

ASRR Submission – Brian Hannan (Retired - industry association, pilot, aircraft owner, lobbyist)

I aim for brevity, addressing your criteria primarily from a general aviation perspective.

I will make a recommendation re the RRP; the remainder is fact based comment to demonstrate gaps.

RRP Outcome

Is it now timely to consider how many CASA CEO/Director and staff have “failed” to roll out the RRP - therefore the issue cannot be the people involved but the unique nature of our RRP system itself?

Australia is small fish in international aviation and ICAO as regards volume and complexity. Successful businesses adopt world’s best practices; CASA continues to reinvent the wheel locally. Past personality politics (particularly consequent upon Dick Smith chairing the then CAA – see reference cite at end of submission), “not invented here” syndrome, and selection of many CASA staff from local military and airline backgrounds has parochially rejected much that works successfully overseas.

It is opportune to reconsider this, particularly as we fill much of our surveillance gap with ADS-B via the mandates. Until now our surveillance lack has kept Australia “different” to the USA and Europe but the gap is closing and would close even further if some CNS/ATM savings of the mandates were invested sooner in more ADS-B ground stations, Class E airspace, and in SBAS.

The law wisely states *“De minimus non curat lex”* – *“the law does not concern itself with trifling matters.”* CASA, driven by DIT bureaucratic thinking, adopts the converse on the basis that to prescribe in fine detail will ensure safety – yet the same nature of GA accidents continues ... thus reinforcing Gann’s comment – *“Rule books are paper - they will not cushion a sudden meeting of stone and metal.”* In fact, analogous to the dramatic road toll reduction arising from electronic stability control in vehicles, rather than road rules, it may be GNSS/PBN (now offering terrain alerting) that offers the next GA safety leap, rather than CASA regulation (particularly as CASA lags technology).

Fine detail complicates the massive Regulatory Suite - versus the other extreme of the Ten Commandments on one page to guide the lives of Christians. Perhaps a middle ground approach is needed, particularly as the more detailed the RRP the more complex the linkages to be assessed and modified when change is necessary – as it will be, because an RRP is evolutionary. An example of resource waste bureaucratic “administrivia” is *“CASA wishes to advise of new Standards Development Project MS 09/22 - Amendments to CAAP 42W-1 and CAAP 42W-2 to introduce and describe a CASA form that is both titled Form 1 [currently numbered as Form 917] and has the Form 1 number allocated to it.”*

Another negative of the CASA regulatory paper chase approach is the impact on small flying schools, operators and maintainers, people so necessary in a country sparsely serviced outside the J curve. A wall of paper compliance distracts these people from their core business, adds costs and will ultimately reduce viability or enthusiasm of such organizations and their vital support to rural and Outback communities. This will no doubt be stressed to you in the maintainer submissions.

Although the current RRP roll out is claimed to be well under way, regulations made under deadline pressure contain “anomalies” and fail the test of industry scrutiny despite purporting “no major changes to existing”. This leads to friction between industry and CASA, particularly when CASA attempts to blame industry inability to comprehend as the delay cause. Example, Part 61 deferred 9 months from December 2013 – note incongruence between the contents of sentences two and three (my underline):

"The primary reason for the changes is the need to give the aviation industry more time to prepare for the commencement of the new regulations," a CASA media release said.

"Despite CASA's education and information campaign on the new licensing regulations many pilots and people working in flying training are only starting to understand the new rules."

"While the new regulations do not make major changes to existing practices it is clear more time for education and information communication is required.

"As a result CASA proposed a package of amendments to clarify the intent of the regulations, correct any anomalies and make improvements which will benefit the aviation industry."

To sum up this section, CASA is a monopoly with a captive audience and no competition to encourage continuous improvement.

[Recommendation](#) - staged adoption of (say) the FAA FAR would release CASA administrative resource from forever writing and reviewing regulatory documents and "consulting", and allow a greater focus on innovation, safety audit, education and any (few) unique Australian issues.

I acknowledge the culture change process would be challenging but surely less formidable than the time and effort and industry disruption in the more than 16 years since *"The Minister for Transport and Regional Development announced an industry-based panel to oversee the CASA regulatory review."*

CASA Structure and effectiveness

In your considerations of resource effectiveness I suggest you make request to CASA for a "due diligence" on the effective manpower equivalents in the total staff dedicated to passenger transport operations above say 9 seats versus general aviation operations - and consider that. The FAA treats "private" operations more appropriately leaving FAA to focus where attention is needed. [Due Diligence](#).

