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Government Without Vision or Care

Since ANZAC day, I have been discussing and researching small business owners concerns with their future with a federal and state public service that are still high in red and green tape. It is not just aviation that is high in paperwork, but many other small business owners are struggling to survive.

One factor that came to prominence was from the mining sector with government's high commitment to implement all aspects of international treaties, even some that are not supported by all industry.

> *"**Australia's commitment to its mining treaties and its ability to adapt to changing regulations and international agreements are crucial for maintaining its position in the global mining market**."*

The whole concept and approach are different in mining, prominent in Qld.

So, what is different with adapting ICAO SARPs, safety and efficiencies, to enable civil aviation engineering, as well as operators, to participate in civil aviation global markets?

Which government department and/or government agency has this responsibility?

It is certainly not CASA who have been restricted, refer Sect 98, Civil Aviation Act, by government to adapting only the safety factors of a limited number of Annexes as a shared responsibility with others.

Refer 'Assignment of Annex Responsibilities by DITRDSCA in this Newsletter,

> ***Note**: What is defined as "safety aspects" of SARPs and by whom?*

If we look at the aviation treaty, why is it not treated the same as the mining treaty by government, trying to identify the safety aspects is purely left for CASA to determine so who is responsible for the 'efficiencies aspects' the SARPs. Other more experienced personnel in industry who are involved globally, may see safety aspects quite differently.

The Chicago Convention, ratified in 1947, includes annexes' SARPs, is a treaty that places responsibilities on the Federal Government to provide passage to implement legislation, required to enable entry into force of the treaty that is crucial for maintaining Australia's position in the global civil aviation market. SARPs are designed for efficiency as well as safety.

Because government has split responsibilities between many government departments and agencies, does it know if it is concurrent with the Conventions Annexes standards?

The only answer that can be assumed is no government department has overall responsibility.

"Purpose of ICAO SARPS

The primary purpose of ICAO SARPS is to ensure **the highest practicable degree** of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways, and auxiliary services. **This uniformity is essential** for facilitating and improving air navigation, which is a core aspect of the Convention on International Civil Aviation (Chicago Convention). SARPS provide a framework for harmonized global aviation safety and efficiency, standardization of functional and performance requirements of air navigation facilities and services, and orderly development of air transport."

Ratifying Department

When DCA became a part of the Department of Infrastructure, Transport, Regional Development, Communications, Sports and the Arts (DITRDCSA), the responsibilities for the treaty and continuing compliance became the department's responsibility, along with DFAT, to maintain compliance with the Chicago Convention.

When Australia signs agreement with ICAO Resolutions, there is no amendment to Sect 98 of the Civil Aviation Act to implement these resolutions so one must assume it is the Department's responsibility.

Or is it that Australia simply plays lip service to these global standards?

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CAA Sect 98 Regulations (government directions to CASA).

NASP: "Australia's air navigation system initiatives respond to global and regional developments as well as our own requirements and priorities aligning strongly to agreed international commitments and timeframes. This links Australia's work in enhancing its air navigation system to the global harmonisation activities of the International Civil Aviation Organization."

Where is the requirement to enhance Australia's global harmonisation with the ICAO SARPs when making regulations?

When Australia signs agreement to ICAO Resolutions, where is the direction to implement?

Obviously not a legislatively responsibility of CASA.

Whatever happened to the vision of an Australasian engineering harmonisation with NZ?

98 Regulations etc.

(1) "The Governor-General may make regulations, not inconsistent with this Act:
- (a) prescribing matters required or permitted by this Act to be prescribed;
- (b) prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to this Act;
- (c) for the purpose of carrying out and giving effect to the provisions of the Chicago Convention [does this **include Annexes, standards, resolutions, etc**./ **relating to safety**;
- (d) **in relation to safety** of air navigation within a Territory or to or from a Territory;
- (e) **in relation to safety** of air navigation, being regulations with respect to trade and commerce with other countries and among the States; and
- (f) **in relation to safety** of air navigation, being regulations with respect to any other matter with respect to which the Parliament has power to make laws.

(2) The regulations may apply in relation to state aircraft [***different to most countries***].

