

HARMONISATION

Harmonisation once meant adopting the “*highest practicable degree of uniformity in regulations, standards and procedures*” from the ICAO international aviation standards and recommended practices.

Challenge: The Civil Aviation Act says “*consistent with*” not “*adopt*”. However, any reasonable person in aviation would assume “*consistent with*” means “*adopting*” when Article 37 of an aviation treaty signed by Australia states “*adopt*”.

The government agreed to **harmonisation** with ICAO international aviation standards initially in 1947 when Australia ratified the *International Convention of Civil Aviation* and, up until the formation of the CAA, aviation requirements harmonised to a far greater extent than current regulations and standards – so what has gone wrong since 1988?

Economic deregulation (government direction)

In 1993, the Bureau of Transport and Communications Economics produced its fifth report since 1989 into aviation economic regulatory reform. Previous reports concentrated on economic airline deregulation issues. This report recorded the economic reform of Australia’s aviation industry had been an ongoing process with five major reform initiatives undertaken since 1988.

“The overriding aim of the whole micro-economic reform program of which aviation is a key plank has been to pursue regulatory outcomes that will bring the most substantial benefits to the consumers, and encourage greater efficiency.”

So how did government **economic reform** transform into **full regulatory reform**?

Pre 1988, the Air Navigation Act, Air Navigation Regulations and Air Navigation Orders were more closely **harmonised** with ICAO international standards and recommended practices than at any time since.

Major reform initiatives have continued but **economic reform** has been replaced by adoption of expensive and inefficient “*world’s best practice*” that reverses the benefits of economic reform. After 28 years, the industry is fatigued from reform.

The Australian aviation industry deserves better than being subject to non-harmonised unique regulations and standards. “**Harmonisation**” has become a permanent career within CASA with no completion date.

How hard is it to adopt plain English international standards without creating unique requirements?

The *highest practicable degree of uniformity possible* means **harmonising** as close as possible to the ICAO standards and recommended practice – the US system is very mature and is seen as the world standard that most other governments model their aviation system on. Even Europe is developing rules compatible with the US system except their rules have become unworkable according to the head of EASA.

Aviation reform must return to the government economic reform approach by adopting ICAO international standards and recommended practices without the wording and intent of the international standard being changed.

The most recent government review into CASA’s management of [economic] regulatory reform (ASRR), and red tape reduction policy, actually questions whether CASA has the skills to properly economically reform the aviation system to **harmonise** with ICAO international standards and recommended practices.

Aviation Participation Similar to US, not Europe.

Australian aviation industry has a similar participation as both Canada and United States. Up until the last decade, CASA's predecessors had always used the US aviation regulatory system as the model to use when adopting ICAO international standards. The US system is very mature, empowers and licence industry participants that are similar to Australia. General aviation in Australia is closest to the United States & Canada. NZ worked this out in the early 1990s as did the CAA.

However, in the last decade less experienced regulators in CASA decided the immature complex EASA system, which virtually does not have a general aviation sector like Australia, had more benefits for bureaucracy than industry & consumers. This ill-conceived choice was rejected in many submissions to the ASRR.

Naturally public servants will always support a system that guarantees public servant jobs – it is why there is a need for government to make these determinations on behalf of their constituents.

Which government (CASA Board) will commit to **harmonisation** with ICAO standards using the US regulatory system as the model?

Today, **harmonisation** has become a total shambles when compared with mature aviation regulatory systems that cover general aviation as well as air transport, training, maintenance and manufacturing. Aviation regulatory development has not complied with governments' red tape reduction policies over the last 28 years.

The red tape reduction policy is government's direction for economic reform.

Commitment to Harmonisation

For a country that originally committed to international harmonisation in 1947, it is an international embarrassment that regulatory development, now a career in the public service, is not complete and has no completion date.

NZ started their recent reform around 1990 and completed it within 5 years.

North America (Canada & USA) and NZ are countries around the Pacific Rim that have similar aviation segments to Australia – from airline to sport aviation and manufacturing. NZ is based on the US system for all segments except major airlines and are more **harmonised** with international standards than Australia.

Annex 6, Part II to the Convention states: Responsibility. The responsibility that devolves upon the operator in Annex 6, Part I, should, in Part II of the Annex, fall upon the owner and pilot-in-command. Precedent for this course of action exists in Annex 2 to the Convention.

The US system applies these international standards to general aviation.

ICAO international standards are written in plain English; it has been proven in a number of countries that adoption can be completed within 2 years with a five year transition period for industry.

Harmonised standards would mean a reduction in red tape for participants in aviation and a reduction in the size of the government agency, CASA.

Could this be the answer?

Internationally, the “structure” of the Federal Aviation Regulations of the USA has been accepted as the international regulatory “structure” standard.

Variation of an adopted standard or practice should only occur if agreed to by the Australian aviation industry, the public and/or the beneficial communities.

Comparable jurisdictions

Any benchmarking of Australia's aviation safety related regulations against the US system, that is an industry recognised comparable overseas jurisdiction, would clearly identify the need for major economic reform with improved safety.



After all these years, the level of compliance with international standards should be closer to 100% than it is today. In the Pacific Rim region, the biggest trading country is the United States with the possibility of China being an emerging market.

A government department or agency that spends over 20 years reforming regulations and standards, **which only need to be adopted**, demonstrates why industry has lost trust and respect for CASA. It is obvious that CASA does not have the expertise and direction to adopt international aviation standards.

The only way to regain that trust and respect is to totally rewrite the Civil Aviation Act so that CASA can only adopt international standards and any proposal to lodge a difference will require consensus from government and the aviation industry.