CASA adopts a "one size fits all" approach, quoting ICAO when it suits, while the USA with a comparable GA safety record adopts a more balanced approach. Our outback charter or joy flight passenger in a single engine Cherokee 6 hardly anticipates airline standards. CASA neglects that ICAO is about international and airline domestic passenger operations rather than those applicable to general aviation, particularly when ICAO documentation allows exemption - which CASA rejects. An example of the mindset is the CASA (mis)use of circling data accident analysis by USA FSF of turbine/jet aircraft and applying it to light aircraft as part of restricting GA IFR GPS NPA approaches at non-certified/registered airports, thus reducing safe arrival capability and promoting scud running. ["One size fits all" mindset](#).

CASA is inconsistent re airline safety. Example - it has allowed self-regulation of the RA Aus sector yet this sector is now flying aircraft of comparable performance to small GA at altitudes to 10,000'. A recent requirement for GA VFR transponder and instrument testing to IFR specifications was based on *"The intent of NPRM 1101CS was to reduce the risk of loss of separation due to aircraft utilising equipment calibrated to different standards."* and *"CASA does not accept the continuance of two standards for aircraft operating in the same airspace."* Despite my approach to the CASA CEO the Rule was introduced with no inclusion of RA Aus aircraft - that mix it with airliners in our large Class G airspace and at regional airports. Reason for non-inclusion *"Particular categories of aircraft that are currently exempt from the provisions of Civil Aviation Regulation 1988, Part 4, Airworthiness Requirements will remain exempt."* So, two standards [have](#) been accepted. [Safety Inconsistency](#).

CASA has also been safety inconsistent, if benevolently myopic, re Qantas activity. Operating as Jetstar almost a million passengers per year were flown for years to/from Avalon as Class G non-towered and with light aircraft transient traffic including international (English as second language) GA pilot training – until pressure was applied to the Minister by the earlier mentioned Australian aviation identity to upgrade the airspace classification and staff the tower. I acknowledge CASA faces difficulty recruiting expertise from airlines while trying to ensure no bias or conflicts of interest. Safety Inconsistency.

The USA GA fleet is approximately 17 times that of Australia and the USA is home to key GA manufacturers. If it were my “business” I would adopt as much as possible from the FAA rather than reinvent the wheel for the smaller Australian GA fleet. A simple example is the CASA ageing aircraft project where in comparison the combination of the FAA and the USA Breed Groups provides an expert information pool CASA cannot achieve. The FAA Ageing Aircraft Program exists and is excellent. This would again allow CASA more focus on value added work. Piggyback efficiency.

CASA is not a “learning organisation”; rather it is reactive, often needing external stimulus. Another example of moving CASA forward was the process I pursued for AOPA from 2008 regarding Airworthiness Directives with the outcome that from October 2009 “state of origin” AD became the norm so saving CASA considerable time rewriting and adding unique extra conditions for Australia rather than what expert manufacturers and the FAA had already published for identical aircraft. Rework.

The current CEO has removed the Industry Complaints Commissioner from direct reporting, and selected a non-aviation ICC dependent for expert advice on those whose staff she may be reviewing, versus the success of the previous ICC reporting direct to the previous CEO. External review of CASA decisions is too expensive for the little man - proper internal review provides a CASA health check for the CEO with an independent authoritative internal “ombudsman”. Nelson’s telescope.

CASA is inconsistent in treatment of people including vendetta against those who stand up to it. This is left to be resolved by the legal system where, in the example attached, expenses like \$35,000 accrue. Lest it be thought the attached adopts “poetic licence” – the magistrates finding verifies my reporting. The key issue in the attached is that (I was liaising with Airservices on Violations of Airspace solutions at the time so I speak with some insight) there was prosecution for a VCA – yet CASA confirmed that from 2005 to June 2008 there has been only one prosecution for a VCA (this case) against our estimate of around 4468 VCA during that period, some of which (not this one) required aircraft avoidance action. The case sums up many CASA shortcomings, and reinforces that even if CASA knows its case may fail it will still “succeed” by damaging costs to the victim. Note the extremely poor presentation and (il)logic by the then CASA CEO under Senator questioning about VCA on the last page. Vindictive / Vendetta

In a quality environment CASA must audit compliance and more regulations require more audit or the regulations are meaningless. A coaching mindset rather than a punitive mindset is a real world need but will only be achieved by a mindset change also in those who direct the need for strict liability provisions.

CASA consultation is often window dressing or tokenism where input is ignored. Likewise the guidelines are bent of the Government Office of Best Practice Regulation and the need for factual Regulatory Impact Statement. Example of window dressing - CASA AVMED Discussion Paper released via the Standards Consultative Council on 19 December 2012 discussing a significant medical change for mature age pilots. Compare this to page 3 of the CASA AVMED Newsletter of Spring 2012 (12 September, some 3 months earlier) “*We will commence these age-related requirements towards the end of the year – after we have advised the pilot population of them.*” Consultation or pre-ordained?

(The proposal breached Discrimination guidelines of the Australian Human Rights Commission and was dropped after my approach to them. As with all things CASA, it will re-emerge disguised at a later date).

