RAAA SUBMISSION

AVIATION SAFETY REGULATION REVIEW

Serving regional aviation, and through it, the people and businesses of regional Australia
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7 February 2014

Mr David Forsyth, AM
Panel Chairman
Aviation Safety Regulation Review
Department of Infrastructure & Regional Development
GPO Box 594
CANBERRA ACT 2601

Dear Mr Forsyth,

RAAA Submission: Aviation Safety Regulation Review

The RAAA is pleased to provide this submission to the Aviation Safety Regulation Review.

I. RAAA Background

The RAAA and its Members

The Regional Aviation Association of Australia (RAAA) is a not-for-profit organisation formed in 1980 as the Regional Airlines Association of Australia to protect, represent and promote the combined interests of its regional airline members and regional aviation throughout Australia.

The Association changed its name in July 2001 to the Regional Aviation Association of Australia (RAAA) and widened its charter to include a range of membership, including regional airlines, charter and aerial work operators, and the businesses that support them.

The RAAA has 28 Ordinary Members (AOC holders) and 72 Associate/Affiliate Members. The RAAA's AOC members directly employ over 2,500 Australians, many in regional areas. On an annual basis, the RAAA's AOC members jointly turnover more than $1.5b, carry well in excess of 2million passengers and move over 23 million kilograms of freight.

RAAA members operate in all States and Territories and include airlines, airports, freight companies, engineering and flight training companies, finance and insurance companies and government entities. Many of RAAA's members operate successful and growing businesses providing employment and economic sustainability within regional and remote areas of Australia.

A Directory of the Association's members is attached to this submission as Annex C.

RAAA Charter

The RAAA's Charter is to promote a safe and viable regional aviation industry. To meet this goal the RAAA:

- promotes the regional aviation industry and its benefits to Australian transport, tourism and the economy among government and regulatory policy makers;
- lobbies on behalf of the regional aviation industry and its members;
- contributes to government and regulatory authority policy processes and formulation to enable its members to have input into policies and decisions that may affect their businesses;
- encourages high standards of professional conduct by its members; and
- provides a forum for formal and informal professional development and information sharing.

The RAAA provides wide representation for the regional aviation industry by direct lobbying of Ministers and senior officials, through parliamentary submissions, personal contact and by ongoing, active participation in a number of consultative forums.

II. EXECUTIVE SUMMARY

The RAAA believes the bulk of its concerns stem from a poor culture in CASA which itself results from poor senior management and governance over several decades. If the Government of the day is not to take a more active role in the formulation of aviation policy generally and, through the relevant Department, a more active role in the management of the aviation bureaucracy, it must be prepared to create a more substantial and active Board to oversight CASA's management.

Successful operators are responsible operators who understand that safety management is integral to the management of their businesses. A safety culture cannot be imposed, it must be fostered. A regulator can police sensible accepted standards, but it cannot foster the safety culture with a rule book and a heavy handed application of penalties.

A genuine safety culture comes from the regulated and the regulator sharing essentially the same values and the same objectives. They will not always agree on the means to achieve these, but without this common basis the safety culture will be undermined. Sound safety culture and practice can really only be achieved by way of a partnership being forged between the regulator and industry.

Today in Australia the regulator, CASA, is held in such low regard there is no common ground, but more of a "them" and "us" attitude. Additionally, industry participants are wary of talking publicly about CASA due to a fear of retribution. This fear is reflected by some RAAA Members' apprehension in providing examples for our submission to this Inquiry, regardless of whether our submission is classified confidential or not.

III. INTRODUCTION

Regional aviation has suffered disproportionately compared to the rest of the industry as a result of the aviation safety regulation environment in Australia. Operators have gone out of business, livelihoods have been threatened and there has been a lack of consultation with industry. This lack of consultation has combined toxically with a faltering, directionless regulatory reform process.

The RAAA welcomes the opportunity to provide a submission to this Aviation Safety Regulation Review. The RAAA agrees with the Government that the Review is a timely opportunity to consider future aviation safety structures and regulatory development processes in Australia.

In providing this submission, the RAAA seeks to address the Terms of Reference of the review by:

A. Investigating the structures, effectiveness and processes of key agencies involved in aviation safety as well as the suitability of Australia's aviation safety related regulations.

B. Making recommendations on the aviation safety roles of CASA and the Australian Transport Safety Bureau (ATSB) and other agencies and outline and identify any areas for improvement in the current interaction and relationships between CASA and the ATSB, as well as other agencies and the Department of Infrastructure and Regional Development.

C. Examining the current processes by which CASA develops, consults on and finalises changes to aviation safety regulations and other legislative instruments such as civil aviation orders, and make proposals for improving these processes.

It is hoped that this submission will assist in bringing about the necessary reform of the aviation safety regulation system in Australia, so that industry relations can once again be productive and the reform objectives that both the regulator and industry should be able to agree on can finally be met.

IV. RAAA CONCERNS

The RAAA has concerns with the administration of aviation safety regulation in Australia. Not only has there been a dramatic deterioration in relations between the regulator (CASA) and the industry over the last five years, but the regulatory reform process, which has been going on since the early 1990s, seems to have lost its way. These observations are based on RAAA members' dealings and interactions with the regulators on numerous occasions.

The feedback by RAAA members on their interactions with CASA – on issues as varied as consultation on the introduction of new Parts of the Civil Aviation Safety Regulations (CASRs) to access to safety information in the event of the reporting of accidents and incidents – greatly concerns the RAAA. There are four key areas of concern which the RAAA will focus on in this submission, and where necessary and appropriate will provide examples. The four areas are:

1. the unfortunate saga of CASA's regulatory reform process
2. CASA's increasingly adversarial approach to enforcement
3. CASA's failure to provide prompt and efficient services to the industry, and
4. CASA's undermining of the "Just Culture" approach to data collection.

