



Australian Federation of Air Pilots

Submission to the

**AVIATION SAFETY REGULATION REVIEW
(ASRR)**

31 January 2014

The Australian Federation of Air Pilots - Background

Formed in 1938, the Australian Federation of Air Pilots (“the Federation”) is the industrial and professional association for commercial air pilots in Australia. The Federation is the largest pilot association in Australia with over 3500 pilot members. The Federation is also a foundation member of the International Federation of Airline Pilots Association (IFALPA), the global body representing commercial pilots worldwide.

The Federation’s membership coverage includes Virgin Australia pilots, Qantas owned subsidiary airline pilots (such as QantasLink and Jetstar), regional airline pilots, Australian pilots flying for overseas operators, general aviation pilots, flight instruction pilots, aero-medical pilots, corporate jet pilots, helicopter pilots and aerial agricultural pilots.

As a professional association, the members and staff of the Federation are active in promoting flight safety and improving Australian and global aviation standards.

The Federation’s diverse pilot membership base places it in a strong position to comment on Australian Aviation Safety Regulations.

Overview

Aviation has never been given the priority at a federal government level or the resources that it deserves given the essential nature of the services that are provided to industry and the general public

The Civil Aviation Safety Authority (CASA) has been poorly resourced by successive governments and this has prevented the organisation from undertaking its role as the regulatory authority, particularly with regard to oversight of Air Operator Certificate (AOC) holders and enforcement of the regulations.

We believe that the regulator needs to act without fear or favour, be better resourced and transparent. However there is a need for a clearly articulated long term goal of what the regulator wants to achieve and how this will be done.

The Federation is supportive of the independent and safety focused role played by the Australian Transport Safety Bureau (ATSB). We support legislative immunity for flight crew who raise safety concerns and measures that allow flight crew to report directly to a better resourced and independent ATSB. We oppose any relaxations which may allow greater access to information obtained by the ATSB during safety investigations by any other agency.

We believe that in the interests of safety there is a clear need for CASA and the ATSB to share information on audits and investigations. We have no objection to CASA accessing compiled, de-identified data summaries, safety investigation reports and research material. However, we strongly object to any proposal to increase CASA’s access to mandatorily supplied notifications of aviation accidents and incidents. Information from any mandatory reporting process should remain confidential.

The regulatory reform process is long past its due date. The intention was to provide regulations that were aligned with ICAO and met the requirements of being clear, concise and unambiguous. For regulations to be effective and enforceable they must meet these basic criteria. In our view the regulations delivered so far do not satisfy these requirements.

Recommendations

The Federation's submission to the Aviation Safety Regulation Review (ASRR or Review) is structured in accordance with the Review terms of reference. Our submission supports that:

1. All aviation agencies and responsibilities be brought back under the oversight of a single Aviation Minister or, at a minimum, the Director of Aviation Safety should not be able to operate independent of a Board structure.
2. The Civil Aviation Safety Authority (CASA) should be better resourced. That programs and initiatives aimed at greater self-regulation do not come at the expense of internal expertise within CASA. The Aviation Medicine section of CASA in particular is in need of an overhaul to ensure clearer processes and that specified service standards are delivered.
3. The Australian Transport Safety Bureau (ATSB) remains independent and purely safety focused. In line with this, that legislative immunity is provided for flight crew who raise safety concerns and the material gathered by the ATSB during investigations is protected from any other party.
4. Airservices Australia (AsA) improves its methodology to ensure appropriate service responses to rapid changes in traffic movements. AsA should also conduct a review of radio and operational procedures for all airports in G Airspace that involve regular public transport operations.
5. The operations of the Office of Transport Security (OTS) are an excessive cost burden on the industry and that many security screening processes are illogical or unnecessary.
6. The recommendations of Senate Committee Inquiry into Aviation Accident Investigations be revisited and implemented as a matter of priority.
7. In accordance with the International Civil Aviation Organisation (ICAO) Annex 13, information gathered in safety investigations or mandatorily supplied be protected and not shared between agencies.
8. The Regulations be re-written in plain English, targeted at and comprehensible to the industry.
9. The Notice of Proposed Rule Making (NPRM) process be reviewed such that sensible and defensible timeframes are provided and adhered to.
10. Jurisdictional issues regarding Australian aircraft operating in New Zealand and New Zealand aircraft operating in Australia needs to be clarified.
11. Fatigue management legislation encompasses all safety sensitive personnel.
12. Automatic Dependent Surveillance Broadcast (ADS-B) surveillance is implemented in all Australian airspace above 10,000 feet.
13. The upgrade of Instrument Landing Systems (ILS) to Cat 3 at all Australian capital city airports.
14. Flight data is provided with legislative protection that ensures it may only be used for safety purposes and prohibits the use of this information in civil or criminal actions.
15. The recommendations of the 2000 Senate Inquiry into the incidents of contaminated cabin air are revisited and implemented as a matter of urgency.
16. Land use planning around airports be controlled and coordinated to ensure airport capacity is not restricted or that development does not adversely impact on existing operations.