(3) Without limiting the generality of subsections (1) and (2), those subsections include the power to make regulations for or in relation to the following:
- (aa) the design and manufacture of aircraft;
- (a) the registration, marking and airworthiness of aircraft;
- (b) the manner of applying for AOCs, including the information that may be required, and the conditions to be satisfied, for the issue of AOCs;
- (ba) the manner of applying for permissions under Part III, including the information that may be required, and the conditions to be satisfied, for the granting of permissions;
- (bb) requiring specified persons to provide CASA with, or to ensure that CASA is provided with, specified information relating to the entering into, modification, cancellation, non-renewal or expiry of acceptable contracts of insurance or adequate financial arrangements in relation to specified passenger-carrying operations (within the meaning of Part IVA of the *Civil Aviation (Carriers' Liability) Act 1959*), to the extent that the insurance or arrangements are required under this Act;
- (c) requiring persons performing specified functions in relation to the operation or maintenance of aircraft and aerodromes to be the holders of licences, permits or certificates of specified kinds, and providing for the grant, issue, cancellation, suspension or variation of such licences, permits and certificates;
- (d) the planning, construction, establishment, operation and use of aerodromes, including the licensing of aerodromes;
- (e) the planning, construction, establishment, maintenance, operation and use of air route and airway facilities, including the obtaining of meteorological information;
- (f) hygiene, sanitation and public health at aerodromes;
- (g) the prohibition of the construction of buildings, structures or objects, the restriction of the dimensions of buildings, structures or objects, and the removal in whole or in part or the marking or lighting of buildings, structures or objects (including trees or other natural obstacles) that constitute or may constitute obstructions, hazards or potential hazards to aircraft flying in the vicinity of an aerodrome, and such other measures as are necessary to ensure the safety of aircraft using an aerodrome or flying in the vicinity of an aerodrome;
- (h) empowering CASA, or an officer authorised by CASA, to give or issue directions or instructions to all or any of the persons holding licences, permits or certificates under this Act or the regulations, being directions or instructions with respect to matters affecting the safe navigation and operation, or the maintenance, of aircraft, and providing for the manner in which such directions and instructions are to be notified;
- (j) the formal proof and authentication of instruments made or issued under this Act or the regulations;
- (k) the powers (including powers of arrest) that may be exercised by members of the crew of an aircraft, in relation to persons on board the aircraft, for the purpose of ensuring the safety of the aircraft or of its passengers, crew or cargo or otherwise for the purposes of this Act or the regulations;
- (ka) requiring *specified* persons to prepare or alter flight manuals, operations manuals, procedures manuals, maintenance manuals, systems of maintenance and other specified manuals and documents relating to the safe operation of aircraft;
- (kb) the approval by CASA of such manuals, systems and documents and of alterations of them;
- (kc) empowering CASA to prepare and alter such manuals, systems and documents;

(kd) requiring specified persons to comply with such manuals, systems and documents as in force at a particular time or from time to time;

(m) the review of decisions made under the regulations;

(p) the imposition of penalties, not exceeding a fine of 50 penalty units, for a contravention of a provision of the regulations or a direction, instruction or condition issued, given, made or imposed under, or in force by virtue of, the regulations;

(q) enabling a person who is alleged to have contravened a specified provision of the regulations to pay to CASA, as an alternative to prosecution, a specified penalty, not exceeding an amount equal to one-fifth of the maximum penalty prescribed for contravening that provision;

(r) standards relating to the establishment and use of airspace;

(ra) formulating a scheme in relation to security status checking;

(s) the planning, construction, establishment, maintenance, operation and use of:

(i) services and facilities of the kind covered by paragraph 8(1)(a) of the *Air Services Act 1995*; and

(iii) services of the kind referred to in paragraph 6(1)(b) of the *Australian Maritime Safety Authority Act 1990* to the extent that those services use aircraft;

and any construction associate with those facilities or services;

(t) the personnel engaged in anything referred to in paragraph (s);

(u) prescribing fees (either by specifying amounts or by prescribing a method of calculation) in relation to services, applications or requests, or the doing of anything, under this Act, the regulations or the Civil Aviation Orders, other than services provided by, applications or requests dealt with in any way by, or anything done by, an external service provider (within the meaning of section 97AB);

(v) prescribing fees (either by specifying amounts or by prescribing a method of calculation) in relation to services, applications or requests, or the doing of anything by CASA under the *Aviation Transport Security Act 2004*;

(w) the circumstances in which unmanned aircraft levy is payable and the collection of unmanned aircraft levy.(3AA). Despite the ANZA mutual recognition agreements, the regulations cannot allow for the mutual recognition of ANZA safety certifications (other than AOCs) between Australia and New Zealand. For this purpose, an ***ANZA safety certification*** is:

(a) a civil aviation authorisation; or

(b) an aviation document, within the meaning of the Civil Aviation Act 1990 of New Zealand.