In the RAAA's view these four shortcomings have created a lack of trust in CASA. However, this lack of trust is merely symptomatic of a deeper malaise in CASA and the wider aviation bureaucracy where there is confusion between the several roles of policy maker, regulator, educator and service provider currently undertaken by CASA.

The RAAA considers a review such as this is long overdue and believes that if the core issues can be addressed the regional aviation industry, so essential in a dispersed nation such as Australia, can be made to operate more safely and more efficiently in the interests of Government, industry participants and the travelling public.

1. The regulatory reform process

The regulatory reform process has now been running for over 20 years. In that time there have been only modest improvements in safety. There has been no harmonisation with overseas jurisdictions such as EASA or the FAA and Australia has in place aviation safety regulations that depart far from ICAO standards and recommended practices.

The previous Government's Aviation White Paper published in December 2009 was widely condemned by industry as contributing nothing to the policy debate and in fact being little more than a packaging exercise for pre-existing programs.

Consequently, members of the Australian Aviation Associations Forum (the Forum) developed their own policy position (Annex B) to amply demonstrate that there was considerably more that Government could do to improve aviation regulation in Australia.

The Forum policies were published in 2012 and offer a comprehensive approach to government policies and structures, regulatory reform, taxation, education and training, regional equity, airports, security, insurance, research and non-aviation impacts on aviation.

Future policy needs to ensure that CASA uses a risk based approach and focuses on safety outcomes rather than simply generating prescriptive rules and blindly enforcing compliance. While CASA executives appreciate and promote a risk based and safety outcome focused strategy, they have not been able to prevent their front line staff from focusing more on compliance than safety. CASA needs to acknowledge that regulatory reform should be undertaken in partnership with industry through strong formal and informal consultative relationships.

1a. The reform process should be placed within the Department

Not only is there a conflict of interest in having the aviation policeman draft the laws that it has to enforce, but as the Australian experience has shown, continuity of the reform process suffers with frequent changes in personnel and direction. The Australian experience is a strong argument for aviation policy and regulatory development to be administered by the Department.

The RAAA believes that the Aviation and Airports Division of the Department of Infrastructure and Regional Development should be expanded to take over the role of aviation regulation policy formulation. It also believes that aviation is important enough to justify a junior Minister, or a Parliamentary Secretary, as an absolute minimum.

Additionally, given the ATSB's role in investigating aviation accidents, making safety recommendations and publishing the subsequent reports, it should be given the task of aviation safety education. This would be a much better fit than CASA and free up the regulator for its primary roles. Furthermore, as explained under "Protection of Safety Information (Just Culture)" below, the ATSB must not release unfettered data to CASA.

Relieved of the confusion of roles CASA could concentrate more effectively on delivering the regulatory services it provides and take a less aggressive approach to rule enforcement.

Clearer direction needs to be given with regard to the formulation of new regulations. A letter of direction from the responsible Minster should make it clear that new regulations are to be formulated with a view to being as simple as possible, to not cause unnecessary cost or hardship to industry and to be standardised with overseas regulations. If necessary, the Civil Aviation Act (1988) should be amended to reflect this.

The rule making process must follow the guidelines promulgated by the Government's Office of Best Practice Regulation which requires that regulations should assist productivity where possible and that a Regulation Impact Statement (RIS) must be done for all regulations that have a regulatory impact on business or not-for-profit organisations. Currently CASA does not observe these guidelines.

1b. The regulations are too complicated and lack international harmonisation

The new regulations are characterised by a complex approach in both content and drafting style that seeks to obfuscate operational clarity and increase certainty for the likelihood of a successful criminal prosecution, with a complete failing of the original intent of 'safety through clarity'. This has resulted in uniquely Australian rules.

There has been Ministerial direction on several occasions to standardise Australian regulations with overseas jurisdictions and to not develop uniquely Australian requirements unless there was a definite need demonstrated by industry. However this has been ignored by CASA.

One of the problems with excessively prescriptive regulations is the time required to make legislative changes in an ever changing environment. Our concern with this time lag is that we may end up with legislation through media release to fill the gap between the legislative processes and current industry best practice. There is no need to try and micromanage every liability or outcome through regulation when there are other avenues available to CASA which provide greater flexibility.

The RAAA and individual RAAA members have over the years spent many days attending meetings, consultation sessions and training briefings only to find that particular proposed reforms are put on hold or substantially revised with little or no consultation. This is exceedingly frustrating. Adding to this frustration are the proposals that are seemingly stalled or dead becoming suddenly urgent resulting in rushed legislation and poor transition arrangements that are costly and for which it is hard to discern any safety cost benefit. An example of this is CAAP 235, which was discussed initially 10 years ago and determined to be of little aviation safety benefit according to FAA research and also produced a real safety risk in non-aviation transport, being suddenly resurrected in 2013 (see below).

RAAA Members have had to endure being provided different interpretations of the regulations by different CASA offices and also by different representatives in the same CASA office. We have been informed many times over the years that CASA is aware of this problem and is in the process of trying to rectify it. However, until a consistent interpretation is provided regardless of which CASA representative industry is talking to industry must endure a degree of uncertainty in advice provided by CASA about the regulations they not only oversee but also write.

CASR Part 42/145 is an example of industry being put under undue stress to meet timelines set by the current regulatory reform process. For Part 42 operators it was no choice but meet the time line. This for many meant allocating a large amount of finite resources to the task, and subsequently reducing the resources available to their core business, and placing both themselves and their staff under excessive pressure resulting in undue stress. When we queried CASA to why the June 2013 deadline was so important CASA responded by stating that "*as far as they are concerned they have given industry ample time to prepare for the changes*".