Introduction

1. The Federation's submission is structured in response to the five dot point objectives detailed in the Review's terms of reference. These being:
 - 1) *the structures, effectiveness and processes of all agencies involved in aviation safety;*
 - 2) *the relationship and interaction of those agencies with each other, as well as with the Department of Infrastructure and Regional Development (Infrastructure);*
 - 3) *the outcomes and direction of the regulatory reform process being undertaken by the Civil Aviation Safety Authority (CASA);*
 - 4) *the suitability of Australia's aviation safety related regulations when benchmarked against comparable overseas jurisdictions; and*
 - 5) *any other safety related matters.*
2. We note that the Review was announced by the Minister on 14 November 2013 and submissions close on 31 January 2014. Owing to the short timeline, encompassing the Christmas holiday period, and the very broad nature of the Review terms of reference, our submission should not be regarded as comprehensive. We would welcome the opportunity to further explain and supplement our submission via verbal submissions to the Review Panel.
3. Our submission is based on pilot member feedback and the views of the Federation's Technical Committee, made up of working airline and commercial pilots under the direction of the AFAP's Technical Director.
4. As an additional general statement, we believe that aviation has never been given the priority at a federal government level or the resources that it deserves given the essential nature of the services that are provided to industry and the general public.
5. Whilst we do not object to a user pays model to cover the costs incurred in providing aviation services, we believe it is necessary to accurately quantify those costs and identify who the end users are to ensure that they contribute a fair share rather than attempting to recover the full cost of service provision from the industry. This applies to the Civil Aviation Safety Authority (CASA), Airservices Australia (AsA), the Bureau of Meteorology (BOM) and Office of Transport Security (OTS). In this light it is somewhat disturbing that CASA reported a \$12M profit over the last year.

1) the structures, effectiveness and processes of all agencies involved in aviation safety

6. The Federation believes that aviation responsibilities should be brought back under the control of a single Aviation Minister. This will ensure appropriate oversight and emphasis is given to a critical element of the economy.
7. Alternatively, we believe that the Director of Aviation Safety should not be able to operate independent of a Board structure.
8. We consider it imperative that all senior appointments to any agency with a safety related role should have significant prior experience in a relevant field.

CASA – the Regulator

9. It is our opinion that the Civil Aviation Safety Authority (CASA) has been poorly resourced by successive governments and this has prevented the organisation from undertaking its role as the regulatory authority particularly with regard to oversight of Air Operators Certificate (AOC) holders and enforcement of the regulations.
10. We agree that operators in a mature environment should be able to accept greater responsibility for their own safety performance and in this regard support CASA initiatives such as the introduction of operator safety management systems. However, any such initiatives must be subject to adequate oversight.
11. Policy changes aimed at greater industry self-regulation than currently exists should be opposed. In a climate of reduced resources a philosophy of self-regulation may appear to be an attractive short term option. However, self-regulation is a self-fulfilling principle; the more that CASA devolves to industry, the less expertise resides within CASA to identify shortcomings, the less CASA is seen as ‘the Regulator’ and the less it accepts that responsibility.
12. The perception of CASA by our members is one of constant change, characterised by high staff turn-over and low morale from within. Whilst we understand any regulatory authority will continually review its internal policies and administrative operations to improve service delivery and efficiency, there is a need for a clearly articulated long term goal of what the Regulator wants to achieve and how this will be done.
13. The Aviation Medicine section of CASA in particular appears to act without due regard for the impact its decisions have on individual pilots and the industry. There is little or no communication about delays in the medical certificate renewal process or transparency about the reasons for delays occurring. Certificate holders are obliged to follow up with the section to find out why their certificates have not been renewed only to receive requests for additional medical reports and tests. The Federation has received numerous complaints from members as to the apparently arbitrary nature of decisions and the bureaucratic and incompetent processing of renewals. These delays threaten the livelihood of our members, and undermine the productivity of the businesses for whom they work. We have previously surveyed members and written to the former Minister on this issue¹. An overhaul of the Aviation Medicine section of CASA should be a priority. This would include additional resources, clearer processes, specified service standards and improved training of staff.

