

AMROBA[®]inc

ADVOCATE OF THE AVIATION MRO INDUSTRY

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2014 Unknown Outcomes

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This will be one of the biggest years for the aviation industry in Australia. A new government has rightfully implemented a review of the current situation and, like the education system that has seen Australia slide down the international scale, aviation has had so much red tape added that there is a decline in new pilots being attracted to the industry.

The aerodrome ownership/operator issue has also created many disputes between owners that now become renters, and the aerodrome operators.

There has been a pilot shortage in this country because the devolvement to industry of the old department's role as examiner of airman was not done with any success.

The majority of airline pilots once came from the rural sectors because aerodromes had flight instructors at many rural aerodromes.

But, the biggest mistake that was made by the CAA was to two-tier the legislation. Australia had a three tier system before they decided to set up a government agency to regulate aviation. They created an enabling Act to set up the CAA (Civil Aviation Act) and then put new management in to run the agency.

A government report identified requirements in Air Navigation Orders that did not have a "Head of Power" in the Act or Regulations. Instead of creating the appropriate "Head of Power" in the Regulations, naïve CAA bureaucrats cancelled many Orders that complied with ICAO Annex standards.

This was further exacerbated by naïve regulators who then decided to two-tier the legislative system. The government later decided to apply, in the mid to late 1990s, the Criminal Code to government legislation. The Code contains all the general principles of criminal responsibility that apply to any offence, irrespective of how the offence is created.

This is the problem, ICAO requirements are not criminal offenses, they are "**standards and recommended practices**".

Whilst ever we have bureaucrats that are hell bent on writing "Standards" as a criminal responsibility, then aviation will not be able to reach its full potential in Australia.

The Minister's aviation review is the best and probably the only chance to turn this fundamental problem around so aviation can safely survive and grow.

There was once a 'question' used when drafting requirements, i.e. "*what would be added to safety of any proposed new regulatory provision?*"

The Minister's review must recognise that the current legislative system is so out of sync that our aviation system is suffering.

The Act empowers CASA to create and promulgate aviation safety standards, this surely is the Head of Power for CASA to raise Civil Aviation Safety Standards that implement the ICAO Annex Standards and Recommended Practices — CASA issued standards just like EASRs and FARs.

Act: An Act is required to enable the setting up of an aviation regulator to meet Australia's obligations under international treaties, especially the Convention and subsequent Protocols.

Regulations: Provide Head of Power for Aviation Safety Standards that were previously promulgated as ANO/CAOs. Abandon the two-tier legislative system for the three-tier legislative system that has a proven legislative record and safety outcomes.

Standards: The Act provides for CASA to promulgate Aviation Safety Standards (ASS), not Manual of Standards or CAOs. Adapting EASRs/FARs, as applicable, as Civil ASS aligned with NZ Rules would adapt a safe aviation legislative system.

MOTTO: SAFETY ALL AROUND

Type Acceptance Certificates

In 1998, CASR Part 21 basically adopted FAR Part 21, except it introduced the ability to issue a Type Acceptance Certificate (TAC), based on a Type Certificate issued by the NAA of a recognised country, to reduce costs to Australian operators. The TAC not only means that CASA no longer performs any product certification of aircraft from recognised countries listed in CASR Part 21, it also means that CASA does not have access to the aircraft's specific design data and/or the technical justification how compliance with the design standards were achieved.

This raises an issue with structural repairs and modifications. The airworthiness codes that we have adopted in Parts 21-35 for manufacture of aircraft and products in Australia do not apply in this case. What design engineers have to address is the design standard that was applied to the aircraft when it was manufactured and the effect that any modification or repair would have on the original design standards, especially the change the modification or repair will have on the reliability of the aircraft.

Approving a replacement part for an aircraft places a higher responsibility on our design engineers if it is a primary structural component than if it is a non structural part. We must give credit to our design engineers who have been safely approving replacement parts for many decades. In some cases they have access to the type certificate holders manufacturing drawings

to approve designs that will improve the life of a component.

Our ageing aircraft fleet need this support as type certificate holders tend to provide little support for these ageing aircraft types. The NAA responsible for the type certificate also issues instructions that are crucial to the on-going airworthiness of the aircraft/component. These NAA instructions are not always mandatory under the Australian system.

1998 also introduced the FAA STC, PMA & TSO system to overlay the previous approval process. These approvals enable sale of approved data and/or products thus reducing costs to the operator. Instead of individual approvals for each aircraft/part, these systems enabled the modification and/or replacement parts or design data to be sold as applicable to aircraft and component types.

These systems also placed a unique responsibility on CASA to issue STC, PMA or TSO when they did not have access to the original aircraft/product design justification used by the NAA that approved the aircraft and/or product. This is why the Australian STC, PMA and TSO system was originally conceived to make the CASA authorised industry design engineer responsible for the design aspects of the approval process. CAAP Admin 1 provided guidance on legal responsibilities of "delegates".

NAA Delegates

How do other NAAs use engineering delegates?