An example of a RIS being conducted in breach is the Addendum to NFRM 1105AS – a significant document to the future direction and costs to aviation of Australian surveillance - after my input was ignored by CASA during the RIS comment period, particularly about a statement grossly wrong (in blue): *“In response to a comment received on the RIS published in Annex D in the NFRM, CASA would like to clarify the following. The RIS includes the following sentence on Page 14 (my underline).*

A major benefit of ADS-B for Australia is that it provides complete airspace coverage allowing air traffic control to accurately view and track the locations of aircraft across Australia.

In isolation this sentence may be interpreted to mean that there is currently ADS-B coverage in all Australian airspace. For clarification, there is currently continent-wide ADS-B coverage at FL290 and above, significant ADS-B coverage in airspace above 10 000ft and limited coverage below 10 000ft. In the future further ADS-B stations will extend coverage at and below 10 000ft in controlled airspace. We apologise for any confusion this may have caused.”

In other words, the RIS on display was completely incorrect over a fundamental surveillance factor. The CASA officer explanation for the Addendum instead of initiating a RIS review *“I had to do it like that as I was instructed ... that the RIS could not be changed after the Minister signed off on it and it was tabled in the Parliament. Which meant that I could only add the clarification addendum to the CASA website.”*

CASA has also bureaucratically applied regulation “anti-safety”. An example is duty time (CAO 48) where in 2008 an airline pilot in West Australia wished to fly his own GA aircraft to a holiday location at weekends, achieving in one hour what required a wearying four hour drive otherwise. (Which do we think would have more effect on his fitness for later duty?). CASA refused the request, where an exemption should have ensued to reduce his recreational effort (and there were many other existing recreational pursuits not required to be considered against duty time but far more strenuous.) When CASA reviewed the flight duty time provisions in 2012 the draft proceeded down the same restrictive conditions (not a learning organisation) but I was successful in having the restriction amended to a logical result - private flying is now correctly treated (as in the UK) as generally not duty time.

A penultimate comment on CASA. The CASA Board is responsible for *“ensuring that CASA performs its functions in a proper, efficient and effective manner.”* The most recent Board was established by the *Civil Aviation Amendment Bill 2009* (supported by AOPA at the time). I have seen no evidence of success or that the positions are any more than a sinecure. If the Board was achieving its charter, the CASA component of this current ASRR would be simplified.

My final comment is that CASA has regularly demonstrated payback or pushing ahead despite relevant industry objection so both a fear of identifying oneself exists and industry is so “shell shocked” that “GA” has come to mean “general apathy” where industry just quietly braces for the next shock.

ATSB

My dealings with them have rarely received reasonable consideration. One example is a fatal at Bankstown (AO-2008-081) where in conjunction with Glenn Morris of Airservices we verified the significant inbound reporting point 2RN adjacent to the crash was not correctly determined in aviation docs, only in the Sydney Basin VPG which is not on the AIRAC cycle, is not a prescribed chart, and was out of date. The ATSB was advised in Feb 2009. No mention was made in their investigation report.

In January 2010 Martin Dolan, Chief Commissioner ATSB assured me while dealing with him re a disgraceful ATSB report (Hamilton Island) that vilified a dead pilot *"I can assure you that I take very seriously our legal responsibility not to apportion blame. I am also aware of the added impact that a media release can have in setting public perceptions."* Along came the report into the Pel-Air Ditching at Norfolk Island that helped trigger this ASSR review – I need say no more.

DIT

Turning now to the Department of Infrastructure (I have used the former abbreviation because nothing has changed but their name) perhaps the Ministerial White Paper is their best self-assessment. It is over 200 pages, verbose, repetitive, and lacks the essentials of success – roadmaps or tables defining what, why, who, when and where. The White Paper falsely takes credit for evolution (*"will continue"* prevails) despite the Government's own regulatory impact guidelines that state *"It is inappropriate to merely calculate incremental costs and benefits compared with the status quo, unless no further changes would have eventuated in the absence of the proposal."*

In 2010 DIT confirmed under my questioning that the White paper general aviation economic and employment data were not homogeneous with the previous comparison data *"the figures quoted in the White Paper are not directly comparable to the data presented in the 2005 BITRE Report, despite both having come from IBIS World Reports, albeit representing different periods of time."*

This makes the purported GA growths and declines meaningless. Yet this is a fundamental document, supposedly the foundation for the future – should we not expect better of the Minister's advisers?

The timelines of the White Paper are motherhood without meaning or DIT successful pursuit – for example Page 19 (remembering the White Paper was dated December 2009 so these are short term horizons – as we now traverse 2014 still without success):

- > *finalise the suites of CASA's regulations on licensing and flight operations by the end of 2010; and*
- > *complete the remainder of the CASA regulatory reform program by 2011, providing additional resources to expedite drafting of new regulations;*

In terms of CNS/ATM I suggest DIT lacks skill and is dependent on ASTRA for expertise. Perhaps ASTRA should be elevated in its role, management structure and input. The ASTRA work on ADS-B and GNSS with which I was involved from early times is world leading and a tribute to industry collaboration, particularly with the Airservices convenors of the two key working groups.