¹ The Federation would be happy to provide a copy of this previous correspondence upon request

14. The Regulator needs to act without fear or favour, be better resourced and transparent.

ATSB – the Investigator

15. The Federation is supportive of the independent and safety focussed role played by the Australian Transport Safety Bureau (ATSB). Pilots and other aviation personnel will not freely report safety related matters if that information can be used for punitive purposes. This is a long and well established principle as recognised under ICAO Annex 13.

16. We support legislative immunity for flight crew who raise safety concerns and measures that allow flight crew to report directly to a better resourced and independent ATSB.

17. We oppose any relaxations which may allow greater access to information obtained by the ATSB during safety investigations.

AsA – the Service Provider

18. Airservices Australia (AsA) has responsibility for the provision of air traffic services within Australian continental and oceanic airspace. The level of service provided within an area of airspace or at an airfield is determined through a review process based on the use of various triggers relating in part to passenger numbers and aircraft movements.

19. We believe this process is flawed as the data collection methodology is not sufficiently timely or adequate to capture the rapid changes in traffic movements. In some instances (specifically in Western Australia and Queensland) this has led to our members operating regular public transport services in high capacity aircraft into uncontrolled airfields with high traffic volumes.

20. The use of a Common Traffic Advisory Frequency that may cover more than one airport in these situations is unsatisfactory and a review of radio and operational procedures for all airports in G Airspace that support regular public transport operations should occur in the near future.

OTS - Security

21. The Office of Transport Security (OTS) appears to operate without any regard for the cost imposition it places on the industry through the requirements for passenger screening. Whilst there may be a clear need for such screening at major airports the rationale for such screening at smaller regional airports is questionable at best.

22. The security screening processes applied to pilots are arbitrary and unnecessary. Continually screening pilots before they go airside so that their tweezers are detected before they take control of a jet aircraft with an axe in the cockpit seat beggars belief. Particularly when other airside workers, such as baggage handlers and catering staff, are not subject to the same screening processes. In addition, pilots are also subject to continual “random selection” for bomb trace detection tests in airports. This practice not only inconveniences aircrew, but also devalues the testing regime by targeting testing away from ordinary passengers. These measures appear driven by political and public relations concerns rather than any safety case.

23. It is also apparent that whilst there are mechanisms in place to increase the level of screening required there are no similar mechanisms to review the current levels and reduce them as the assessed threat level diminishes.

2) the relationship and interaction of those agencies with each other, as well as with the Department of Infrastructure and Regional Development (Infrastructure);

24. The report of the Senate Committee Inquiry into Aviation Accident Investigations was handed down over two years ago. It made 26 recommendations to improve the effectiveness of the relationship between CASA and the ATSB. To date it appears that few if any of these recommendations have been carried out.
25. We note that the Minister whilst in opposition supported demands for the immediate implementation of those recommendations and request that this Review revisit the findings of that inquiry and recommend the implementation of those recommendations as a matter of priority.