For Part 145 providers this meant firstly making a decision of transiting, and be in the same situation as Part 42 Operators including costs associated to transiting to a Part 145 organisation, or ceasing to provide services to the aviation industry. In an industry presentation by CASA in March 2013 they indicated that they were aware of 180 organisations (down from 200 organisations identified by CASA in November 2011) that need to transition to Part 145 by June 2013. According to the CASA website in January 2014 there are now only 127 Part 145 organisations. Therefore we can surmise that we have lost somewhere between 53 to 73 organisations (29% to 37%) that were providing essential services for operators to maintain their aircraft. For example, we have been informed there is now only one Part 145 organisation in Melbourne available to do general aircraft airframe maintenance.

1c. The regulations have created unnecessary cost and obstacles to industry

The problem with introducing new regulations that are overly complicated and not in harmony with corresponding regulations overseas is that they have the adverse effect of creating unnecessary cost and other obstacles for industry. For example, one of our operator members has reported that the last 18 months of regulatory change have added around 40% in costs to their operations due to additional staff (designated "Key Personnel" under the new regulations) required to manage the changes. If one of these "Key Personnel" leaves the organisation prematurely the potential flow on affect is that the operator will be effectively grounded.

CASR Part 90 – cockpit ballistic doors

The issue of hardened cockpit doors is an example of cost under-estimation to industry by CASA. The initial installation of these doors was achieved with the assistance of $3.2 million of Commonwealth Government funds. In August 2013 CASA's NPRM proposed enhancements to the legislation which would require the current doors be modified. The NPRM grossly underestimated the cost of the enhancements through using a labour cost of $53/hour. This figure is simply not realistic. Advice from our members is that the realistic cost of labour would be at least triple the rate provided by CASA in the NPRM especially in the case where the work would need to be outsourced to an Approved Part 145 Maintenance Organisation. One of our members estimated that the capital expenditure required to have their fleet meet the new requirements of the 2013 NPRM is in the order of $1 million. Despite the huge cost involved, CASA did not provide any scientific evidence or safety case to justify the new requirements.

CASR Part 42/145

Part 42/145 currently applies only to regular public transport (RPT) operators and highlights where the lag in bringing in complementary legislation uniformly can provide a non-level playing field for operators competing for the same business. An operator who provides RPT services as part of their operations, and also uses the same aircraft to provide charter services, now has a much higher cost base and regulatory requirement than someone providing charter services only. This will only change when Part 135 comes into existence, which is not expected by industry for several years. One of our members has informed us that currently it costs them 20% more per engine to overhaul it for a RPT aircraft than what would be charged for the same engine obtaining the same service on a charter only aircraft. This cost increase does not include additional auditing costs required for RPT operations and that it takes more man hours for administration of the same aircraft.

An RAAA Member (an RPT operator) estimates that the CASR Part 42/145 processes have added $1.5m per annum to its overhead, for no safety or reliability gain. That figure excludes the ability of the RAAA member's pilots to clear minor bird strikes (after training). Another incident under the new rules with a RAAA Operator Member involved a four hour delay at a regional South Australian airport. The operator had to charter an aircraft to fly an engineer to the airport when there was clearly no damage.

An RAAA Operator Member was provided with a one sector ferry permit by the engine manufacturer to fly an aircraft to Adelaide to do an engine change. CASA subsequently denied the ferry permit and the operator was required to ship an engine and all other necessary materials to Perth at a cost of over $100,000.

Our Part 145 maintenance provider Members indicate that the cancellations of Maintenance Authorities (MAs) for Regular Public Transport (RPT) aircraft, combined with inadequate transitional arrangements, has created unnecessary cost and obstacles for organisations. This excessive restrictiveness, without any safety basis, highlights lack of continuity between the old and new rules and the lack of flexibility with the new rules. For example, a Member under the old rules had an MA signing out their own work safely for over 6 months. Now that MAs are cancelled it will be 18-24 months until that individual will be able to sign out their own work again, forcing the organisation to bring in expensive sub-contractors to cover the interim period.

Members have also reported incurring further massive costs when a requirement is imposed by CASA to send two CASA Airworthiness Inspectors overseas to approve a maintenance facility that already has a FAA/EASA approval.

CASR Part 60 - Synthetic training devices

There is currently a misalignment of standards exercised between overseas synthetic training device operators and Australian synthetic training device operators. An Australian pilot can travel and complete a Type Rating course overseas in a simulator training center that has not been audited by CASA, complete a course that CASA have not assessed or approved, train in a simulator that CASA has not fidelity checked and be trained by an instructor that has not been assessed or approved to conduct endorsement training. This completed Type Rating that is unaudited is recognized by CASA. For example, CASA has accepted Type Endorsements from Malaysia which we understand is not a recognized State for CASA regulatory approvals. Additionally, we have been informed that a pilot who did his A320 Type Rate in the USA, during an employment interview explained that he had not done a visual circuit in the simulator and that all landings were auto landings. His application for an A320 endorsement was nonetheless approved by CASA.

1d. Some regulations are far too restrictive and do not have a safety case

COA 48 – Fatigue Risk Management Systems

In May 2012 CASA released an NPRM to change the requirements around the management of fatigue by operators that added considerable cost and complexity to regional operators, without a corresponding demonstrated safety benefit. Although there is a growing body of literature on fatigue in general, its practical application to aviation is largely theoretical. Whilst the RAAA supports efforts to gain a better understanding of fatigue management and has generally favoured the flexibility allowed to operators to develop an FRMS as an alternative to the prescriptions of CAO 48, we are not aware of any body of evidence linking fatigue to aviation accidents or incidents in Australia. Accordingly, there is not a sufficient basis to make regional operations more complex and costly by restricting the current safe and reasonably flexible rostering of flight crews. Moreover, the expectation of major and ongoing amendments and approvals to Operations Manuals is an unjustified cost imposition.