DIT also lacks technical literacy. In their SBAS Paper of 2011 DIT cited figures of straight in approaches being 25 times safer than circling, and approaches with vertical guidance being 8 times safer than without. When asked to cite, the answer at senior DIT level was *"I have not been able to track down the original ICAO reference. As you will no doubt be aware IATA, ICAO and the Flight Safety Foundation (and many experts) were involved in a lot of joint work through the 1990s concerning the issue of controlled flight into terrain and approach and landing accidents ... It is possible that it may have been a working paper presented during this period of work by these organisations which has not been published."* (Quite apart from technical literacy and foundation needing factual and available references is that DIT is accepting studies around 20 years old after what has occurred in cockpit evolution since).

As regards General Aviation, the department pays lip service but does little to encourage GA growth or survival as CASA continues to push private GA pilots to the recreational RA Aus sector. The 2008 JCP (ADS-B, GNSS and the subsequent (current) GNSS and ADS-B mandates result in infrastructure savings for Airservices that will be passed to the airlines but GA is forced to spend for little tangible gain. CASA admitted in 2009 after the JCP did not proceed that, “Aviation benefits related to ADS-B Out technology are very difficult to estimate, there is considerable cost shifting to aircraft operators as a result of transition to satellite-based technologies, and the financial situation of airspace users in the GA category needs to be addressed”. It wasn’t.

CLOSING

As I finalise this submission, most appropriately on Australia Day, I am reminded of the numerous enquiries and reviews of CASA and how many of my aviation colleagues believe it is fruitless to submit to you based on past reviews achieving no improvement. I commend to this ASRR panel the chance to finally achieve much needed change before another smoking scar on a hillside.

I also commend the following reference document to the Committee, particularly our offshore colleagues, for its valuable and concise content – a quick skim explains much of how we reached where we are now:

http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/1011/Aviation (Aviation safety regulation timeline 1982-2011)



26 January 2014

SUBMITTER’S CREDENTIALS

My background is corporate (handling regulatory and customer service issues) retiring as an Exec Officer with 3000 staff, small business, retired director and VP of AOPA Australia with special responsibility for regulation and technical issues, and retired Freeman of the Guild of Air Pilots and Navigators. I am owner of a mechanical repair business, a pilot, former aircraft owner and an aviation writer, with a multitude of small course citations, amateur radio qualification, company director (ANU) and postgraduate business management (Monash) qualifications.

My AOPA role required regular dealings with CASA and Airservices, a chalk and cheese comparison. I was operating with Airservices under a Memorandum of Understanding and was highly motivated by the staff ethos and safety approach based on data, consultation and coaching. I cannot commend CASA in comparison as the occasional shining star in CASA was more the norm in Airservices staff.

AUSTRALIAN Pilot EXTRA

MEMBERS NEWS UPDATES - OCTOBER 2008

AIRCRAFT OWNERS AND PILOTS ASSOCIATION OF AUSTRALIA



From the President

Col Rodgers
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A grain of salt

A recent newspaper article called an aircraft a 'small jet' – with both propellers visible at the front of the photo. It reminded me how much the media and internet influence our daily opinions. Still, why let fact stand in the way of a good aviation accident that helps sell newspapers? But, the message to us is evident – take what you read in media with a grain of salt.

Victorian media had a field day over the recent tragedy at Moorabbin, and the NIMBY residents around Moorabbin and Essendon, together with some local opportunistic politicians, were quick to call for airport closures. A copy of our media release is in this Extra.