Sharing of Data Between Agencies

26. In the interests of safety there is a clear need for CASA and the ATSB to share information on audits and investigations. We have no objection to CASA accessing compiled, de-identified data summaries, safety investigation reports and research material. However, we strongly object to any proposal to increase CASA's access to mandatorily supplied notifications of aviation accidents and incidents. Information from any mandatory reporting process should remain confidential.
27. Section 3A of the Civil Aviation Act states that, the main function of the Act is to provide for a regulatory framework that has a particular emphasis on preventing accidents and incidents. Further to that, depending on the circumstances of an accident or incident, CASA as the regulator, may in the interests of safety need to take enforcement action to ensure compliance with the applicable regulations.
28. This is contrary to the intent of ICAO Annex 13 which states that "the objective of an investigation of an accident or incident is prevention of future events" and the ICAO Safety Management Manual which states that "information should be collected solely for the purpose of aviation safety and information protection is essential in ensuring the continued availability of that information". It follows that ATSB reports on accident or incident investigations or any information from the mandatory reporting process should never be made available for regulatory enforcement purposes or civil actions.
29. For a safety reporting regime to operate effectively people must be confident that disclosure will not result in punitive action unless the action was deliberate or reckless.
30. We have no specific comments on the relationship of these agencies with the Department.

3) the outcomes and direction of the regulatory reform process being undertaken by the Civil Aviation Safety Authority (CASA);

31. The writing of the CASRs has had a stop-start history and has been underway now for many years. It was acknowledged that Australia's aviation operations would be simplified if our legislation was, where possible, harmonised with the rest of the world, particularly the USA and Europe.
32. Other countries conducted similar re-writes including both New Zealand and Canada in the 1990s and subsequently a number of Pacific states have adopted a similar format (loosely following the New Zealand model). Consequently from a regional point of view it was determined that it would be advantageous for Australia to develop a similar system through the introduction of the Civil Aviation Safety Regulations 1998.
33. 15 years have now passed since the introduction of the CASRs and there are still large portions of the 1998 suite of regulations which are not yet in place. Increasingly many of those that are in place are extremely difficult for industry participants to understand without specialist legal advice.
34. Among the reasons originally stated for the need for regulatory change was the acknowledgement that Australian aviation would benefit from having a suite of legislation that was clear, concise and unambiguous. Unfortunately the CASRs creation has taken such a long time with so many hands being involved in the drafting and redrafting, that the regulations are in some cases quite unclear, verbose and ambiguous.
35. As an example you need go no further than the definitions in CASR part 61. In this part an aeroplane is defined as follows –
- Aeroplane means an aeroplane that has flight controls providing control of the aeroplane in three axis.*
36. This definition does not define an aeroplane at all beyond telling the reader that it is an aeroplane(!!) and that it has three axis controls (as incidentally do most other types of aircraft).
37. A 2002 draft of the Notice of Proposed Rule Making (NPRM) of this part had the following definition of an aeroplane –
- Aeroplane means a power-driven heavier-than-air aircraft deriving its lift in flight chiefly from aerodynamic reactions on surfaces remaining fixed under given conditions of flight, but does not include power driven sailplanes.*
38. This definition, while certainly a little longer, is clear, concise and unambiguous, unlike the current version.
39. The current CASR Part 61 contains no definition of a helicopter, a glider, a gyroplane, an airship or a powered lift aircraft, all of which have three axis controls, and all of which are listed under the definition of category of aircraft in 61.015. The 2002 version of the NPRM for this part used the ICAO definitions to define both helicopter and glider and provided clear definitions of a gyroplane and an aeroplane.

40. Similar examples can be found on almost any page of the CASRs where a great many words have been used to paint a picture which, while perhaps clear to lawyers and those who draft legislation, is, in the main, confusing and in some cases unintelligible to many of those whose day to day working activity is regulated by this legislation.
41. In contrast to Australia's CASRs 1998, the New Zealand Civil Aviation Rules are clear and comprehensible. While in no way endorsing the content of the New Zealand legislation, we would support clear plain English regulations aimed at and comprehensible to the industry, not just lawyers.
42. We therefore request that the regulatory development process be reviewed in the interests of achieving the goals of clear, concise and unambiguous regulations delivered in a timely manner.

The NPRM process

43. The NPRM Process associated with the development of the CASR is treated with some scepticism by many, due in part to the relatively short time frame given to provide comment on what are often long and complicated documents. There is also frustration with the erratic timeframe involved in the development of the CASRs. As a case in point the Part 61 NPRM was issued on 18 July 2003. The next consultation draft for part 61 was issued eight years later, in November 2011.