(3AB) Subsection (3AA) does not prevent the making of regulations for purposes connected with the *Trans-Tasman Mutual Recognition Act 1997*.

(3A) The regulations may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in a written instrument or other document, as in force at a particular time or from time to time, even if the written instrument or other document does not yet exist when the regulation is made.

For this purpose, ***modifications*** includes omissions, additions and substitutions.

(3B) Nothing in this Act (including, in particular, subsection 9(1), subsection 13(4) and section 94) is to be taken to prevent regulations being made which provide for the delegation of:

(a) a function conferred on CASA under subsection 9(1); or

(b) a power of CASA for or in connection with the performance of that function;

to a person who is not an officer.

(4) Where the regulations provide for the removal, marking or lighting of anything referred to in paragraph (3)(g), the regulations shall also provide for the payment of compensation to any person who suffers loss or damage or incurs expense in or as a direct result of the removal, marking or lighting.

(4A) CASA may issue Civil Aviation Orders, not inconsistent with this Act or the regulations, and not prescribing any pecuniary penalty, with respect to any matter in relation to which regulations may be made for the purposes of section 23, 23B or 28BA.

(4B) An order issued under subsection (4A) is a legislative instrument.

Note: *Part 4 of Chapter 3 (sunsetting) of the Legislation Act 2003 does not apply to the order (see regulations made for the purposes of paragraph 54(2)(b) of that Act).*

(5) The regulations may provide that CASA may issue a Civil Aviation Order containing a direction, instruction, notification, permission, approval or authority.

(5AAA) A Civil Aviation Order issued under a regulation made under subsection (5) is a legislative instrument.

Note: *Part 4 of Chapter 3 (sunsetting) of Legislation Act 2003 does not apply to the Order (see regulations made for the purposes of paragraph 54(2)(b) of that Act).*

(5A) The regulations may empower CASA to issue instruments in relation to the following:

(a) matters affecting the safe navigation and operation, or the maintenance, of aircraft;

(b) the airworthiness of, or design standards for, aircraft.

An instrument must not prescribe a penalty.

(5AA) An instrument issued under paragraph (5A)(a) is a legislative instrument if the instrument is expressed to apply in relation to:
(a) a class of persons; or
(b) a class of aircraft; or
(c) a class of aeronautical product.

Note: *Part 4 of Chapter 3 (sunsetting) of the Legislation Act 2003 does not apply to the instrument (see regulations made for the purposes of paragraph 54(2)(b) of that Act).*

(5AB) An instrument issued under paragraph (5A)(a) is not a legislative instrument if the instrument is expressed to apply in relation to:
(a) a particular person; or
(b) a particular aircraft; or
(c) a particular aeronautical product.

(5B) An instrument issued under a regulation made under paragraph (5A)(b) is a legislative instrument if the instrument is, or relates to:
(a) an airworthiness directive; or
(b) an airworthiness standard; or
(c) a design standard.

Note: *Part 4 of Chapter 3 (sunsetting) of the Legislation Act 2003 does not apply to the see regulations made for the purposes of paragraph 54(2)(b) of that Act)*

(5BA) However, an instrument issued under a regulation made under paragraph (5A)(b) is not a legislative instrument if the instrument is expressed to apply in relation to:
(a) a particular person; or
(b) a particular aircraft; or
(c) a particular aeronautical product.

(5C) Subsection 5A) is not taken to affect CASA's power to issue directions or instructions under paragraph 98(3)(h).

(5D) Despite section 14 of the *Legislation Act 2003*, a legislative instrument made under this Act or the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing:
(a) as in force or existing at a particular time; or
(b) as in force or existing from time to time;
even if the other instrument or writing does not yet exist when the legislative instrument is made.