Based on the NPRM in May 2012 CASA have indicated that there will be only 5 operators in Australia with an FRMS under their proposed regime. This highlights the inadequacies as an “all of industry” viability is not available. Additionally, a safety case has not been provided by CASA. One of our members pointed out that the table provided in the NPRM is completely inadequate for regional operators. For example, a pilot flying at 6am in the morning is assumed to be awake at 11pm the previous evening, which is ludicrous. As noted on page 6 of the NPRM the consultative process on this involved 12 Organisations. Noticeably absent from this list are any Members of the RAAA (or the Association itself).

We understand the proposed CAO 48.2 (Flight Attendant) flight and duty times are currently being developed. This proposal should have been done in conjunction with the pilot rules changes to ensure that both rule sets are seamless. Industry must now ensure that there is no misalignment between the two regulations to ensure the proposal is operationally workable for regional operators.

CAR 235A – minimum runway width

CAR235A describes a process to develop standards of operations on narrow runways. It also introduces additional requirements that may restrict or prohibit operations to remote regional communities. Additionally, the Civil Aviation Advisory Publication (CAAP) contains contradictions in regard to crew training and does not provide an alternative means of achieving equivalent safety outcomes. One of our Members indicated that CAR 235A has put regular public transport services to at least one remote regional location in jeopardy.

Another of our members had a local inspector do all the checks at Clermont Qld for reduced runway width and submitted the Standard Form of Recommendation (SFR) to CASA where it was signed off by the applicable section. After this it went to the General Manager within CASA for final approval who refused to sign it without reason. The CASA General Manager revisited the SFR twice ultimately waiting till the maximum time period (3 months) specified in the regulations was just about expired and then approved the SFR. Due to the excessive period taken by CASA the client of our Member had decided not to proceed with the project (mining) at that time.

MOS 139 - Aviation Rescue & Fire Fighting (ARFF)

The instigation of an ARFF service at airports is currently triggered by the number of passenger movements at an airport exceeding 350,000 for the previous financial year with the removal of the service potentially after the passenger movements fall below 300,000 for a 12 month period.

The RAAA is firstly concerned that although the instigation of the AARF service is automatic once the 350,000 movement threshold has been breached the removal of the service is not so clear cut. For example, Ayers Rock (Connellan Airport) passenger movements have been below the 300,000 passenger movements for some time now however the service has not been decommissioned, and continues to be paid for by the aviation industry through Industry's Long Term Pricing Agreement (LTPA) with Airservices Australia. The continuation of this ARFF service is due to, we understand, non-aviation related reasons. The RAAA believes that if the commissioning of an ARFF service is predicated on breaching a predetermined threshold so should be the decommissioning of the service.

A further concern we have is that the instigation of an ARFF service is currently based solely on historic values without consideration of future movements at the location. This is compounded by CASA, who instruct Airservices Australia to instigate an ARFF service, recently indicating that Airservices Australia must have an ARFF service ready to be operational as soon as the threshold is breached; thereby pre-empting the need for capital outlay and ongoing expenses such as personnel.

This has resulted in airports at Ballina, Coffs Harbour, Port Hedland and Newman now requiring an ARFF service, at a cost of $58.9 million paid for by industry through the LTPA, due to the increased number of passenger movements - predominantly due to the growth in the resource sector and the use of fly-in fly-out labour. With the current softening in the mining industry now that the boom has finished there is a risk that CASA's insistence on instituting an ARFF as soon as the threshold has been breached may result in a service being provided unnecessarily.

The RAAA is also concerned that the instigation of an ARFF service is based solely on an arbitrary threshold that does not take into consideration a risk assessment. The current arbitrary threshold for the installation of an ARFF service has been in place for numerous years and does not take into consideration advances made in aircraft safety or factors associated to the location in question. Airservices Australia has indicated to us that they have approached CASA about the threshold, however CASA are not willing to discuss the issue.

1e. The length of current regulatory reform consultation timelines

Current regulatory reform consultation timelines are far too short, and proper more effective consultative procedures with industry should be introduced. Not only has industry input been ignored in a number of instances, but proper Regulation Impact Statements have not always been undertaken, with the result that the cost/safety case for the change is not justified.

Additionally, the consultative mechanisms that CASA has put in place, in particular the Standards Consultative Committee (SCC), are clumsy and have not achieved genuine industry participation. The reform process is in the incongruous position of having consultation time frames that are far too short, but of being a process that has already taken far too long. Shortening consultation timeframes to push through reform only serves to exacerbate the problems.

<u>Part 61 – Flight Crew Licensing</u>

The proposed replacement of Division 5 of the CARS with Part 61 is generally supported by industry as a worthwhile development and has been in process since before the FLOT Conference in 2003. The industry have expended large amounts of staff time and financial resources attending numerous consultations and information/training sessions.

Despite the lengthy gestation, in September 2013 CASA staff were advising CASA delegates in a training session for Approved Testing Officers (ATOs) that amendments were still being made to legislation due to come into effect on 4 December 2013. The forms to be used by the ATOs in less than 3 months were not available and their usefulness was debated by the ATOs. The Manual of Standards (MOS) to support the Regulations was also not available. For industry it is critical that when CASA is contemplating dates for any proposed legislation to come into effect that the MOS, forms, and other relevant documents are available to, and have been agreed by, industry so that industry is aware of how they are expected to comply with the proposed changes and how the proposed changes potentially affect their business model.

It was simply unacceptable for CASA to try and place the blame for the delay in implementing Part 61 solely on the industry, which is highlighted by legislative changes still being announced in January 2014. For example, a finalised MOS (in its draft form over 600 pages) has still not been promulgated to industry. So industry continues to sit in limbo about how to develop programs and comply with this legislation that was supposed to come into effect in December last year.

