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## ADVOCATE OF THE AVIATION MRO INDUSTRY

<p>Newsletter Date 25/03/2014</p>	<p>The Fear of Retribution</p>	<p>Volume 11, Issue 04 March – 2014</p>
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The recently released Senate report into the ATSB/CASA Pel-Air accident near Norfolk Island has clearly stated that CASA did not meet its obligations to ATSB and, more concerning, has created a fear of retribution with many participants in industry who no longer have confidence/trust in CASA.

This report does not paint Australia's safety system in a good light. Safety requires all sectors to actively work together to maintain safety, let alone improve safety standards, and this can only be done if all involved are confident that by being honest there will be no retribution. What this Senate Inquiry has identified that the trust in CASA to be a fair regulator has deteriorated to such a level that, to bring the truth to the notice of this inquiry, many did so "in-camera" so that their identities were protected. Why? To prevent retribution by CASA. **CASA's next CEO has a challenge to resurrect a "Just Culture"**.

The situation is so bad that the Inquiry Executive Summary stated: *"Witnesses—whether public or in camera—should suffer no adverse consequences from providing evidence to the committee. Given the numerous concerns expressed, the committee will be monitoring this situation carefully."*

The following are relevant extracts from the Report's Executive Summary.

*"The committee also focuses on the appropriateness and effectiveness of the interaction between the ATSB and CASA. The committee notes that a systemic approach to the investigation was initially pursued, but that systemic issues were scoped out of the investigation early in the process. This led the committee to ask whether CASA exerted undue influence on the ATSB process. What is clear is that CASA's failure to provide the ATSB with critical documents, including the Chambers Report and CASA's Special Audit of Pel-Air, which both demonstrated CASA's failure to properly oversee the Pel-Air operations, contravened the Memorandum of Understanding (MoU) in place between the two agencies and may have breached the terms of the Transport Safety Investigations Act 2003 (Chapter 7). The committee takes a dim view of CASA's actions in this regard.*

*It also emerged in the course of the inquiry that the previous system of mandatory and confidential incident reporting to the ATSB has been altered. Pilots have expressed concern that CASA now appears to have access to identifying information, which may inhibit pilots reporting incidents and will therefore undermine the important principle of just culture within the aviation industry (Chapter 10).*

*Finally, the committee notes that many submitters and witnesses provided evidence in camera due to fear of retribution, particularly from CASA, were they to go public with their concerns. Many who chose to give in camera evidence did so in the knowledge of protections provided by parliamentary privilege. The committee also notes that this reticence to speak in public has been apparent for each inquiry this committee has conducted in this area over several years, and finds this deeply worrying. Given the positive statements made about the inquiry by CASA Director of Aviation Safety, Mr John McCormick, the committee trusts that concerns about retribution are unwarranted. There is an obligation on CASA to allay these concerns that retribution could follow speaking out, which appear to be widespread within the aviation industry. The committee stresses that it takes the protection of witnesses under parliamentary privilege very seriously. *Witnesses—whether public or in camera—should suffer no adverse consequences from providing evidence to the committee. Given the numerous concerns expressed, the committee will be monitoring this situation carefully.**

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**MOTTO: SAFETY ALL AROUND**

## 'Communication between CASA and the ATSB'

Some of the reasons why the gulf between CASA and many in industry is described in the Senate Report where they dissect the relationship between ATSB and CASA. It basically states that CASA selectively provided information to ATSB. During the Senate's investigation they uncovered an internal CASA report on CASA/Pel-Air relationship and this report (Chamber's Report) was damning on CASA and their oversight of Pel-Air. It clearly identified CASA and Pel-Air organisational issues.

7.11 *Given evidence on the lack of analysis of systemic issues in the ATSB investigation report, as outlined in previous chapters, the committee questions the plausibility of the statement above. On the weight of evidence reviewed, the committee questions CASA's motivation in withholding the Chambers Report from the ATSB.*

7.12 *This leads the committee to conclude that CASA may have breached section 24 of the TSI Act by withholding the document. To ensure that any appropriate action is taken, the committee will write to the Australian Federal Police, providing a copy of this report and supporting evidence for review.*

7.13 *Irrespective of how highly either agency head is inclined to speak on the public record when describing the ATSB/CASA relationship, this inquiry exposed not only a predilection by CASA to withhold information when it suited them, but also a willingness to engage the ATSB both formally and informally in ways that have not always been transparent. In both regards, CASA's actions have influenced the conduct of the ATSB investigation to the detriment of aviation safety. Based on the documentation available to the committee, it appears that the two agencies have placed maintaining the veneer of a productive working relationship ahead of public safety.*