(6) The preceding provisions of this section (including provisions that do not contain references to the States or to a Territory) have effect as if the Northern Territory were a State.

(6A) The regulations may contain provisions relating to medical standards that are inconsistent with the *Sex Discrimination Act 1984* if the inconsistency is necessary for the safety of air navigation.

Note: *See also Part 2 of Schedule 1 to the Civil Aviation Amendment Act 2005.*

(6B) The regulations may contain provisions that are inconsistent with the *Disability Discrimination Act 1992* if the inconsistency is necessary for the safety of air navigation.

Note: *See also Part 2 of Schedule 1 to the Civil Aviation Amendment Act 2005.*

(6C) CASA must consult the Australian Human Rights Commission about any proposal that regulations be made containing provisions that are inconsistent as mentioned in subsection (6A) or (6B). However, a failure to consult the Commission does not affect the validity of any regulations so made.

(7) A law of a Territory (not being a law of the Commonwealth) does not have effect to the extent to which it is inconsistent with a provision of the regulations having effect in that Territory, but such a law shall not be taken to be inconsistent with such a provision to the extent that it is capable of operating concurrently with that provision."

ICAO Regulatory Responsibilities Missing?

To disband a government department with so many ICAO experienced experts, who were also part of the ICAO engineering specialists, move to department to Canberra and place it within a mega department was a a failure. Australia has never recovered from that government decision.

When it became obvious it did not work, government decided to create an Agency. In the meantime, the directions to government department to give effect to the Conventions, SARPs, resolutions, etc., has become very diminished and spread around different government department and agencies.

For this reason alone, Australia will never achieve harmonisation with other major aviation nations.

What is also missing from Australian Civil Aviation System is Government's promotion of this industry, especially engineering aspects.
Refer The FAA has a Precise Regulatory Role to Promote in this Newsletter.

The FAA has a Precise Regulatory Role to Promote.

e.g. The FAA has a legislative responsibility to promote various aspects of civil aviation

For example: Promotion of civil aeronautics and safety of air commerce

"**49 USC 40104 - Promotion of civil aeronautics and safety of air commerce**

(a) Developing Civil Aeronautics and Safety of Air Commerce.—The Administrator of the Federal Aviation Administration ***shall encourage the development of civil aeronautics and safety of air commerce in and outside the United States.***

(c) Educational and Professional Development*. —*

(1) In general.—In carrying out subsection (a), the Administrator shall support and undertake efforts to ***promote and support the education and professional development of current and future aerospace professionals****.*

(2) Educational materials.—Based on the availability of resources, the Administrator shall—

(A) develop and distribute civil aviation information and educational materials; and

(B) provide expertise to State and local school administrators, college and university officials, and officers of other interested organizations and entities.

(3) Content.—In developing the educational materials under paragraph (2), the Administrator shall ensure such materials, including presentations, cover topics of broad relevance, including—

(B) managing (A) ethical decision-making and the responsibilities of aerospace professionals; a workforce, encouraging proper reporting of prospective safety issues, and educating employees on safety management systems; and

(C) responsibilities as a designee or representative of the Administrator."

(d) ***International Role and Assistance of the FAA.***

(1) In general.—In carrying out subsection (a), the Administrator shall promote and achieve global improvements in the safety, efficiency, and environmental effect of air travel by exercising leadership with the Administrator's foreign counterparts, in the International Civil Aviation Organization and its subsidiary organizations, and other international organizations and fora, and with the private sector.

(2) International presence.—The Administrator shall maintain an international presence to—

(A) assist foreign civil aviation authorities in—

(i) establishing robust aviation oversight practices and policies;

(ii) harmonizing international aviation standards for air traffic management, operator certification, aircraft certification, airports, and certificated or credentialed individuals;

(iii) validating and accepting foreign aircraft design and production approvals;

(iv) preparing for new aviation technologies, including powered-lift aircraft, products, and articles; and

(v) appropriately adopting continuing airworthiness information, such as airworthiness directives;

(B) encourage the adoption of United States standards, regulations, and policies;

(C) establish, maintain, and update bilateral or multilateral aviation safety agreements and the aviation safety information contained within such agreements;