A particular issue within Part 61 relates to ATOs indemnity. A minor, but significant effect of Part 61 is to change ATOs into Flight Examiners who would no longer be CASA delegates and enjoy the indemnity of CAAP Admin1. There is no doubt that this was deliberate policy not an oversight - but its impacts, unintended or otherwise, had not been thought through. The potential insurance cost implications are such that a majority of ATOs have indicated they will cease testing, throwing an unmanageable burden back on CASA.

Operators who have ATOs on staff will have to consider paying the insurance costs of those examiners so their operations can continue. This has the potential to increase staffing costs considerably. Currently neither operators nor insurance organisations have a mechanism for this form of insurance, know what the potential cost of obtaining this type of insurance will be, or know what level of insurance cover would be required.

CAAP 235-2(2) - Carriage and restraint of small children in aircraft

The Civil Aviation Advisory Publication (CAAP) for “Carriage and restraint of small children in aircraft” was released on the 28 October 2013 with responses due by 11 November 2013. This allowed us 10 working days to review the document (in addition to our other responsibilities), obtain member feedback, draft and clear through our Board an appropriate response and then finally submit the approved response to CASA.

The RAAA office is a small energetic team comprising 2 full time staff and one part time staff member; unlike CASA that has 850 employees at its disposal. During the time period to respond to this CAAP one of the full time staff members was on leave. Furthermore, RAAA Operator Members are in the day to day business of providing safe and reliable air services to the community. Our Associate Members are in the business of providing support serves to our operator members through maintenance, training, or other ancillary services. RAAA Members core activity, and the one their livelihoods' rest on, is the services they provide - not reviewing legislative changes. Additionally, although some RAAA members do have large complex operations, overall the membership comprises small to medium sized businesses with extremely limited human resources that are key in ensuring their day to day operations run safely and smoothly.

The 10 working days allowed by CASA in this, and other, consultations is simply inadequate and highlights industry concerns that consultation by CASA is of a token nature. The RAAA recommends that at a bare minimum 25 business days are required for simple documents and 60 to 90+ days for more complex documents should be used. Consultations of less than 25 working days should only be used in the most extreme circumstances where there is an immediate and critical safety issue affecting life and should require CASA to be more proactive in contacting all of industry affected by the change and obtaining feedback.

2. Adversarial Approach to Enforcement

There has been a dramatic deterioration in relations between CASA and the industry over the last five years. Instead of taking a co-operative approach to its dealings with industry, CASA has relentlessly pursued an adversarial approach, to the detriment of the industry as a whole. CASA needs to reset its relationship with industry.

As with their approach to regulatory reform, CASA's approach to enforcement should be undertaken in partnership with industry. It is in the interests of both CASA and the industry to be on the same page regarding safety and how that is best achieved. CASA needs to realise that an adversarial approach to enforcement and a sustained and concerted attack on principles such as Just Culture (discussed further below) will only continue to antagonise industry relations.

The experience of RAAA members in recent years is that CASA has moved from assisting to penalising. In 2012 the Request for Corrective Action (RCA's) changed to Non Compliance Notices (NCN's). This was on Members' understanding that neither the substance or the status of the notice was changing with the name change. Since then, however, Members have experienced a greater use of NCNs as opposed to the previous use of RCA's, NCNs being issued on the basis of voluntary reports, and CASA refusing to acquit NCNs without an admission of fault. The last two points are particularly damaging to the industry/CASA relationship due to their aggressive nature. The reasoning we consider CASA is doing this is not to achieve safety outcomes but to create a basis for an easier prosecution through the Courts in the future.

There also appears to be a greater recourse to Show Cause Notices (SCNs), ie the Serious & Imminent Threat provisions, without reasonable notice or consultation. Some of these notices are being delivered on Friday afternoons with increasing frequency. CASA is tasked with being a model litigant but such behaviour borders on sharp practice.

CASA's Enforcement Manual states in paragraph 2.5 under the heading "Distinguishing 'Compliance-Related' Action from Enforcement Action" -

> *It is common ground that compliance with aviation safety requirements is normally achieved by the entirely self-motivated conduct of participants in aviation-related activities who comply with the rules because they know or believe it is the 'right thing' to do, as a matter of law and in the interests of safety alike.*
>
> *Beyond such self-motivated compliance (in the reinforcement of which CASA is playing a greater and more constructive role) there are four other ways in which CASA is actively and directly involved in bringing about compliance, each of which is reflected in specified CASA functions under section 9 of the Civil Aviation Act. These are:*
>
> - *Assisting the industry to comply, generally and on an individual basis,*
> - *Encouraging or exhorting compliance,*
> - *Compelling compliance,*
> - *Penalising and deterring non-compliance.*

This apparently co-operative policy is not being followed in practice and an adversarial approach has become increasingly the norm.

One of our operator Members wet leased an aircraft from New Zealand and had nothing but trouble from CASA. CASA refused to accept that New Zealand registered aircraft can operate safely and freely in Australia and that CASA has no oversight rights or responsibilities. CASA went to the extreme of issuing the operator an NCN on the issue.

We have been informed that in early December 2012 CASA regional offices approached flight simulator operators in relation to training data provided by aircraft manufacturers relative to the simulators in their training centre. This particular issue comes out of the Air France Flight 447 accident in the Atlantic and, although endorsed in principal by ICAO, ***is not a legislative requirement*** at this time under CAO 40.1.0 or MOS Part 60. In one situation the CASA regional office contacted the operator at 10am in the morning asking if CASA representatives could come talk to them. One hour later they arrived at the operators premises where they verbally informed the operator that all CASA training course approvals are being withdrawn with immediate affect due to not having the training data from aircraft manufacturers. This was done with no prior notice being given to the simulator operator, no audit by CASA on the simulator operator, and no Non Compliance Notice issued to the simulator operator by CASA. This effectively grounded the operator forcing them to cancel planned endorsement courses thus preventing revenue earnings from these courses . Several days after the meeting the simulator operator received a letter from the CASA Regional Office confirming the previous meeting with the CASA delegation about the certificate withdrawal provided verbally. After the operator went to much pain, either by convincing CASA that due to the aircraft manufacture no longer existing that they were operating under industry best practise or (in the case of 2 simulators) that they had obtained the necessary documentation, the operator did receive an apology from senior CASA management that the incident should never has arisen due to the requirement not being legislated.

