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NEWSLETTER

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1. GA Future Depends on More Pilots.

The government's 457 Visa decision places more pressure to adopt the FAA cost-effective pilot training system.

Grow more pilots. The most significant thing we can do is to increase the number of active pilots. More pilots means more customers, which means more airplanes and more avionics and more gas and more parts. It also means lowered cost through economies of scale. Bigger markets equal smaller prices. A big lowly populated country needs flexibility in pilot training.

Embrace the innovators. GA is a conservative industry, entrenched in old, out-of-date practices and burdened by overwhelming regulation. We still see an industry that think the best way to train a new pilot is in an airplane twice the age of their average student. In a culture where toddlers are often using iPads and video games that have more computing power than the flight management systems on many aircraft, it is going to be very hard to entice potential pilots with 1940's technology.

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This is an adaption of a USA article written back in 2014 that listed three major points for GA to reverse the decline. Our young are in an IT world that just does not exist in the majority of GA sectors. Regulations are not written for the future.

2. Why do Aviation Regulations Reverse the Onus of Proof?

When I started in aviation the burden of proof, when "safety" was jeopardised, rested with the regulator to prove by identifying an unsafe practice then finding the non-compliance or breach of the Act, Regulations or Order requirement. Justifying that "safety" had been jeopardised in the "opinion of the Inspector" was only upheld in AAT if the Inspector had the expertise to convince the courts – not always easy. What we now need is a Minister to direct that there should be no reverse onus of proof in the Act and Regulations (something that was once "normal legislative form") or that "strict liability" shall not be used where any measure of pilot/LAME decision making is involved, because it violates the definition of "strict liability" in the Criminal Code.

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When will the government take positive action to ensure that its citizens are protected by "rule of law" by repealing the strict liability system imposed by CASA in regulations?

3. CASR Part 66 underpinning standards must be high priority.

CASR Part 66 should be identifying licences that meet Annex 1 (international standards) and the licence, however called, that do not meet Annex 1. One of the most important issues confronting maintenance is coming to terms whether we have a 'recognised' trade within the NVET system or whether we have a mixed trade/profession because of the application of the EASA knowledge based AME licencing system. There are three parts to the skilling of our workforce that are combined so that all parts suffer.

Practical trade skills underpin the ability of the workforce but these skills vary whether you work in an airline system that does not need some skills or an aircraft/component overhaul sector that needs all the practical skills to do repairs, modifications, etc.

International AME knowledge requirements for the avionic and mechanical maintenance should be separated from the current practical competency based training and treated more as 'profession' training that can be tested by examination. Basically what CASA Basic Examinations did in the past!

Licensing knowledge is a step above the AME practical/knowledge as identified by the ICAO AME training Manual.

One of the real issues confronting the maintenance training is the underpinning skills/knowledge that a person needs when entering the aviation industry.

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We really are at the cross roads in providing the skills to the maintenance segment. To retain AME/AMT in the workforce they need transportable skills.

1. *GA Future Depends on More Pilots.*

The government's 457 Visa decision places more pressure to adopt the FAA cost-effective pilot training system. Pilot training just cannot provide the number of pilots commercially needed. There has always been poaching by larger operators but today, Australia does not have the capability to provide or attract enough pilots. Without the 457, industry will suffer. CASA managed regulatory reform has failed to produce jobs in aviation, especially by removing the flexibility of learning to fly.

Grow more pilots. The most significant thing we can do is to increase the number of active pilots. More pilots means more customers, which means more airplanes and more avionics and more gas and more parts. It also means lowered cost through economies of scale. Bigger markets equal smaller prices. A big lowly populated country needs flexibility in pilot training.

Ans. Adopt FAR Part 61 independent flight instructor system.

Embrace the innovators. GA is a conservative industry, entrenched in old, out-of-date practices and burdened by overwhelming regulation. We still see an industry that think the best way to train a new pilot is in an airplane twice the age of their average student. In a culture where toddlers are often using iPads and video games that have more computing power than the flight management systems on many aircraft, it is going to be very hard to entice potential pilots with 1940's technology.

Ans. Computerised distant learning to meet international knowledge training standards.

Be willing to change. The current pilot population and industry infrastructure must be willing to adapt to the times. This means changing attitudes and behaviours, especially government public servants. We must embrace our communities, support our airports, open our hangar doors and fence gates. We must share expenses, share ownership, share responsibility, and continue to create a culture of safety first.

Add to these points the following:

Provide training for the future. Australia has one of the best climates and huge open airspace that should be accommodating major aviation international training industry for pilots, engineering, and maintenance for the Indo/Asia/Pacific region. Update training to meet the needs means adopting cost effective international training standards. Australian pilot, engineering and maintenance global training providers should be registered with ICAO.