7.14 *The committee is of the view that CASA has adopted a rather self-serving interpretation of the MoU, which allows the agency to laud the spirit of the document whilst simultaneously failing to adhere to its contents when convenient. Whilst aware that the MoU between the ATSB and CASA is not a legally binding document, it nonetheless has an intended aim, and therefore fails to serve its purpose if not adhered to. The committee concludes that CASA's decision to withhold important documents from the ATSB has, as outlined in Chapter 6, had a severe impact on the ATSB's investigative process."*

The worrying concern is that it demonstrates that CASA selectively uses data. This has been an issue from many industry participants in their not to friendly dealings with CASA. It also demonstrates that this government agency, who has no security responsibilities, is very guarded in what they hold and their lack of transparency.

CASA has not cultivated or maintained harmonious relationships with all of the aviation industry, especially in implementing a "just culture" for the aviation industry. Until CASA accepts that every participant shares a responsibility for safety and information can be shared both ways without the fear of retribution, a safe and "just culture" will not exist. CASA does not oversee every flight. Aviation organisations, pilots, engineers, air traffic controllers and aircraft owners are each responsible for meeting the statutory safety and security standards. The Regulations should set the minimum standards for entering, and operating within, the system. It is in the best interests of all aviation participants to perform to a standard above the minimum.

CASA's next CEO has a massive challenge to address generations of fear of retribution.

## Morris Report May 1995

3.12 There are **two ways to amend the object clause**.

The **first** is as follows:

3A. The main object of this Act is to establish a regulatory framework for maintaining, enhancing and promoting the safety of civil aviation *in an effective and economical way*, with particular emphasis on preventing aviation accidents and incidents *whilst recognising the need for more people to benefit from civil aviation*,

3.14 The **second** option provides for greater detail in the object clause and is as follows:

3A. The main object of this Act is to establish a regulatory framework for maintaining, enhancing and promoting the safety of civil aviation, with partic-

ular emphasis on preventing accidents and incidents *whilst recognising the need for more people to benefit from civil aviation* by means that include the following:

- (a) *the development and maintenance of effective safety regulations;*
- (b) *the encouragement of greater responsibility for aviation safety by industry;*
- (c) *the promotion of effective consultation, effective decision-making and the efficient and effective use of resources; and*
- (d) *the promotion of Australia's civil aviation safety capabilities.*

[the words in *italics* were Committee recommended]

# Report Questions CASA Compliance

## **Breach of the Transport Safety Investigation Act?**

7.9 *The committee remains very concerned by CASA's actions in this regard, and has cause to ask whether the agency is in fact also in breach of the Transport Safety Investigation Act 2003 (TSI Act). Section 24 of the Act clearly states that it is an offence to hinder an investigation:*

(1) *A person is guilty of an offence if:*

(a) *the person engages in conduct; and*

(b) *the person is reckless as to whether the conduct will adversely affect an investigation:*

(i) *that is being conducted at that time; or*

(ii) *that could be conducted at a later time into an immediately reportable matter; and*

(c) *the conduct has the result of adversely affecting such an investigation (whether or not the investigation had commenced at the time of the conduct); and*

(d) *the conduct is not authorised by the Chief Commissioner.*

7.11 *Given evidence on the lack of analysis of systemic issues in the ATSB investigation report, as outlined in previous chapters, the committee questions the plausibility of the statement above. On the weight of evidence reviewed, the committee questions CASA's motivation in withholding the Chambers Report from the ATSB.*

7.12 *This leads the committee to conclude that CASA may have breached section 24 of the TSI Act by withholding the document. To ensure that any appropriate action is taken, the committee will write to the Australian Federal Police, providing a copy of this report and supporting evidence for review.*

### **[Senate] Committee view**

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### **Searle's Report—September 2008**

The Senate's Searle Report, ***Administration of the Civil Aviation Safety Authority (CASA) and related Matters*** also made recommendations:

**Recommendation 1:** *The committee recommends the Australian Government strengthen CASA's governance framework and administrative capability by:*

- *introducing a small board of up to five members to provide enhanced oversight and strategic direction for CASA; and*  
*undertaking a review of CASA's funding arrangements to ensure CASA is equipped to deal with new regulatory challenges.*

**Recommendation 2:** *The committee recommends, in accordance with the findings of the Hawke Taskforce, that CASA's Regulatory Reform Program be brought to a conclusion as quickly as possible to provide certainty to industry and to ensure CASA and industry are ready to address future safety challenges.*

**Recommendation 3:** *2.165 The committee recommends that the Australian National Audit Office audit CASA's implementation and administration of its Safety Management Systems approach.*

When will the Civil Aviation Act be re-written to address recommendations and findings? Regulatory changes can be completed within 2 (two) years. Past recommendations have failed to fix.