3. Delivery of Services

3a. Processing Delays

The granting of approvals and the issuing of authorisations can sometimes seem to be a lottery – inconsistent responses to the similar applications, vastly differing charges and costly delays.

Licensing delays of 6 to 8 weeks are not uncommon and can be very costly for industry. Some of these delays are caused by sheer pedantry - for example, a pilot application returned because the applicant's ARN was not entered on the top of one page when it was clearly entered on all other pages and could have been entered by the processing clerk.

The medical certification seems to involve a large amount of second guessing the Designated Medical Examiners (DMEs) and demanding more expensive additional tests and re-examinations. Is there any good reason why DMEs in Australia cannot be authorised to actually issue the Medical Certificate as UK Authorised Medical Examiners are – even to the extent of issuing a UK/JAA medical here in Australia? It is the opinion of many in the industry that the medical section of CASA needs a complete overhaul.

Our Members indicate that to change an “approved Person” attached to an AOC the AOC holder must apply to CASA Regservices for a quote, at a charge rate of $160 per hour, by completing the required form. The job when allocated by Regservices is sent to the local CASA office for completion. On completion the local CASA office issues the “instrument”. The AOC holder then has to apply again to Regservices for a quote to have the AOC Specification updated; again a charge rate of $160 per hour is used by CASA. Why is CASA, with current technology, not able to automatically change information through all its departments and forward the amended specification automatically to the AOC holder? Additionally, many forms, such as variation for an AOC or an Instrument rating renewal, seem cumbersome and designed for initial issue. The forms require a large amount of information that CASA already holds and may also contain information that is not relevant.

One of our Members recently had a new aircraft added to their fleet that had previously been used by another operator for RPT services. After having the aircraft successfully added to their AOC it was discovered that the aircraft had not been added to their Part 145. This task takes about 2 hours however in this particular case it took over 3 weeks. This meant that the aircraft was not available for use for RPT services for this extended period resulting in a subsequent reduction in potential earning capacity for the operator.

Another recent incident experienced by one of our Members relates to an AOC variation, to add an aircraft in the Charter category only. The application was submitted in December 2013 with the estimate received in late December 2013. With the closure of CASA over the Christmas/ New Year break the Member did not pay the estimate until the beginning of January 2014. They were subsequently advised in mid-January 2014 that the anticipated completion date would be June 2014. Seven months, notwithstanding the loss of time over the Christmas/New Year break, to process the AOC variation is totally unacceptable.

In another situation, an RAAA Operator Member has a mining client who has just purchased an on-going gold mine. Included in the purchase are all buildings, plant, machinery etc and staff. Part of the infrastructure is the aerodrome which is registered with CASA and fuel storage which is covered by a Dangerous Goods (DG) approval from the Department of Mines WA. The mining company applied to the Department of Mines for a transfer of the DG license, which was issued without delay. They then applied to CASA for a transfer of the registration of the aerodrome. They were told by CASA they would need to submit a full application and it would take approximately three months to process. This is absurd considering the aerodrome is registered and the ARO’s and all other staff and infrastructure remain unchanged.

Industry participants are often required to respond to CASA requests for information or action at short notice under pain of penalty or loss of rights under the civil aviation legislation. There is no similar pressure on CASA to be effective and efficient. This point is a major contradiction and should be rectified and then independently evaluated.

The CASA 2012-13 Annual Report indicates in Annex B (page 174 & 175) that they had, as at 30 June 2013, 850 employees. Of possible concern is that 441 people (52%) are classified as “Other Services”. It may be possible for CASA to look how its people are deployed to ensure that their current human resources are optimised for outcomes pertinent and effective to the Australian aviation industry.

3b. Management and structure of CASA

An overwhelming majority in the aviation industry believe CASA is essentially dysfunctional.

One of the key problems is that the Board lacks proper aviation expertise, to the extent that it is unable to properly oversight the actions and proposals of the Director of Aviation Safety. Arguably, this has led to the capital “R” regulator approach taken by CASA. At face value and compared with the size and manner of operation of the UK CAA Board, the CASA Board is too small and meets too infrequently to be able to properly oversight CASA’s management. With a small Board that does not have an in depth knowledge of the workings of the oversighted organisation (such as the UK CAA Board has through its committee structure which deals directly with senior managers), the CEO can have undue influence. Senior managers can feel accountable only to the CEO and not the Board.

CASA’s programs and practices can then seem to be at the whim of the incumbent CEO. This is evidenced by the stop/start approach to regulatory reform over the last decade and half and by shifts in enforcement practice from co-operation to rigidly legalistic.

In the RAAA’s view, policy making should be clearly separated from regulation enforcement.

The Australian Aviation Associations Forum (the Forum), of which the RAAA is a member, has stated its view that the entire regulatory reform and policy development role should be removed from CASA and placed in the relevant Department. The RAAA strongly supports this view in its own Policy Document. Copies of both documents are attached to this submission (Annex A and Annex B) for reference by the Review Committee.

3c. Management within CASA

It is a cliché that bureaucracies poorly managed can become sheltered workshops for less able time servers. This unfortunately is a widely held view of CASA.

There is abundant evidence that CASA is an unhappy workplace. Criticism between regions, between regions and central office divisions and between central office divisions is regularly heard in the industry. Forum shopping for a more favourable (or some would say, more reasonable and sensible decision) has long been an issue in the industry.