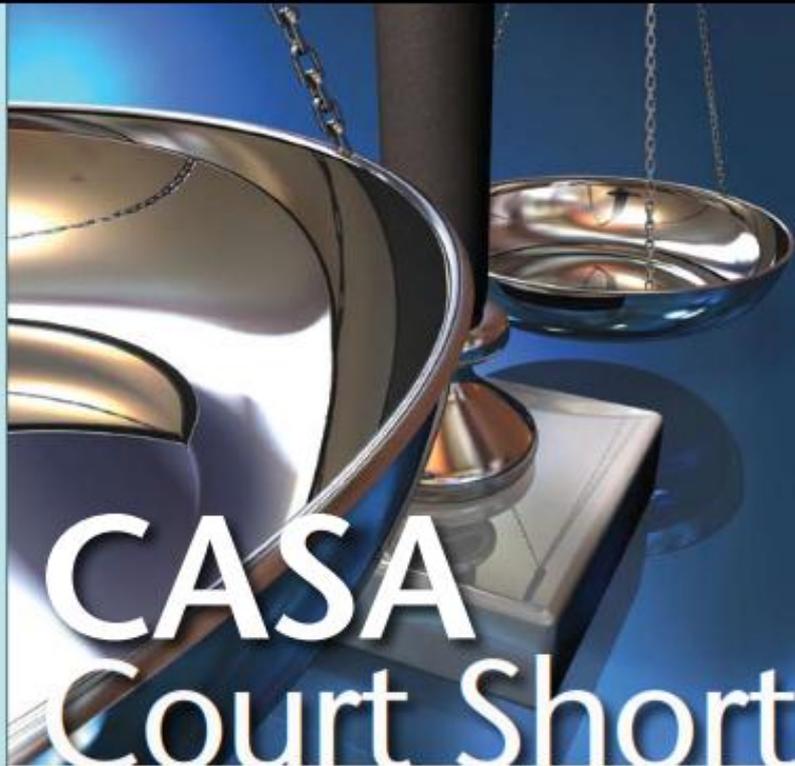
As a result, I had a very positive interview at Regional radio's request on the benefits of decentralised flying training and local airports to regional areas, but stressed the point that for many pilots the GAAP airports are near their home and work and the only way they can fit in their training. As always, I put the analogy that the highest risk is the drive to and from the airport.

Recently a member barrelled me over media comment about changes to a particular airspace and why AOPA had supported this. On investigation, his belief was based on high profile media comment that he assumed was linked to AOPA. Our position was actually quite opposite to his assumption.

The AOPA directors are in daily email, telephone or fax communication at their own expense to canvass current issues and member concerns. The list of our directors is in this Extra and those people are the only group that represents or speaks for AOPA. Usually media releases will come from me or our CEO, Tim Blatch.

If you have any concerns with items you hear or read in the media or on the internet, contact the AOPA office or one of our directors and they will give you the facts or even run an article in the Extra so your fellow members are informed. Remember – it's your AOPA and we value your feedback.

Col Rodgers



CASA Court Short

'Because CASA does not have unlimited resources, it must discharge its responsibilities under the Act in such a manner as to minimise the risks of harm, injury or damage to the greatest extent practicable.'

- Bruce Byron, CEO, April 2007

Last Members' Extra we promised the story of a recent prosecution that ended well for our members and must encourage CASA to review procedures. Brian Hannan, who is working with CASA to resolve AOPA concerns, comments.

"At time of writing, the case is being investigated by the CASA Industry Complaints Commissioner so I de-identify the players. Much of this story is based on information from the operators and I'm not giving the answers, rather a good 'whodunnit' story, where you draw your own conclusions".

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- » Benefits & Services for AOPA Members



Canadians unhappy with 406 MHz

The Canadian Owners and Pilots Association (COPA) says that the new Transport Canada regulation requiring new emergency locator transmitters (ELTs) in private aircraft is too expensive and won't help rescue lost pilots. It is claimed that the geostationary satellite signal is unreliable above 70 degrees North, and Canada's mountainous terrain causes degradation of the signal.

COPA is urging that Transport Canada allow each aircraft owner to decide what equipment best suits their own location and operations.

Avalon to go International?



Leader of the Victorian Liberal Nationals coalition Ted Baillieu announced on August 23rd that his party is committed to the development of a new international airport at Avalon. He said the new airport would see up to 2 million passengers per annum, and would create 400 extra jobs and hundreds of millions in tourism.

One might wonder what happens to all these things that are going to boost tourism, (like the Olympics, Commonwealth Games, Youth Week, F1 GP, etc). Tourism is declining despite taxpayer \$\$\$ being thrown at the industry.



Continued from page 1...

CASA

Ralph and his son Jacko operate a well-regarded flying school and charter business with a very clean bill of health in regulatory compliance. Yet, in July this year, they found themselves heading for court on 11 charges in total, dating back to 2005. Could it be you next? Based on this story, none of us are immune from persecution.

Year 2005 was 'interesting' for the business.

- A CASA audit provided only two minor Requests for Corrective Action (RCA).
- Ralph and his wife were nearly killed when aileron control was lost in flight, and only his experience and skill landed the aircraft in one piece.
- The C/P/Chief Pilot departed the business.
- Ralph had a minor Violation of Controlled Airspace (VCA) in Albury airspace (matter closed by CASA at the time as 'no further action' - remember that).
- One of Ralph's Warriors overflying a nearby airfield at 2000 feet was hit from below and behind by another aircraft from the nearby school doing circuits; instructor aboard. The circuit height is 1300. All survived the mid-air.
- CASA allowed model aircraft operations (permanent) up to 4000' AMSL in the downwind leg of Ralph's airfield circuit—without advice or consultation—which Ralph argued against vigorously but without success. On the day I interviewed Ralph, I saw a model aircraft in the downwind circuit area at a height I consider a risk.