FAA: *A Designee is a representative of the FAA Administrator authorized by law to examine, test, and/or make inspections necessary to issue airman or aircraft certificates. However, a designee is not considered an employee of the U.S. Government, and is not federally protected for the work performed or the decisions made as a designee.*

TCCA: *Acting as a representative of the Minister of Transport, the DAR determines, or participates in the determination, that an aeronautical product design, or parts thereof, complies with airworthiness standards.*

- a) *Delegation is a privilege and not a right. As such, TCCA and Delegates must have a shared commitment to safety. For delegation to work Industry must be as interested in and committed to safety as the Minister.*
- b) *Through Delegation the Minister has access to both a broader range and increased number of qualified certification personnel.*
- c) ***Delegation is one means that may be used to expedite certification project approvals.***

d) *Approvals and findings of compliance made by Delegates are approvals and findings by the Minister. When a Delegate makes a finding of compliance it is considered no different than if TCCA made that finding. Most Airworthiness authorities including the FAA and the JAA, accept our system of Delegation*

NZ: *The design delegation holder is not permitted to carry out their delegated approval function outside a design organisation. This ensures that the support structure is available for that person to satisfactorily approve design changes. Therefore, the design delegation holder relinquishes their delegation if they leave a design organisation.*

Design Changes are divided into two classes for the approval by delegation holders:

- *Class A design changes that require full engineering investigation;*
- *Class B design changes that do not require full engineering investigation.*

The approving person for a design is the Director although certain design changes may be approved under design delegations.

All are delegates of the NAA.

Criminal Offences Effects

It is interesting that the Commonwealth Guidelines to frame offences, if followed iaw their criteria, would mean that many regulations would not be classified as an offence. Should all regulatory provisions have 'strict liability' offences applied?

Factors that should be considered in determining whether to impose a criminal or civil (non-criminal) sanction include:

- *the nature of the conduct to be deterred;*
- *the circumstances surrounding the proposed provision;*
- *whether the proposed provision fits into the overall legislative scheme;*
- *whether the conduct causes serious harm to other people;*
- *whether the conduct in some way so seriously contravenes fundamental values as to be harmful to society;*
- *whether it is justified to use criminal enforcement powers in investigating the conduct;*
- *whether similar conduct is regulated in the proposed legislative scheme and other Commonwealth legislation;*
- *if the conduct has been regulated for some time, how effective existing provisions have been in deterring the undesired behaviour; and*
- *the level and type of penalties that will provide deterrence.*

*In determining whether a criminal or civil sanction should be applied, **perhaps the most important factor to consider will be the effect of a criminal conviction.***

*Conviction for a crime carries with it a range of consequences **beyond the immediate penalty.***

- *Subject to the spent conviction provisions in Part VIIC of the Crimes Act, a person may be required to disclose their criminal conviction in a range of circumstances. For example, disclosure may be required in seeking employment to work with children or work in a law enforcement agency. Imposing a criminal conviction may affect a person's employment opportunities.*
- **The person may be ineligible to travel to many countries.**

It is this last provision that affects industry participants. This is a global industry that relies on training in foreign countries for pilots, LAMEs and others involved in airworthiness control and operations of aircraft.

- *The main purposes of criminal law are traditionally considered to be deterrence and punishment. Central to the concept of criminality are the notion of individual culpability and the criminal intention for one's actions.*

There are a variety of other mechanisms for imposing liability on a person for contravening a statutory requirement. Other mechanisms include infringement notices, civil penalties, enforceable undertakings and administrative sanctions, such as licence cancellation. In many instances, these penalties can be as effective, or more effective, in deterring and punishing breaches of legislation.

What was wrong with administrative actions such as actions against licences/certificates?

Aviation Safety Partnership

Shared Responsibility for Safety.

"In a civil aviation system, every participant shares a responsibility for safety and security. The CAA does not oversee every flight.

Aviation organisations, pilots, engineers, air traffic controllers and aircraft registered operators are each responsible for meeting the statutory safety and security standards.

The Rules 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."

The above CAA(NZ) statement acknowledges two major points.

In NZ, the Act clearly states that the Rules provide the minimum standards, this is a common approach by many NAAs.

It is not the approach in Australia and will not be until the Civil Aviation Act is replaced by an Act that is based on the Articles to the Convention like the NZ Civil Aviation Act.

A return to proscribing "minimum standards" in CASA promulgated "Rules" as done in NZ would go a long way to bring back a "rule of law" system.

This would also make it quite clear the responsibilities of individuals and organisations, including CASA, for safety.

* 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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2013—Hindsight

2013 was an eventful year where the industry endured more "rule by the regulator" provisions instead of the provision of minimum standards that underpin a "rule of law" system.

As everyone now knows, employers that apply for, or hold, an aviation document from CASA to participate in aviation functions, must have a manual (exposition) that is based on the interpretation of the legislation by CASA individual Inspectors. All the manuals (expositions), including the procedures to be included, are approved to the satisfaction of an individual and not a standard.

Many employers state that the wording of the manual (exposition) to satisfy a CASA Inspector no longer provides clear guidance to their staff on how to keep the company compliant with the law.

Surveillance is now about compliance with a manual (exposition) that was forced on an employer to satisfy the whim of an individual CASA Inspector. There are so many cases presented by industry members of different CASA offices interpreting the requirements differently and there are cases where the differences happen between individuals within a CASA office.

By the end of last year, industry had become so concerned with the direction of regulatory reform, that they raised it politically. The new government listened to the concerns of industry participants and promulgated their aviation policy prior to the election.

It included statements that covered most of the concerns of many individuals and associations and proposed a review which the Minister has initiated.

Our review of the Pacific region aviation regulatory systems during 2013 really identified the growing gap between our proposed system and what is international practice.

In the MRO industry it is important that bureaucratic restrictions be removed so that Bilateral Agreements and/or Technical Agreements can be signed between Australian and foreign trading nations. It is the lack of these agreements that are holding back businesses investing in internal business enterprises.

What is holding back these agreements is the continual growth in unique Australian aviation regulatory requirements and the micro-management of aviation by CASA.

Adoption of the Kiwi aviation Act & Regulations in toto would put us in a better position to obtain these important agreements.

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."*