The government's Aviation Safety Regulation Review submissions, report and recommendations demonstrate the national support to adopt the US system.

International Treaty almost meaningless!

The need for uniformity throughout the world is higher today because the aviation market is now a true global market demanding harmonisation.

Australia, in 1947, ratified the International Convention of Civil Aviation, also known as the Chicago Convention. Article 37 of the Convention places an obligation on Australia to **adopt** international standards promulgated by ICAO.

ICAO states in its regulatory oversight manual: 3.3.3.2. *"It should be noted, however, that the filing of differences with respect to international standards does not mean that a State (Australia) can then do business as usual. Several articles of the Convention make it clear that if Standards adopted by a State are lower than those required by ICAO, aerodromes, aircraft, service providers or personnel with licences or certificates endorsed by that State cannot participate in international air navigation, except with the permission of the State or States whose territory is entered."*

ICAO also states: *The term "regulations" is used in a generic sense to include but is limited to what may be variously considered by States as instructions, rules, edicts, directives, sets of law, policies, requirements and orders.*

Why be a member State if government/CASA do not adopt these standards?

Adopting International Standards

*ICAO Standard: Any specification for physical characteristics, configuration, material, performance, personnel or procedure, the **uniform application of which is recognized as necessary for the safety or regularity** of international air navigation and to which **Contracting States will conform in accordance with the Convention**; in the event of impossibility of compliance, notification to the Council is compulsory under Article 38.*

Adopting international standards and procedures should be a simple administrative process. Singapore was able to achieve this quickly over a few years by adopting either the applicable FAR or EASR and updating to meet ICAO standards.



Singapore's ICAO compliance is one of the best in the world. They adopted standards – this is what CASA should be doing; **stop creating and adopt.** However, Singapore does not have the demographics of Australia.

The Convention Articles make it quite clear that standards are to be adopted.

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) Communications systems and air navigation aids, including ground marking;*
- b) Characteristics of airports and landing areas;*
- c) Rules of the air and air traffic control practices;*
- d) Licensing of operating and mechanical personnel;*
- e) Airworthiness of aircraft;*
- f) Registration and identification of aircraft;*
- g) Collection and exchange of meteorological information;*
- h) Log books;*
- i) Aeronautical maps and charts;*
- j) Customs and immigration procedures;*
- k) Aircraft in distress and investigation of accidents;*

and such other matters concerned with the safety, regularity, and efficiency of air navigation as may from time to time appear appropriate.

In addition, Article 42 enabled personnel licences held in 1947 to remain until 1952 when they needed to harmonise with the international standards.

Article 42 - The provisions of this Chapter shall not apply to personnel whose licenses are originally issued prior to a date one year after initial adoption of an international standard of qualification for such personnel; but they shall in any case apply to all personnel whose licenses remain valid five years after the date of adoption of such standard. [The 5 year time passed in 1952.]

Application of penalties

What CASA cannot come to terms with is the responsibility to apply penalties for non-compliance.

“The specific status given to regulation when it is applied within the State and the penalty assigned in the event of non-compliance are matters for the judgement of individual States, taking into account their responsibilities under the Convention.”

So what is the appropriate penalty for non-compliance of an ICAO adopted standard? In the majority of cases, if the resolution of safety concerns cannot be addressed under a corrective action plan or the licence/certificate holder does not or will not correct the non-compliance, then administrative action must be taken.

However, deliberate actions that can be listed as a criminal action should be included as part of the Federal Criminal Act and Regulations. This is the process used in the United States – CFR Title 49 lists aviation specific criminal actions.

ICAO Regulatory Oversight Manual: 3.3.1.1- “The State laws and regulations should be in conformity with the Annexes to the Convention. The Annex provisions are designed to provide the minimum requirements to be met by all Contracting States, regardless of the size and complexity of their civil aviation activity. The individual States are then responsible for developing equivalent regulations and rules containing sufficient details to ensure that satisfactory compliance will result in the desired level of safety.”

The same ICAO manual states:

3.3.2 Adapting or adopting regulations from other States

“To meet their requirements for regulations, Contracting states always have the option of adopting another Contracting state’s regulations. Even though the unilateral adoption of another State’s regulations may have some advantages, such as enhanced exchange of operating crew and aircraft, it should be done only after ensuring that the regulations have been updated to include all ICAO standards. The complexity of the other State’s aviation environment should also be considered. A State with a limited aviation environment should be careful not to place undue burden on its aviation community and its assessment staff by adopting excessively restrictive regulations. A better alternative would be to adapt the regulations to meet the aviation environment while still maintaining harmony with other States.”

The responsible aviation government department pre 1988 were more committed to securing the highest practicable degree of uniformity in regulations, standards, and procedures, in relation to aircraft, personnel, airways and auxiliary services that facilitated and improved air navigation.

They also adapted requirements to meet Australian aviation environment while maintaining harmony with other States.

However, since 1988, when the Civil Aviation Authority was formed, the commitment to “**harmonisation**” has become blurred as public servants create a life time career of regulatory development without commitment to harmonisation.

International harmonisation can be achieved within 2-5 years without major disruption by adopting and adapting the US system to Australia.

Criminal actions should be included in criminal codes, not aviation standards.

Harmonisation means adoption of ICAO standards by adapting the FARs.

Lowest cost option available for our aviation environment.

Hundreds of millions of dollars spent since 1988 and harmonisation still not achieved by CASA. AT WHAT COST TO INDUSTRY.