Streamline training. With the current use of iPads from a young age, new students should be able to download the full 'knowledge' elements of maintenance training when the person starts training. This system should also enable on-line examinations. Only the practical elements need direct student/trainer involvement.

International equivalent licence and certificates. Pilot and AME licences should be based on meeting these international training standards and their licences should state they meet the Convention Annex 1 standards. This is the first step to once again having Australian LAME's being accepted internationally. Academic qualifications that meet the Annex minimum standards. This also complies with Article 37 of the Convention.

Domestic only licences and certificates. The Convention places an obligation on Australia to adopt international training standards for personnel (Article 37) BUT the Convention also provides provisions (Articles 39 & 40) for 'licences' for **personnel** that do not meet the international standards AS LONG AS the 'licence is endorsed as not meeting the international standards. This is the international standard that is used for the maintenance authority system that should be classified as a limited licence.

These Articles are what CASA and its predecessors also used to issue limited, experimental etc. certificates to aircraft.

These provisions means CASA can promulgate applicable personnel standards to maintain aircraft that do not meet an international type certification standard, like recreational and ex-military aircraft, to operate within Australian airspace. The Convention also enables such aircraft to fly to another country if that country gives permission.

[Back to Top](#)

2. Why do Aviation Regulations Reverse the Onus of Proof?

When I started in aviation the burden of proof, when “safety” was jeopardised, was on the regulator to prove by identifying an unsafe practice then finding the non-compliance or breach of the Act, regulations or Order requirement. Justifying that “safety” had been jeopardised in the “opinion of the Inspector” was only upheld in AAT if the Inspector had the expertise to convince the courts – not always easy. What we now need is a Minister to direct that there should be no reverse onus of proof in the Act and Regulations (something that was once "normal legislative form") or that "strict liability" shall not be used where any measure of pilot/LAME decision making is involved, because it violates the definition of "strict liability" in the Criminal Code.

“Strict liability” applied to regulations removes the legitimate rights of pilots/LAMEs and takes precedence for administrative convenience and perceived cost savings in program administration.

The ALRC (Australian Law Reform Committee) does not support new torts imposing strict liability. Strict liability leads to liability regardless of fault. If the cause of action were one of strict liability, then the defendant would be held liable even though they were not at fault, that is, the defendant’s actions were not intentional, reckless or negligent.

Mr Spencer Ferrier has written an excellent article on this subject in the latest AOPA magazine. This industry is being conned by CASA who are directing the use of strict liability to save their resources and to use the infringement notices for breaches of badly written regulations that are not harmonised, especially in the Pacific region.

In tort law (a tort is a civil wrong), strict liability is the imposition of liability on a party without a finding of fault (such as negligence or tortious intent). The claimant need only prove that the tort occurred and that the defendant was responsible. The law imputes strict liability to situations it considers to be inherently dangerous. It discourages reckless behaviour and needless loss by forcing potential defendants to take every possible precaution. It also has the effect of simplifying and thereby expediting court decisions in these cases.

Obviously, politicians, public servants, including CASA, think aviation is inherently dangerous when it is one of the safest means of transport due to the professionalism of the flying and engineering fraternity.

If an honest review of regulations that have been implemented since 2005 was carried out, there would be very few requirements that could be classified as addressing a situation that is inherently dangerous.

The imposition of strict liability can be both unfair and unjust. There are many problems with the way that strict liability is currently imposed. Problems with strict liability include:

- *It may not succeed in raising standards as people often do not realise that they are party to any wrongdoing.*

- *Decisions are often unjust and unfair.*
- *The courts often face difficulty identifying strict liability offences and are inconsistent with their attitude and decisions.*
- *There is often a marked lack of clarity in judgements.*
- *Decisions with regard to strict liability can sometimes lead to outcomes that are the opposite of what was intended by the law.*
- *A criminal conviction and the possibilities of massive penalties are imposed on the defendant for an offence that he/she may not have foreseen/intended or been able to prevent.*

The Senate Committee Report states in Chapter 7, *Application of absolute and strict liability offences in Commonwealth legislation:*

