

Aviation Review - 2013

Fundamental Problem Never Addressed

AMROBA is of the opinion that aviation reviews, of all kinds, carried out over the past 25 years have all failed to identify the fundamental problem with the aviation legislative system and the structure of government departments and agencies. The failure of past governments to totally review the total legislative system that created the independent government agencies of *Australian Transport Safety Board* (ATSB) and the *Civil Aviation Safety Authority* (CASA) is the reason why we have continual reviews addressing selected issues.

The creation of ATSB, CAA (CASA), Airservices and other agencies has never been meticulously prescribed in legislation so applicable government departments and agencies have a clear understanding of their obligations for the appropriate Articles of the Convention on International Civil Aviation (referred to as the 'Convention' in this document). This is in addition to any other regulatory environment requirements being imposed on aviation related businesses in Australia.

The Civil Aviation Act in particular, when compared with foreign Acts of foreign Parliaments enabling the creation of their aviation safety regulator, does not clearly clarify the treaty responsibility of CASA nor directs CASA and its CEO to be responsible for specified Articles of the Convention compliant with the requirements of the International Civil Aviation Organisation (ICAO).

The Civil Aviation Act does not, when compared to other foreign aviation enabling Acts, empower CASA to promulgate Civil Aviation Safety Standards (CASS) based on Standards and Recommended Practices promulgated in Annexes to the Convention in the same manner as North America and Europe.

In the global aviation industry, countries outside of North America and Europe are **adapting** their regulatory systems based on either North America or Europe or a combination of both. These systems enable the Regulator to promulgate "Standards and Practices".

This would give us a legislative system similar to Canada who has agreements with both the United States and Europe. Act/Regulations referring to CASSs.

A two-tier regulatory system is and will continue be a complete failure.

The Criminal Code is applied to Acts & Regulations.

A three-tier regulatory system is the option that will succeed.

The Act needs to better define both the duties and the authority granted CASA and its CEO. It should also address the structure of CASA, its administration, general powers, and duties, especially the procedure that is to be followed by the Authority in enforcement action.

The following are a couple of examples of changes needed to the Civil Aviation Act **but** the whole Act needs to be modernised so that "Standards and Practices" are removed from the Act and promulgated by CASA as *Civil Aviation Safety Standards* (CASS). The same applies to current *Civil Aviation Safety Regulations* (CASR); all "Standards and Practices" should be removed from the Regulations and promulgated by CASA as CASSs.

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Example 1.

A. **Section 9(1)(c) of the Civil Aviation Act:** The Civil Aviation Act provides for the promulgation of ‘**aviation safety standards**’ but does not state what these standards are based on. North America (TCCA & FAA) aviation safety standards are promulgated by the Federal Aviation Administration (FAA) as “Regulations”, Transport Canada Civil Aviation (TCCA) as “Standards” and in Europe by the European Aviation Safety Authority (EASA) as Regulations.

Country	ICAO Primary Aviation Legislation		ICAO Specific Operating Regulations
Australia	Civil Aviation Act	Civil Aviation Safety Regulations / Manuals of Standards	<i>Sec 9(1)(c) Not used CASSs</i>
Europe	Enabling Regulations		EASRs issued by EASA
United States	Federal Aviation Act, Title 49.		FARs issued by FAA
Canada	Act	Minister Regulations	Standards issued by TCCA
New Zealand	Act	Minister signed Regulations	

It is imperative that this provision of the Act be clarified so that CASA is empowered to promulgate CASSs in the same manner as the Regulators of Canada, Europe and the United States of America.

Section 9(1)(c) of the Civil Aviation Act states one of CASA functions:

(c) developing and promulgating appropriate, clear and concise aviation safety standards;

However, CASA has failed to promulgate “aviation safety standards” because they are trying to include such “standards” in the Act and CASRs.

The reason for not issuing “**CASSs**” was the decision of a new CAA CEO in 1990 who decided to “**Two-Tier**” the legislative structure. By not utilising this provision of the Act that is designed for a **Three-Tier** legislative structure, regulatory reform has failed and prevented Australia from properly complying with Article 37 of the Convention.