There is a general belief in the industry that CASA staff are less knowledgeable and less experienced than the people they regulate and, with notable exceptions, are not competent to work in the industry.

An uninterested or defensive decision maker will often make no decision or procrastinate as being the options that produce less criticism.

An uninterested or defensive regulator will look for the soft option of auditing paper without any genuine “on the floor” or “in the field” investigation. This leaves those who genuinely try to follow the rules and who make honest mistakes feeling that the flagrant abusers are left alone because they require too much effort. The avoidance of serious detailed investigation in favour of aggressive enforcement and undermining of the “Just Culture” approach in the collection of safety data destroys any co-operative approach to safety management.

In his November 2003 Charter Letter to CASA, then Minister for Transport and Regional Services, The Hon John Anderson MP, summarises the Government’s directions for CASA as :

> *“I wish to see CASA demonstrate world’s best practice in the area of aviation safety regulation. In its daily dealings, CASA must exhibit those behavioural attributes of a good regulator including consistency, accountability, fairness, flexibility and efficiency.”*

For the reasons outlined in this submission CASA simply has not achieved consistency, accountability, fairness, flexibility and efficiency.

3d. CASA’s funding

According to its Annual Report, CASA recorded an operating surplus of $12.0 million in 2012-13. The operating result was $5.0 million more than the revised estimate. CASA explained the difference as being primarily due to an increase in the aviation fuel excise that it had received. Approximately 66 per cent of CASA’s income during 2012-13 came from aviation fuel excise on fuel sold for domestic air travel.

What needs to be kept in mind, due to ICAO requirements, excise is levied only on fuel sold for domestic operations. This has the effect of exacerbating an already inequitable situation as international flights (including those operated by Australian carriers such as Qantas, Jetstar and Virgin Australia) do not pay the excise. Similarly, the major airports and Airservices Australia do not pay the excise yet they come under CASA’s jurisdiction. Clearly, a very large proportion of CASA’s resources are expended on services which do not contribute to CASA funding.

Effectively this has put the main burden of CASA funding on the regional operators and the mainline domestic operators. However as the major domestic airlines all belong to company groups that have international operations they are receiving some benefit from this arrangement. It is the regional operators that are paying far more than their fair share under this funding arrangement.

In line with the current Minister's stated intent of relieving the financial burden on the industry, funding of CASA should be provided totally out of consolidated revenue rather than the current inequitable method used with the fuel levy. However if it is deemed that industry needs to contribute to CASA funding then such funding should be based on more equitable parameters that measure activity such as passenger numbers and/or ASKs (Available Seat Kilometres). These parameters could be adapted to suit both airlines and airports.

3e. Proper oversight of CASA

Currently there is no accountability with the way CASA behaves towards industry. In theory this could be achieved through the office of the Industry Complaints Commissioner (ICC), however CASA have managed to interfere and to make this process impotent. The RAAA notes that despite the initial high hopes for the role that the Industry Complaints Commissioner could play, the inaugural Commissioner resigned under a cloud of accusations of interference from senior management, and material and significant changes to the remit of the office. The RAAA also understands that Mr Hart's successor in the role also announced her resignation in late 2013.

Experience with the ICC is that the process is very time consuming. Whilst the general principle in administrative law is that there should be internal review prior to external review, the normal expectation is that this should be done by more senior management.

In order to restore industry confidence and restore the independence of the position, the RAAA believes that the Office of the ICC needs a serious overhaul and should be moved out of CASA and into the Department, reporting directly to the Departmental Secretary or the Minister. Additionally, it should be provided with greater authority and investigative powers. Indeed, the Ombudsman's 2007/08 Annual Report notes an overlap of roles. The current system of the ICC reporting direct to the CASA CEO is seen by industry as largely ineffective and, again, discourages some industry complaints due to fear of retribution.

3f. Civil Aviation Regulation ("CAR") 206

The Administrative Appeals Tribunal decision in *Caper Pty Ltd T/a Direct Air Charter and Civil Aviation Safety Authority ("Caper")*[1] in May 2011 has created confusion over the classification of operations which have long been operated safely as charter flights but are now regarded as Regular Public Transport (RPT). In particular it is an issue for operators of scheduled charters such as air tours. The *Caper* decision is also a practical problem for a number of RAAA members, as not all of their operations can comply with RPT standards.

[1] [2011] AATA 181.

Classification as an RPT operation would require a number of RAAA members to invest in infrastructure such as runway length and additional security requirements in order to meet the regulatory standards for an RPT operation. In most cases this represents funds that RAAA members do not have and simply cannot afford. Nevertheless, at least one operator has informed the RAAA that it would be applying for an RPT AOC in response to the decision in *Caper*, and that the decision would likely see some consolidation and a number of departures from the charter business – both in terms the number of operators and certain routes.

In view of the serious consequences arising from the *Caper* decision, CASA needs to immediately work with industry on a solution. The introduction of the new Part 135 of the Civil Aviation Safety Regulations ("CASR Part 135") may go some way to resolving the issues that arise from the *Caper* decision. CASR Part 135 will set the minimum acceptable standards applicable to small aeroplanes that are conducting Australian air transport operations, and will affect air operators involved in current charter and RPT operations (passenger and cargo) in aeroplanes[2].

However, the implementation of CASR Part 135 is already behind schedule. CASA has previously made representations to RAAA members that Part 135 would be finalised by the end of 2013. This has not occurred, and whether this will affect the proposed commencement date for Part 135 of 5 March 2015 is unclear.

In any event, there is a regulatory vacuum that will exist from the date of the *Caper* decision to whenever CASR Part 135 becomes law. To combat this, CASA proposed a solution where CASA may, in appropriate cases, consider exempting an RPT operator from complying with some otherwise applicable requirements, and approving deviations from certain other requirements where that option is available.