Ralph pursued the aileron fault, which was due to failure of a stainless steel fitting on a control cable due to 'stress chloride corrosion', and advised CASA of this major safety risk. Ralph checked other operators and found other instances; one pilot saved only by the lock-wire keeping the fitting temporarily together. By February 2007, CASA had only issued a discussion paper and in August 2007 another nine fittings on Ralph's

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Court Short

airfield were replaced under suspicion. Ralph still awaits issue of a CASA safety directive about the fittings to adequately warn owners and maintainers.

Leading up to 2005, Ralph's Warriors suffered a series of crashes. The cause was found to be a carburettor mixture nozzle of the 'atomising' type. These were first fitted to Warriors in mid-1978 then removed by AD PA28-76A (Airworthiness Directive) after a Department of Transport investigation found atomising nozzles and carburettor ice are partners, particularly on grass strips. For 20 years all went well.

In 1999 an engine failure flying in circuit wrote off one of Ralph's Warriors and the female student, although not injured, gave up flying. Investigation found the aircraft was fitted with ... an atomising nozzle! Ralph dug further and found that CASA had withdrawn AD PA28-76A, and so the atomising nozzle so susceptible to carby ice was back in vogue. Why? Ralph looked and found the cancellation AD, and remained unenlightened as to why the cancellation, and why the alternative mixture nozzle that had been substituted as OK was now a 'no-no' despite years of no problems.

The AD cancellation was one uninformative paragraph:

"The requirement to fit fuel nozzle PIN 47-813 in lieu of atomising nozzle PIN 47-828 to carburettors 10-5009N and A10-5009N as a means to improve carburettor icing resistance can no longer be substantiated. This Directive is therefore cancelled."

Ralph took up the cudgels on this issue as well. CASA responded with advice that any fitment of a non-atomising nozzle—even with the nozzle approved for the past twenty years—would prejudice Ralph's AOC (licence to operate) and any engineer who made the change for Ralph would lose his approval certificate. Ralph's insurer, motivated by the payout for the aircraft write-off, also wrote to CASA, again with no success. Ralph, ever persistent, approached CASA and was allowed to seek a special certification from a CAR 35 licensed engineer, who rang two days later to tell Ralph "Sorry, mate, I've been warned off doing it".

Ralph lost three Warriors, three people suffered bone fractures, the insurance premiums have risen, and no cause has been found. The only common item known was the atomising mixture nozzle for which CASA would not allow the proven safe mixture nozzle to be substituted. Fortunately, Ralph found a way around the obstacle and coincidentally the engine stoppages stopped, and all went back to normal flying.

At this point, you might want to re-read that Byron quote at the start of this article: "minimise the risk of harm, injury or damage". How do you score CASA so far? >

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PA77H - Coiled Extension Lead Helicopter Headset	\$79
PA82.4 - Headset Adapter Icom A4	\$29
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PA85Y - Headset Adapter Yaesu/Vertex	\$29
PA86A - Amplified Cell Phone Interface - GA	\$150
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PA87 - Impedance converter GA	\$49
PA87H - Impedance converter NATO Helicopter plugs	\$59

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You have guessed by now Ralph is no longer a favoured CASA airfield operator. No bureaucracy loves the messenger when he keeps prodding the system gaps.

We move to CASA finally acting on 'safety matters' ...well, their definition anyway. Ignoring some to and fro in between, Ralph and Jacko find themselves in 2008 facing 11 counts for a court appearance, counts that can result in criminal convictions.

RALPH

- CAR 100(2) Violation of controlled airspace.
- CAR 175A(1) Single engine IFR charter.
- CAR 275(3) Takeoff where meteorological minima is less than prescribed (two counts).
- CAR 5.55(2) Exceeding duty time for a tour of duty.
- CAR 303(1) Failure to surrender a pilot logbook on notice.

JACKO

- CAR 42U Unapproved repair to an aircraft.
- CAR 42ZE Failure to certify maintenance by approved system cert.
- CAR 50 Failure to endorse the maintenance release re: damage.
- CAR 43B Failure to record the total time in service for an aircraft (two counts).

Reel in horror at the risk to safety of not recording TTIS on a maintenance release, or refusing to hand over a logbook

without appropriate security of YOUR property. Issues like the Warrior crashes, the stainless steel failures, and the mid-air (for which Ralph believes CASA took no action against the offending operators) pale into insignificance against incomplete paperwork, don't they?

After expert evidence and character references from AOPA and others, the Director of Public Prosecutions agreed to withdraw all except the first and last charge against Ralph, and all but the CAR 50 charge against Jacko, with one stipulation.

There were good reasons for this, not just benevolence, so let us consider these. Perhaps also remember the test of a good investigator, and the need to adhere to procedure. It starts with 'get all the facts BEFORE ... weigh up and decide.'