Civil Aviation Act 9(1)(c) [*Civil*] *Aviation Safety Standards* must be the legal instrument by which CASA promulgates the ICAO Specific Operating Regulations in the same manner as EASA and FAA issue “*Regulations*” and TCCA issue “*Standards*”.

Act, Regulations and Standards.

CASS: Act should use ICAO terminology “***Specific Operating Rules***”.

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Recommendation 1: Amend 9(1)(c) to read:

- (c) promulgate appropriate, clear and concise civil aviation safety standards;*
- (i) consistent with the standards and practices contained in Annexes to the Convention;*
 - (ii) comparable with North America and Europe aviation requirements;*
- and*
- (iii) have minimal differences with New Zealand aviation requirements.*

Amending Section 9(1)(c) of the Civil Aviation Act will empower CASA in a similar manner as their counterparts in other mature aviation countries. Clarifying **aviation safety standards** as **Civil Aviation Safety Standards** also meets global principles.

Benefits:

This change would give Australia a three-tier legislative system which it had prior to government's creation of ATSB and CASA. A three-tier system that worked, and is consistent with the regulatory framework of other mature aviation systems.

It enables *aviation safety standards* to be issued in the correct "language" instead of being in the "language" of the Criminal Code that is applied to the Act and Civil Aviation Safety Regulations.

Regulatory Reduction: Adopting this approach will enable removal of these "standards" from both the Act and CASRs without any reduction in safety – the Act or Regulations would refer to all aviation safety requirements (CASSs) thus requiring them to be complied with.

[Civil] Aviation Safety Standards: All such "standards" can be written in a clear and concise "language" as used by EASA, FAA, TCCA and ICAO. This will improve interpretation and safety by the use of "plain English" to write CASSs promulgated by CASA.

"**Safety standards**" are well defined by ICAO who have promulgated global civil aviation safety '*standards and recommended practices*' in Annexes to the Convention. In North America and Europe those Civil Aviation Safety Standards are promulgated by EASA and FAA as 'regulations'. TCCA promulgate them as "Standards".

In Australia, we currently include those same aviation safety standards in the Civil Aviation Act, CASRs & associated Manual of Standards. Australia is unique compared to EASA, FAA & TCCA in that the Criminal Code is applied to aviation standards included in the Act and Regulations.

This application of the criminal code means the "language" of technical standards are changed to meet the legal "language" of the Criminal Code.

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If the new government's aviation policy is to be implemented with any success, then this fundamental legislative structure issue will need to be addressed. The regulatory effects on aviation will continue to have negative impacts on the industry, especially, the non-airline sectors until this matter has been corrected.

ICAO Definition:

ICAO defines "**regulations**" in their Safety Oversight Manual, Part A, Chapter 3 under *Specific Operating Regulations that emanate from primary legislation* [Act and CASRs] as:

Note – the term "regulations" is used in a generic sense to include but is not limited to instructions, rules, edicts, directives, sets of laws, requirements, policies, and orders.

CASSs and the older Civil Aviation Orders are these ICAO "regulations".

Specific Operating Regulations are defined by ICAO as:

Specific operating regulations. *The provision of adequate 'regulations' to address at a minimum, national requirements emanating from the primary aviation legislation [Civil Aviation Act & Civil Aviation Safety Regulations] and providing for standardised operational procedures, equipment and infrastructures (including safety management and training systems) in accordance with the Standards and Recommended Practices (SARPs) contained in the Annexes to the Convention on International Civil Aviation.*

Maybe the best option is change section 9(1)(c) to read "**specific operating rules**" instead of "**aviation safety standards**" so CASA can promulgate such standards "in accordance with" this provision of ICAO.

This would enable CASA to meet Article 37 by issuing **specific operating rules or aviation safety standards** based on the Annexes.

Article 37.

Adoption of international standards and procedures.