Flight Crew Licencing

44. We note that the implementation of Parts 61, 141 and 142 originally scheduled for December 2013 has now been delayed until September 2014. Whilst CASA seemed to imply that industry was to blame, there were issues in regards to insurance coverage for Flight Examiners and the availability of documentation preventing industry from fully understanding the proposed changes within the original timeframe.

Future Reform

45. We note that the government has an objective to reduce the cost to business of regulation; however, it is imperative that this objective be second to improving safety.

4) the suitability of Australia's aviation safety related regulations when benchmarked against comparable overseas jurisdictions;

46. Due to the short timeline for submissions, the Federation has not conducted a comprehensive benchmarking of Australia's aviation safety related regulations against comparable overseas jurisdictions.

47. Our broad comments, reinforced in our responses to the other terms of reference, include that:

- Regulations need to be plain English and comprehensible to industry;
- It is important that the separation and independence is maintained between the body responsible for enforcing aviation safety regulations (CASA) and the body responsible for aviation incident and accident investigations (ATSB);
- It would be preferable that all aviation matters be brought back under the oversight of a single Aviation Minister or, at a minimum, the Director of Aviation Safety should not be able to operate independent of a Board structure.

5) any other safety related matters.

Operations under the Trans-Tasman Mutual Recognition Agreement

48. The Trans-Tasman Mutual Recognition Bill, the Single Aviation Market and our Closer Economic Relations protocol with New Zealand facilitate the ability of Australian companies to operate services within New Zealand and vice versa.
49. Whilst NZ registered aircraft are occasionally operated domestically in Australia, we are primarily concerned about the oversight by CASA of Australian registered aircraft operating domestically in New Zealand under these agreements. Our concerns relate to the question of who has jurisdiction in the event of an accident or incident involving these aircraft and whether there is adequate oversight of the maintenance process.

Fatigue Management for Engineers and Cabin Crew

50. CASA has recently revised the regulations governing fatigue management for flight crew and whilst we believe the changes could have gone further, generally we support the steps that have been made to address this important issue.
51. We are still concerned however about the lack of regulation by CASA in regard to fatigue management for engineers and cabin crew. Their role is safety critical yet their duty and flying hours are totally unregulated except through industrial agreements.

Implementation of Non-Radar Surveillance

52. In 2005 Airservices Australia (AsA) proposed to implement Automatic Dependent Surveillance Broadcast (ADS-B) surveillance in Australian airspace above 10,000 feet. This initial proposal to provide an Australia-wide surveillance service was subsequently downgraded to 29,000 feet and above. This was finally implemented in December 2013 and even then exemptions have been provided to many older aircraft for an additional two year period.
53. Co-incident with this, we have seen a significant increase in the number of both high and low capacity aircraft operating in remote areas which would have been covered by the initial proposal. This has led to a significantly lower level of safety to that which was originally envisaged for this busy airspace.

Provision of Precision Instrument Landing Systems at Major Airports

54. On 18 June 2013 two Boeing 737 passenger jets diverted from Adelaide to Mildura due to un-forecast fog at Adelaide airport. This event highlights the urgent need for the upgrade of instrument landing systems at major Australian airports.
55. Upon arrival at Mildura with insufficient fuel to divert further both aircraft were committed to a landing. Fog, again un-forecast, was also encountered at Mildura airport. This necessitated both aircraft conducting an approach and landing in conditions when the visibility was below the legally required minima. One aircraft became visual about 300 feet above the ground the other aircraft was forced to land in zero visibility. It is a glowing testament to the skill and professionalism of the flight crew that both aircraft landed safely and we did not read in the daily papers about what could have been the biggest disaster in Australian aviation history.