For Ralph, the CASA alleged 'single engine IFR charter' was clearly an unremunerated private flight, not charter. Scratch that charge.

The two take-offs into 'less than prescribed meteorological minima' were based on information—believe it or not—from Ralph's former CFVCP (who coincidentally is now CASA employed), and where he had made an assumption on arriving an hour AFTER the flight took off. An assumption on the cloud height

that I am told was made to two decimal places in the statement.

CASA responded swiftly to this 'crisis' and were there next morning to check for themselves, including making a video recording. No aircraft crashed in these alleged 'below minima' excursions and the video commentary is a Keystone Cops comedy of pre-meditated intent, with the commentary disproved by the visual facts on tape.

The duty time charge was yet another assumption based on information doggedly obtained by CASA from ATC radio tapes, and failed the factual evidence test. It may have been better had they checked the nature of the flights involved.

Moving on to Jacko, the first count—unapproved repair—was the use of duct tape on several cracks in the (openable) side window of an aircraft. The second count was associated and likewise untenable. (Hands up all those without '100 MPH tape' in the trip flight bag?)

Count Four: the first failure to record TTIS on the maintenance release, bit the dust because Jacko was not on board, not the owner, not responsible.

Count Five: Jacko forgot to record the TTIS at end of the day. Have not we all? A crime that surely places the aircraft and occupants at risk ... well, perhaps not.

Story continues on page 21...

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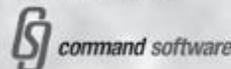
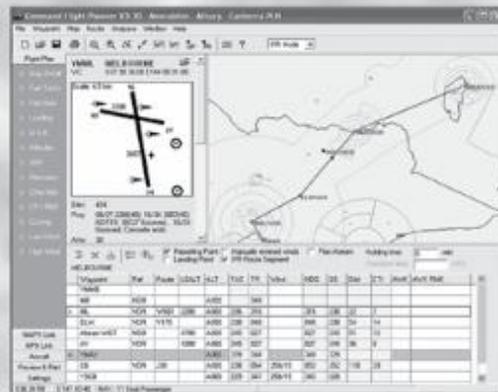
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Continued from page 12...

Now to the counts that ended up in court. By now Ralph and Jacko will be over \$30,000 out of pocket in legal expenses, so they reluctantly accept the DPP offer to save cost and drop the above counts, with that earlier mentioned stipulation - if Ralph and Jacko plead guilty to the three remaining.

First, Ralph and the VCA. It's strange that this went to court after a CASA FOI had decided no further action in 2005. But the real strangeness is CASA confirms that from 2005 to June 2008 there has been only one prosecution for a VCA (this case) against our estimate of around 4468 VCA during that period, some of which (not this one) required aircraft avoidance action. Yet, the DPP sought conviction and a fine on the basis of 'general deterrence'. What, you may ask, of the other 4467 'criminals' out there needing to be 'deterred'? (This being an offence of strict liability and any conviction a criminal one). Anyone reading this ever had a VCA? Accident or crime?

Can someone out there explain this strange statistic and the delay in CASA action?

Ralph and the logbook. Due to a previous CASA logbook 'misunderstanding' seven years before (again sloppy investigation where the investigator decided 'CBA' was Canberra - when we all know it is Cobar), Ralph was reluctant to lose his logbook and offered in writing to make it available in the presence of a witness. Seems reasonable to me; a logbook is a precious one-off personal record.

Jacko and the CAR 50 charge. Remember, Jacko was not the pilot when the damage occurred. Somehow, in their pursuit of Jacko for failing to endorse the maintenance release, CASA missed also proceeding against the pilot in command who actually CAUSED the damage (requiring the duct tape), and failed to record it, by:

- failing to secure the seat belts adjacent to the door
- failing to secure the door properly.
- failing to follow the procedure contained in the Aircraft's Flight Manual in dealing with a door opening in flight.
- failing to make an entry on the MR.

Yet the owner of the aircraft (Jacko) is charged for not endorsing the maintenance release. No wonder the defending solicitor classed the CASA behaviour 'perverse'.

To court the three charges go and, in

a case set down for three days, it is over three hours later. As Ralph and Jacko pleaded guilty, we could likely expect the magistrate to say 'off with their criminally-unsafe heads'. Well, it didn't quite happen that way.

The Magistrate found as follows for each charge:

COURT ORDER - "Dismissed"

SPECIAL CONDITIONS

Pursuant to S19B, having regard to the character and antecedents of the defendant, and the circumstances of each of the offences, I propose to dismiss the charges before the court as I have formed the view that it is inexpedient to impose any punishment.



So to wind up this strange story, do you believe it fair that Ralph and Jacko should be around \$35,000 out of pocket given the strange happenings of this case that failed and was dismissed by the magistrate? Are Ralph and Jacko better and safer men for all this?