Each contracting State undertakes to collaborate in securing the highest practicable degree of uniformity in **regulations, standards, procedures, and organization** in relation to aircraft, personnel, airways and auxiliary services **in all matters in which such uniformity** will facilitate and improve air navigation. To this end the International Civil Aviation Organization shall adopt and amend from time to time, as may be necessary, international standards and recommended practices and procedures dealing with: (a) to (k) and such other matters concerned with the safety, regularity, and efficiency of air navigation as may from time to time appear appropriate.

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Example 2.

- B. **Section 3A of the Civil Aviation Act:** The current “Main Object” of the Act directs CASA to develop “regulations” to prevent accidents and incidents. It does not direct CASA to promulgate [civil] aviation safety standards (*refer Example 1*). This is one of many provisions of the **Civil Aviation Act that needs to change:**
1. Change Section 3A of the Civil Aviation Act to provide a new “**Objective**” that will include “**sustainable industry**” so that safety regulations and CASA promulgated [civil] aviation safety standards will support a **safe and sustainable** industry.
 2. Too often, those charged with regulatory development openly state that costs are not considered as the Act only requires the regulations to address safety not viability of industry participants. The legislative structure must ensure a **safe and sustainable aviation industry**.

Clarification

1. **Amending Section 3A of the Civil Aviation Act.**

- a. The current 3A of the Act states the Main Object of the Act is to *establish regulations that prevent accidents and incidents*. It is well known worldwide that accidents and incidents happen despite the amount of regulations.
- b. New Zealand has the main objectives listed to achieve an *integrated, safe, responsive, and sustainable transport system* that meets New Zealand’s obligations under international civil aviation agreements such as the Chicago Convention.

Compare the difference between Australia & New Zealand Objectives

Australia: 3A Main object of this Act

The main object of this Act is to establish a regulatory framework for maintaining, enhancing and promoting the safety of civil aviation, with particular emphasis on preventing aviation accidents and incidents.

New Zealand: The objectives of the Minister under this Act are —

- (a) *to undertake the Minister's functions in a way that contributes to the aim of achieving an integrated, safe, responsive, and sustainable transport system;*
and
- (b) *to ensure that New Zealand's obligations under international civil aviation agreements are implemented.*

New Zealand’s objective includes “*an integrated, safe, responsive, and sustainable transport system.*” Quite a difference approach to Australia.

CASA once had a Mission Statement that stated “a **safe and viable aviation industry**” which kept the focus on making “business-type” aviation requirements instead of the descriptive structure of legislation today.

Recommendation 2: Amend 3A to read similar to the NZ Objectives: e.g.

- a) *CASA to undertake the government's functions in a way that contributes to the aim of achieving an integrated, safe, responsive, and sustainable aviation system; and*
- (b) *to ensure that Australia’s obligations under international civil aviation agreements are implemented.*

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Correcting the “Objective” of the Civil Aviation Act will also remove the reliance on every new responsible Minister to issue a new “Strategic Direction” to the Board of CASA, including prescribing the manner in which CASA interacts with the aviation industry. The objectives can address the main points currently in the Direction and CASRs can provide regulatory direction to promulgate CASSs.

Subsequent Act Changes

To enable these two provisions to function correctly, **Section 98 of the Civil Aviation Act** would need to be completely modernised so CASA can be properly empowered – many regulations should direct CASA to promulgate CASSs.

Section 98 of the Civil Aviation Act should include the requirements of Articles of the Convention that CASA has government responsibility to manage compliance and enable regulations that also direct CASA to promulgate CASS (Specific Operating Rules).

If the Government is to realise their aviation policy then there will need to be a change of thinking and attitude of not only industry but CASA personnel as well. Everyone recognises that we are ‘over-regulated’ but do we understand what we mean by stating “*over-regulation is stifling industry*”.

Nobody will agree to lower ‘safety standards’ but it is possible to improve safety standards whilst de-regulating the non-airline sectors. The “language” of Acts of Parliament & Parliamentary Regulations are not akin to the ‘language’ of technical standards as used in EASA and FAA Regulations or the TCCA Standards.

Adoption of ICAO terminology that is used globally would also make the Act more readable by those in aviation in Australia and internationally.