipate?

For heaven's sake: Set a **deadline** for the achievement of an **outcome**.

Have the integrity to make, and to take responsibility for making, a **decision**.

Govern! (if you can remember how.)

CONCLUSION

Now let's see. In 5 years, Mr Byron has been able to achieve absolutely nothing in relation to the regulatory reform program. No timetables have ever been met, no significant rules have ever been promulgated, two-tiering has been abandoned etc (oops – they did manage to make Part 137) But, we have had lots of directives, SCC meetings, trips overseas, media releases etc. So what do we think such an achievement is all worth. Quite a lot actually. According to an answer to a Question on Notice tabled in the Senate on 21 March 2007, such sterling performance not only warrants a salary more than the Prime Minister, it also warrants a special performance payment:

(Civil Aviation Safety Authority: Chief Executive Officer
(Question No. 2686)

Senator O'Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 10 November 2006:

(1) Can the Minister confirm that the remuneration of the Chief Executive Officer of the Civil Aviation Safety Authority (CASA) increased from $213 010 in the 2003-04 financial year to $364 531 in the 2004-05 financial year to the $385 000 – $399 999 band in the 2005-06 financial year.

(2) Why does the CASA annual report for 2005-06 fail to report the actual remuneration of the Chief Executive Officer for the 2005-06 financial year, unlike the CASA annual report for 2004-05 which reports the actual remuneration for the Chief Executive Officer for the 2004-05 and 2003-04 financial years.

(3) What actual remuneration did the CASA Chief Executive Officer receive in the 2005-06 financial year.

(4) Can the Minister confirm that CASA's operating result declined from an operating surplus of $12.5 million in the 2004-05 financial year to a deficit of $2.5 million in the 2005-06 financial year.

(5) What was the justification for the significant increase in remuneration of the CASA Chief Executive Officer in the 2005-06 financial year.

(6) What total remuneration will the CASA Chief Executive Officer receive in the 2006-07 financial year.

Senator Johnston—The Minister for Transport and Regional Services has provided the following answer to the honourable senator's question:

(1) The CASA Chief Executive Officer commenced his appointment on 1 December 2003. The remuneration shown in the 2003/04 Annual Report is therefore only part-year and does not represent his contract remuneration for a full year. In 2004/05, the remuneration of the CEO was $364,351. In 2005/06, the remuneration of the CEO was in the $385,000 - $399,000 band.

(2) At Note 13 to the Financial Statements, the CASA 2005/06 Annual Report states that the actual remuneration of the CEO in 2005/06 was $392,374.

(3) The actual remuneration received by the CASA CEO in 2005/06 was $392,374.

(4) Yes.

(5) The Remuneration Tribunal increased the remuneration of the CASA CEO by 4.1 per cent with effect from 6 July 2005. The increase was the result of the Remuneration Tribunal's annual review of salary bands in the Principal Executive Officer Classification Structure. **Mr Byron was also provided a 3.6 per cent performance bonus by the Minister**.

(6) In 2006/07, the CASA CEO is expected to receive total remuneration of $375,100, plus any personal performance payment for which he may qualify.

Now there's a job worth having. Performance pay for no performance. Or as the Dire Straits song goes "Money for nothing". Dire straits indeed…..

ATTACHMENT 5

CASA media release - Friday, 8 September 2006

General aviation self administration summit

A special summit has been called to examine the concept of self administration for the general aviation sector of the aviation industry.

The Civil Aviation Safety Authority is convening the summit in late September 2006 to start a structured debate on self administration.

Twelve peak general aviation industry groups have been invited to take part in the day-long meeting.

The groups will be asked to consider two key questions relating to self administration:

- Can self administration provide equivalent or better safety outcomes for the general aviation sector than presently apply?
- If so, what would be the most appropriate model for self administration?

Self administration arrangements currently apply to the sports aviation sector, where peak bodies in each aviation sport administer regulations set by CASA. These peak bodies issue licences and certificates, carry out safety surveillance and provide other regulatory services.

CASA then audits the activities of the peak bodies to ensure compliance with regulatory standards. This approach means CASA only devotes a relatively small level of resources directly to sports aviation, allowing more attention to be focussed on higher priority passenger-carrying operations.

CASA's chief executive officer, Bruce Byron, says the concept of self administration being extended beyond sports aviation has been discussed widely in recent years.

He says those supporting the move have pointed out similar arrangements for general aviation exist overseas.

“Many people in the aviation industry have been strongly lobbying CASA for this change and indeed CASA can see potential benefits too,” Mr Byron says.

“But before the industry and CASA pursue the concepts any further there first needs to be some structured debate on whether safety outcomes can be maintained or improved.

“If we can see that safety will not be compromised, then the debate can move on to potential models for self administration. Hopefully the summit will be a starting point of a vigorous and valuable discussion right across the general aviation sector.”

For more information on the summit go to:
http://www.casa.gov.au/seminars/selfadmin/index.htm

Media contact:
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Bruce Byron – December 2006

General aviation self administration

Key groups and individuals interested in the idea of self administration for the general aviation sector met in Canberra at the end of last month. This was the second 'summit' meeting CASA convened on the issue. CASA outlined a range of functions and activities that could be either simplified or devolved to industry, as long as appropriate safety checks are in place. One example of how CASA could step back from involvement in general aviation was the approval of chief pilots or chief flying instructors. CASA could approve training courses for these positions and when people passed a course they would qualify to take up approved positions - subject to a check that they met relevant operational requirements.

CASA stressed it was looking for ways to reduce the administrative burden of regulations and to get the focus on safety and risk management. On-line reporting of administrative responsibilities in general aviation could streamline regulatory processes. It was agreed the best way to progress self-administration was to establish small industry working groups to concentrate on specific initiatives. This means additional 'summit' meetings are not planned, with industry and CASA to now focus on specific initiatives.

Bruce Byron 2006-07 Annual report

An example of our consultation and cooperation with industry was the general aviation self-administration summits in Brisbane and Canberra in late 2006, where we encouraged peak industry groups to consider whether self-administration could provide equivalent or better safety, and if so, what would be the most appropriate model. The summits showed there was general industry support for the principle of self-administration, and CASA undertook to help industry progress the discussion. I am pleased that as a result of our efforts during the year self-administration is now a fact in sports aviation and vintage military or 'warbird' aviation in Australia.

Bruce Byron – January 2007

Self-administration has been in the spotlight in recent times, with the concept being examined for general aviation, warbirds preparing for to become self-administering and new rules being drafted. CASA supports self-administration for some non-passenger carrying sectors of aviation where risks can be safely managed by participants and where peer controls have a potential to produce better safety outcomes. That is why self-administration has existed in sports aviation for many years - people taking part in flying as a sport understand and accept the risks and the impact of their activities on other airspace users and the public is minimal. The advantage for CASA is that we can reduce the level of resources we allocate to these sectors, instead focussing on passenger carrying operations where 96 per cent of Australian fly.

Of course self administration does not mean a total lack of involvement by CASA. We oversight safety by approving the organisations that administer the various areas of activity and retain the ability to step in and take appropriate regulatory action where necessary if serious safety problems arise. I believe the concept of self-administration reflects the maturity of Australia's aviation industry - its ability to identify and manage risks and deliver safe outcomes. There are still discussions going on between CASA and various groups about self-administration ideas for general aviation, with the preferred direction being an increased level of delegation of functions and responsibilites to appropriate individuals and organisations. This is firm evidence of CASA and industry working co-operatively for the best safety and operational outcomes for the aviation industry