Ralph adds: *'After much thought we commenced RA Aus flying training here in 2007 and it has even further widened the credibility gap. RA Aus is firm but fair to deal with and value genuine safety versus the biased unnecessary treatment we received from Chaps Against Small Aviation. The future for general aviation in Australia is grim if we cannot change the CASA culture. Hopefully now they will leave us to continue safe operations rather than continue a mindset of payback and prosecution.'*

Would you like to be placed in the situation of a legal bill ending in tens of thousands of dollars for a VCA, or for failing to sign a maintenance release, plus a possible criminal conviction that could affect your livelihood right to travel overseas, or even issue of an ASIC? This case is frightening that such prosecution, nay persecution, could occur.

Ralph, ever pragmatic, continued: *'CASA has unlimited power and financial resources to pursue such matters, but apparently lacks the ability to discriminate between that which is a serious safety matter versus something that might warrant an interview and coaching. It is not just the waste of our own money, and this is not the first due to their harassment, it is the squandering of taxpayer funds by CASA where they seem neither concerned nor accountable. I believe the CASA enforcement budget is greater than the cost of operating the Tasmanian police force, which keeps nearly half a million people safe.'*

AOPA is committed to continuing to investigate, pursue and publicise cases like this until we have a balanced approach to safety for any of our members who make mistakes and errors with no criminal intent. The CASA enforcement manual and process now endorses this approach of punitive action as a last resort; now we just have to convince the field staff to operate by their own rules.

CASA rightly points out that the decision to prosecute was made by the CDPP independently and the action would not have been initiated had the CDPP not formed the objective view that there was sufficient evidence to support the allegations.

Be that as it may, the question remaining in my mind is exactly how such poorly investigated and prepared material reached the CDPP in the first place.

AOPA is also weighing up the matter of self reporting and responding to ESIR. We have signed a sharing agreement for safety action with Airservices but unless CASA commits to ESIR being properly used to identify and correct systemic defects rather than punitive action members may expect a recommendation to not participate.

If you think you might know Ralph, give him a buzz and he can fill in any gaps. He is a 'bonzer' bloke and shares the story in the hope of justice for us all in future. In a later edition, we will bring you the results of the CASA Industry Complaints Commissioner investigation. ■

Senator ABETZ - In relation to violations of controlled air space, are you able to tell us how many cases of violations of controlled air space are known to have occurred between 2005 and June 2008?

Mr Byron - I do not have those specifics in front of me.

Senator ABETZ - But would it be in the thousands?

Mr Byron - That was a three-year period?

Senator ABETZ - Yes, between June 2005 and June 2008, so three years.

Mr Byron - Are we talking about Australia wide?

Senator ABETZ - Yes.

Mr Byron - I do not think it would be in the thousands, but I would need to check.

Mr Byron - I stand to be corrected, but we track violations of controlled air space as one of our safety outcome parameters. We are sitting down on, I think, 5 November to look at the last quarter's figures. But going back to the last quarterly safety review that we, as a full senior management team, did, we know that in terms of the incidents that occur, which are reported through the Airservices electronic information reporting system, violations of controlled air space are one of the highest problems that we have.

Senator ABETZ - Can you take on notice for me how many cases are known to have occurred and then how many cases were pursued by legal action? Do you know how many there have been?

Mr Byron - Not off the top of my head, no.

Senator ABETZ - I understand there has only been one and I would be interested in you either confirming or denying that. All I can say is that I have this constituent who has been giving me this information and, if that is wrong, then please tell me why it is wrong as to the actual number.

CHAIR - That constituent probably reads Hansard as well and can get the answer.

Senator ABETZ - Yes, but these will be on notice so I doubt that he will get them unless I pass them on. If it was only the one case, what were the particular circumstances that warranted it being prosecuted? I refer to page 21 of this great, well read magazine. This is the October 2008 edition. I think I referred to that previously. It asserts:

It's strange that this went to court after a CASA FOI had decided no further action in 2005. But the real strangeness is CASA confirms that from 2005 to June 2008 there has been only one prosecution for a VCA (this case) against our estimate of around 4,468 VCA during that period, some of which (not this one) required aircraft avoidance action.

I would be interested to find out whether this article is correct. It may well be that the article is not. I do not seek to make any allegations. All I am seeking to do is ascertain the proof about the figures. If the figures are correct, it would beg the question why only this one out of the 4,000 has been pursued. I know in my home state of Tasmania the police are given certain quotas for speeding tickets, et cetera, to fulfil. I would assume CASA officials do not have such quotas.

Mr Byron - Our objective is the safety outcome. If we think we can fix a problem through enforcement, that is the only way we will do that. If we think it is an error that was made unintentionally, we will probably take a more educational approach, particularly if it is a learning pilot. A lot of the VCAs we get are with student pilots. But we will provide those figures. ■

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