56. The incident is the subject of ATSB investigation AO-2013-100, which from the preliminary report, indicates that the investigation is concentrating on two issues: deficiencies in the provision of operational information to aircraft; and deficiencies in the provision of current weather information to aviation in Australia. While both these issues are worthy of investigation, the investigation appears to have shied away from a further, most important subject which is the inadequacy of current instrument approach low visibility approach procedures available at Australian airports.
57. The Instrument landing System (ILS) is a type of approach procedure known as a precision approach in that it provides both vertical and lateral guidance to the runway. The current minimum conditions for the Cat 1 ILS approach at Adelaide airport are Visibility of 800 metres and a cloud height of 250 feet above ground level (AGL). Contrast this with the requirements for the Cat 3A approach on runway 16 at Melbourne airport which are a cloud height of 50 feet AGL and a runway visual range (RVR) of 175 metres or the Cat 3B approach requiring an RVR of 75 metres and a cloud height of zero feet AGL.
58. Sydney is the only other airport in Australia having a capability better than Cat 1, with Cat 2 approaches on runways 16R and 34L. These allow approach minimas of 100 feet AGL and 350 metres RVR. All other Australian airports have, at best Cat 1 capability i.e. approximately 200-250 AGL with visibility of 800 metres. Minima for regional airports (such as Mildura) with only non-precision approaches are considerably greater.
59. Contrast this situation with the United States which has at present over 50 airports with Cat 3 capability and in other countries worldwide where more than 80 airports have Cat 3 capability with approximately 50 more having Cat 2 capability. As examples, England has 10 airports with Cat 2 and of these 9 have Cat 3 capability, and Italy has 7 airports with both Cat 2 and Cat 3 capability. These countries have all recognised the increased safety and economic benefits afforded by Cat 2 and Cat 3 ILS capability and have invested in the appropriate infrastructure - Australia has not.
60. We therefore request that the process be commenced as soon as possible to upgrade the Instrument Landing Systems at all Australian capital city airports.

Flight Data Recordings

61. Part 111B of the Civil Aviation Act 1988 provides for the protection of the information gathered on cockpit voice recordings (CVR). The legislation acknowledges that information gathered on CVRs must be protected in order that it can be used as a valuable tool in the interests of aviation safety. It also acknowledges that use of this information for other reasons such as industrial or punitive purposes could have a negative impact on the integrity of the information. At present the information gathered on Flight Data Recorders (FDR) is not similarly protected.
62. In line with the need to ensure that all information which could assist in improving the level of aviation safety can be disclosed without undue fear of retribution or prosecution and, in accordance with Australia's responsibilities under ICAO Annex 19, we believe that the information gathered on FDRs deserves the same protection as CVRs.
63. We would request that FDR be provided with legislative protection similar to that accorded to CVRs that ensures that they may only be used for safety purposes, and importantly that legislation prohibit the use of this information for civil or criminal actions.

Cabin Air Quality

64. In 1999-2000 the Australian Senate conducted an inquiry into the incidents of contaminated cabin air being introduced into the passenger cabins and cockpits of a number of Australian airliners. The inquiry made a number of recommendations. In 2006 the shadow Minister for Transport questioned the government regarding progress in this matter and it was apparent that little if any action had been taken.
65. In 2008 CASA convened an Independent Expert Panel on Aircraft Air Quality who published their report in October 2010. This report, while acknowledging the potential hazards involved in this issue, recommends that reports and information continue to be gathered from within Australia and overseas. However the specific recommendations made in 2000 have largely been ignored by both CASA and the airline industry.
66. As this issue continues to potentially affect the health and safety of our members and indeed all who travel on jet aircraft we submit that the response of CASA to this issue can at best be described as unduly timid. We therefore request that CASA be instructed to implement the recommendations of the 2000 Senate inquiry as a matter of urgency.

Coordinating Airport Land Planning

67. Regulatory and management arrangements for land use around airports are addressed through a range of Commonwealth, state and territory legislation and regulation. Unfortunately the enforcement of these regulations is left primarily to local councils. Pressure from development groups and community action groups can be difficult for local councils to ignore.
68. Airports require buffer zones to limit the impact of noise and to provide adequate obstacle clearance for aircraft approaches and departures. It is imperative that land use planning around airports is controlled to ensure the airport capacity is not restricted or that development does not adversely impact on existing operations.

Further information

As previously stated, the Federation would welcome the opportunity to supplement the above written submission via verbal submissions to the Review Panel.

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