(D) engage in bilateral and multilateral discussions as required under paragraph (5) and provide technical assistance as described in paragraph (6);

(E) validate foreign aviation products and ensure reciprocal validation of products for which the United States is the state of design or production;

(F) support accident and incident investigations, particularly such investigations that involve United States persons and certified products and such investigations where the National Transportation Safety Board is supporting an investigation pursuant to annex 13 of the International Civil Aviation Organization;

(G) support the international safety activities of the United States aviation sector;

(H) maintain valuable relationships with entities with aviation equities, including civil aviation authorities, other governmental bodies, non-governmental organizations, and foreign manufacturers; and

(I) perform other activities as determined necessary by the Administrator."

Adopting some of these US requirements

Australia is not at the same level as the FAA but many of these promote provisions should be their responsibility of the department and/or CASA.

Because trade agreements, e.g. Bilateral Agreements, are needed, both the departments (Infrastructure & DFAT) and Regulator are involved in these technical agreements, the appropriate provision from the above FAA requirements need to be Australianised and added to both departments and the CASA agency. This way, maybe Australia will develop and implement these trade agreements with the US and other or aviation nations.

Maybe the 1990s vision of an Australasian aviation engineering market will eventuate.

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Assignment of Annex Responsibilities by DITRDCSA

CASA Sole:		CASA Shared:
Annex	**Description**	**Responsibility**
1	Personnel Licensing (licensing of flight crews, air traffic controllers and aircraft maintenance personnel)	**CASA,** Defence (DASA)
2	Rules of the Air (rules relating to the conduct of visual and instrument flights)	**CASA**
3	Meteorological Service for International Air Navigation (provision of meteorology services for international air navigation and reporting of meteorology observations from aircraft)	BoM
4	Aeronautical Charts (specifications for aeronautical charts for use in international aviation)	**CASA,** Airservices Australia
5	Units of Measurement to be used in Air and Ground Operations (dimensional systems to be used in air and ground operations)	Airservices Australia
6	Operations of Aircraft (specifications which will ensure in similar operations throughout the world a level of safety above a prescribed minimum): Part I—International Commercial Air Transport—Aeroplanes Part II—International General Aviation—Aeroplanes Part III—International Operations—Helicopters	**CASA**, Defence (DASA)
7	Aircraft Nationality and Registration Marks (requirements for registration and identification of aircraft)	**CASA,** Defence (DASA)
8	Airworthiness of Aircraft (certification and inspection of aircraft according to uniform procedures)	**CASA**, Defence (DASA)
9	Facilitation (requirements relating to facilities, services and arrangements for the entry and departure of aircraft, passengers and cargo)	Infrastructure, Home Affairs and DFAT
10	Aeronautical Telecommunications (standardisation of communications systems) Vol I—Radio Navigation Aids Vol II—Communications Procedures including those with PANS status Vol III—Communication Systems Vol IV—Surveillance and Collision Avoidance Systems Vol V—Aeronautical Radio Frequency Spectrum Utilization	**CASA**, Airservices Australia, Defence
11	Air Traffic Services (establishment and operation of air traffic control, flight information and alerting	**CASA**, Airservices Australia, Defence
12	Search and Rescue (organisation and operation of facilities and services necessary for search and rescue)	Defence (DASA), Infrastructure
13	Aircraft Accident and Incident Investigation	ATSB, Infrastructure, Defence (DASA)
14	Aerodromes (specifications for the design and equipment of aerodromes) Vol I—Aerodrome Design and Operations Vol II—Heliports	**CASA,** Defence (DASA)
15	Aeronautical Information Services (methods for the collection and dissemination of aeronautical information required for flight operations)	**CASA**, Airservices Australia, Defence
16	Environmental Protection: Vol I—Aircraft Noise (specifications for aircraft noise certification, noise monitoring and noise exposure units for land use planning) Vol II—Aircraft Engine Emissions Vol III—Aeroplane CO2 Emissions	Infrastructure
17	Security—(Safeguarding International Civil Aviation Against Acts of Unlawful Interference	Home Affairs
18	The Safe Transport of Dangerous Goods By Air (specifications for the labelling, packaging and shipping of dangerous goods)	**CASA**
19	Safety Management	**CASA**, ATSB, Defence