- *the process of deciding whether to introduce strict liability for an offence should recognise that this may have adverse effects upon those affected. The legitimate rights of these people should be paramount and take precedence over administrative convenience and perceived cost savings in program administration;*
- *agencies should acknowledge that there may be areas where existing strict liability offences, or the way they are administered, may be unfair. In these cases, agencies should review the offences under the general coordination of the Attorney-General's Department;*
- *strict liability should not be implemented for legislative or administrative schemes that are so complex and detailed that breaches are virtually guaranteed regardless of the skill, care and diligence of those affected. Any such scheme would be deficient from the viewpoint of sound public administration;*
- *strict liability offences should be designed to avoid the likelihood that those affected, particularly by the issue of an infringement notice, will pay the lower penalty simply because it is easy and convenient to do so, rather than spend the money and time to pursue what might be a legitimate defence. Any agency that encouraged this tendency would be acting improperly;*
- *strict liability should depend as far as possible on the actions or lack of action of those who are actually liable for an offence, rather than be imposed on parties who must, by necessity, rely on information from third parties in Australia or overseas. Offences that do not apply this principle have the potential to operate unfairly;*
- *strict liability has the potential to adversely affect small and medium enterprises. Steps should be taken to ameliorate any such consequences arising from the different compliance and management resources of smaller entities;*
- *any potential adverse effects of strict liability on the costs of those affected should be minimised to the extent that this is possible. In particular, parties who are subject to strict liability should not have their costs increased as a consequence of an agency reducing its costs;*
- *external merit review by the Administrative Appeals Tribunal, or other independent tribunal, of relevant decisions made by agencies is a core safeguard of any legislative or administrative scheme. Every agency that administers strict liability offences should review those provisions to ensure that this right is provided;*
- *new and existing strict liability schemes should have adequate resources to ensure that they are implemented to maximise safeguards. A lack of proper resources may result in the inadequate operation of those safeguards;*
- *strict liability should not be accompanied by an excessive or unreasonable increase in agency powers of control, search, monitoring and questioning. Any such increase in powers may indicate that the legislative and administrative scheme has structural flaws;*
- *there should be a reasonable time limit within which strict liability proceedings can be initiated. It would be unfair to those affected if they were to be charged perhaps years after an alleged breach;*
- *as a general rule, strict liability should be provided by primary legislation, with regulations used only for genuine administrative detail. It would be a breach of parliamentary propriety and personal rights for regulations to change the basic framework or important aspects of a legislative scheme; and*
- *the use of strict liability in relation to the collection of personal information about members of the public from third parties has the potential to intrude into the legitimate rights of the people whose details are being collected. In such cases the entire process should be transparent, with all affected members of the public being notified of their rights and remedies under the Privacy Act.*

Adherence to these principles would see many aviation strict liability provisions being removed as they certainly do not adhere to these principles.

[Back to Top](#)

3. CASR Part 66 underpinning Standards must be High Priority.

One of the most important issues confronting maintenance is coming to terms whether we have a 'recognised' trade within the NVET system or whether we have a combined trade/profession because of the partial application of the EASA AME licencing system. There are three parts to the skilling of the workforce that are combined so all parts suffer.

Practical trade skills underpin the ability of the workforce but these skills vary whether you work in an airline system that does not need some skills needed in GA, or an aircraft/component overhaul sector that needs all the internal component knowledge and practical skills to do repairs, modifications, etc.

International AME knowledge requirements for the avionic and mechanical maintenance should be separated from the current practical competency based training and treated more as 'profession' training that can be tested by examination. Basically what CASA Basic Examinations did in the past!

Licensing "knowledge" is a step above the AME practical/knowledge as identified by ICAO AME training Manual. EASA knowledge based examination system was no different than the ageing CASA Basic Examination System.

However, as has been identified by many employers, the current trainee does not have the practical skills that came from the technical secondary training systems in the past.

The industry assumes that the AME apprentices/trainees are intelligent, well-motivated, and capable of sustained hard work and have a minimum educational attainment equivalent to a good secondary or high school standard, preferably with concentration in the applicable sciences, physics and mathematics.

The real facts are we are failing to skill to international standards. This affects all manufacturing and maintenance capabilities in Australia. Higher education academics are designing innovative changes for the future but have to look off-shore for the skills to manufacture and maintain these products simply because the tertiary training system in Australia is below international standards.

Australia's aerospace industry is working in the global aerospace industry and achieving some excellent outcomes but the aviation industry is not capable because of the tertiary training standards are below world standards.

CASA's predecessor use to promulgate the international training standards as 'syllabi' for the avionic and mechanical pathways.

This has to be returned but it is the Education NVET system that must direct all skill (practical & knowledge) training meet international training standards. CASA should be able to be confident that the academic qualification plus industry experience would underpin a LAME examination based on understanding of the LAME's role in signing the maintenance release (coordination/planning/etc.) and to certify the aircraft or parts of the aircraft (system) as continuing to meet design standards – this ensures the validity of the certificate of airworthiness.

AMROBA has been collaborating with academia who are now starting to recognise how the tertiary training system has not provided, not only in aviation, the skills necessary to support the manufacturing and maintenance industries in Australia.

Under the current political direction, there is a good chance we can bring about this change to the education system that should underpin the future licence system.

[Back to Top](#)