## \* Become a Member \*

The adage "there is strength in numbers" is absolutely true when it comes to influencing government regulations and policy. No one company, no matter how big or successful, can keep up on all the regulatory issues directly impacting businesses.

AMROBA is dedicated to serving the businesses that are responsible for the in-service continuing airworthiness of aircraft and aeronautical products, including the manufacture of replacement parts for in-service aircraft. This segment of the industry has never had a dedicated advocate until now.

AMROBA membership form is available from the AMROBA website: <http://amroba.org.au/become-a-member/>

print the membership form <http://amroba.org.au/index.php/download/file/view/15/>



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## Senate Report Summary

If the recommendations and findings of this latest Senate Report and previous government and judicial recommendations and findings are reviewed, it is obvious that nothing has been achieved to create an aviation regulatory authority that is transparent and encourages safe growth of aviation.

Why is there a Memorandum of Understanding between two government agencies? Why aren't their roles specified in legislation?

All of these recommendations and findings from all of the inquiries sadly reflects on the Acts and Regulations that govern these two agencies. How the ATSB and CASA work with each other should be in the applicable Act and/or Regulations.

If ATSB and CASA were correctly empowered under their respective Acts and Regulations then there would be no need for any MoU between the two agencies.

The Civil Aviation Act needs to be re-written so that it correctly empowers CASA to be a respected ICAO regulatory authority that provides a "just culture" environment for participants of this industry.

The Morris report (see page 2), May 1995 stated:

*2.14 Second, the abolition of the CAA and the establishment of the Civil Aviation Safety Authority (CASA) are to be achieved by a series of amendments to the existing Civil Aviation Act 1988 (the CA Act). Many of the provisions which are considered adequate to the regulatory functions will remain unchanged. **This is better than creating a brand new act.***

In hindsight, a new Civil Aviation Act, based on the New Zealand Act, would have addressed many points raised by this latest report. These inquiries and reports into CASA will continue until there are Acts and Regulations that clearly explain the responsibilities of both these very important aviation agencies. Industry trade, both domestically and globally, depends to a high level on CASA domestically, and globally on agreements between CASA and the NAA of possible and probable trading nations.

The Minister has stated in his response "Finally, consistent with this Government's Aviation Policy we have announced the establishment of an **Aviation Safety Regulation Review** to investigate the structures and processes of all aviation agencies involved in aviation safety.

**Recommendation 13:** *That a short inquiry be conducted by the Senate Standing Committee on Rural and Regional Affairs and Transport into the current status of aviation regulatory reform to assess the direction, progress and resources expended to date to ensure greater visibility of the processes.* [Minister supports recommendation in-principle]

### The Aircraft Maintenance Engineers/Technician Creed

#### Worth Remembering

*"UPON MY HONOR I swear that I shall hold in sacred trust the rights and privileges conferred upon me as a qualified aircraft maintenance engineer/technician. Knowing full well that the safety and lives of others are dependent upon my skill and judgment, I shall never knowingly subject others to risks which I would not be willing to assume for myself, or for those dear to me.*

*IN DISCHARGING this trust, I pledge myself never to undertake work or approve work which I feel to be beyond the limits of my knowledge nor shall I allow any non qualified superior to persuade me to approve aircraft or equipment as airworthy against my better judgment, nor shall I permit my judgment to be influenced by money or other personal gain, nor shall I pass as airworthy aircraft or equipment about which I am in doubt either as a result of direct inspection or uncertainty regarding the ability of others who have worked on it to accomplish their work satisfactorily.*

**I REALIZE** *the grave responsibility which is mine as a qualified aircraft maintenance engineer/technician, to exercise my judgment on the airworthiness of aircraft and equipment. I, therefore, pledge unyielding adherence to these precepts for the advancement of aviation and for the dignity of my vocation."*

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