In light of *Caper*, CASA indicated that it would consider applications for authorisation to conduct RPT operations with the exemptions detailed above where the aircraft involved have a seating capacity of not more than 9 seats and a maximum take-off weight of not more than 8,618 kg.

The RAAA understands that the Industry Complaints Commissioner had been pursuing test cases regarding CAR 206, to confirm whether or not CASA's Regulatory Policy was effective in resolving the issues raised by *Caper*, at least in the interim. However, as noted above the Commissioner has recently resigned from her position, with the test cases only part way through the legal process.

In the interim some operators have ceased regular charters for fear of being prosecuted by CASA with a resultant adverse impact on their business and the local tourist industry.

[2] "Small aeroplane" under Part 135 means an aeroplane with a maximum take-off weight not exceeding 8,618 kg and fitted with a passenger seat configuration of not more than 9.

4. Protection of Safety Information (Just Culture)

Australia was once at the forefront of robust safety information protection regimes. However, we are now in an environment where CASA has made it clear that it regards any information it obtains, regardless of the circumstances by which that information is provided, as a potential basis for administrative action.

Safety information should only be used for safety purposes. Safety purposes do not include regulatory action against an individual or organisation.

The protection of safety information is arguably a subset of the RAAA's concerns in relation to enforcement aggression, but it is of sufficient importance and concern to be treated as an issue in its own right. There have been a number of recent examples of both actual and proposed conduct by CASA (and to a lesser extent by the ATSB) that the RAAA considers will jeopardise the free flow of safety information. Some of these examples are outlined below.

The working paper presented by Australia (CASA) at the 37th Session of the ICAO Assembly, Some Caveats on 'Just Culture', highlights CASA's arrogance, misalignment of views to the Australian aviation industry on Just Culture, and wilfulness in pursuing legal recourse rather than safety outcomes where they say under 4.2 of the paper "*…. the discourse on Just Culture that so often essays to distance itself from the courts and the law, is unhelpful*". It is the RAAA's opinion that any paper presented to the ICAO Assembly should be first presented to the Australian aviation industry for consultation. This is to ensure it represents, as far as possible, a holistic view based on safety outcomes as opposed to a predetermined legal recourse wanting to be imposed by the Australian Regulator.

4a. The safety buffer between ATSB and CASA and the CASA push for unfettered access

The current push by CASA towards unfettered access to safety reports held by ATSB and to operator SMS databases evidences reluctance on CASA's part to do genuine enforcement investigation and can only undermine the quality and usefulness of safety reporting.

These attempts by CASA to gain access to safety information held by the ATSB for the purpose of further enquiries have become an increasing occurrence. The recent moves by CASA to seek full access to incident reports from the ATSB through proposed changes to the TSI Act and amendments to the draft CASR 119 illustrate the inherent conflict in having the safety enforcer also in charge of the regulations.

Current practice allows for the sharing of some information between the ATSB and CASA where it is necessary to maintain safety standards. There is no need to extend this, particularly when it is at the risk of compromising Safety Management Systems. CASA's view that any action taken as a result of receiving these reports is not punitive or disciplinary is not shared by the industry. Such a move compromises Just Culture and would inevitably erode the healthy reporting culture that is so essential to a successful Safety Management System.

Similarly, CASA's recent tendency to demand full access to Safety Management System databases has the potential to severely damage the safety reporting culture. If this was to be mandated then it would be perceived by employees that Just Culture no longer exists.

Several RAAA members have reported situations where CASA inspectors have asked to see identified information in their Safety Management Systems. One operator responded by refusing them access to the data altogether whilst another allowed the inspector restricted access to reports which had been previously de-identified. Notwithstanding sanctions for failure to report safety related incidents or possible safety risks, individuals will not report if they feel they are exposing themselves to punitive action. The concept of just culture is essential to ensure that safety information is collected solely for the improvement of aviation safety and not for punitive action against reporters. To achieve that end the safety reporting system must be confidential, voluntary and non-punitive. Administrative action to suspend or cancel a licence or an approval cannot be described as non-punitive, simply because it was not done through criminal proceedings.

The independence of the ATSB must be maintained, and the fostering and promotion of safety should be removed from CASA and placed under ATSB jurisdiction. In addition, the policy on access to ATSB safety reports by CASA, including access to industry SMS databases, should be determined by the Department and not by CASA.

The RAAA believes that a common sense approach should be taken here. The suspension or cancellation of an authorisation or licence is clearly a punitive action. It is highly likely that an individual, faced with an action such as this, or with the threat of his or her employer being shut down, will think twice about reporting a safety incident. In such cases, there is a risk that errors and unsafe actions will remain hidden and organisations and regulators will lose opportunities for improvement and prevention.

In the CASA 2012-13 Annual Report (page 33) under Portfolio Outcomes they state for the number of incidents per hours flown, by industry sector that, "*However, there was an increase in reported occurrences in the regular public transport sector during 2012. This may be a result of an improved reporting culture in this sector. The introduction of the REPCON scheme for voluntary and confidential reporting of safety concerns under the Transport Safety Investigation Regulations 2003 may have also contributed to an increase in the number of incidents reported to the Australian Transport Safety Bureau.*" We can therefore surmise that even CASA sees the benefit of the current Just Culture regime that they are now attempting to dismantle.

V. CONCLUSION

The RAAA is grateful for the opportunity to provide our views to the Review Committee for the Aviation Safety Regulation Review. We hope the above information provides an insight into the current regulatory environment our Members' experience.

If the Review Committee, or any of its Members, would like further information about the items contained in this submission, or clarrification on any of the points we make, the RAAA would be more than happy to assist.

Regards,

Paul Tyrrell
Chief Executive Officer