

3 March 2014

The Aviation Safety Regulation Review Panel

Richard Farmer  
General Manager Review Panel

Dear Sirs,

**SUPPLEMENTARY SUBMISSION : Aviation Safety Regulation Review Panel**

Further to my submission to the Panel dated 31 January 2014, and to our discussions at the meeting on 28 February 2014, I enclose as discussed the following supplementary submission for consideration by the Aviation Safety Regulation Review Panel:

**CIVIL AVIATION OMBUDSMAN ['CAO']**

I would suggest that consideration be given to the establishment of an independent Civil Aviation Ombudsman who can deal with disputes between industry members and CASA with view to hopefully resolving those disputes expeditiously and thereby avoiding, wherever possible, the necessity to make an application to the AAT for a Review of a CASA Decision.

I would envisage that the CAO would neither usurp nor replace the current system of Review by the AAT, but rather the CAO would complement the Review system to enable a number of disputes to be settled, and in particular, *prior* to the commencement of the "show cause" process and/or the imposition of administrative sanctions (which would then require a Review by the AAT).

The CAO should have the capacity to receive and to independently mediate disputes in (but not be limited to) the following areas:

1. Flight operations and pilots
2. Aircraft maintenance and engineers
3. Aviation medical certification
4. Fees for services provided by CASA, and
5. The conduct of CASA officers

NOTE: The Industry Complaints Commissioner could be absorbed into the CAO

In order to enable the CAO to broaden its areas of expertise to deal with disputes, we would suggest that the office of the CAO should have access to a panel of independent experts who can provide assistance when necessary from time to time to advise on discrete issues.

The CAO should be independent of CASA, and be responsible directly to the Minister responsible for aviation. The functions of the CAO should include the power to make a recommendation to the Minister for direct intervention in appropriate cases where necessary.

### **ADMINISTRATIVE APPEALS TRIBUNAL ['AAT']**

Any amendment to the *Administrative Appeals Tribunal Act 1975* ['AAT Act'] to include a provision (in concert with the State Government counterparts to the AAT Act) that costs may be awarded by the Tribunal in its discretion in appropriate cases will require an Act to amend the principal AAT Act.

If the Panel is inclined to recommend to the Minister that the AAT Act be amended as requested to allow for costs to be awarded, I would expect this process may take some time.

### **AUTOMATIC STAY PROVISIONS: s31A *Civil Aviation Act 1988***

Further to my earlier submissions regarding the Rights of Review and the "automatic" stay provisions invoked by operation of section 31A of the *Civil Aviation Act 1988*, I repeat my concerns that the vice in the current system is the narrow reading applied by the CASA lawyers to the definitions of "reviewable decision" in s31A of the *Civil Aviation Act*, and of the definitions of "authority" and "certificate" as are currently set out in CAR 263(1).

There are numerous permits, authorities and certificates issued by CASA which fall within the ambit of CAR 31A of the *Civil Aviation Act*, many of which are replicated in CAR 297A; but the definitions in CAR 263(1) have not been upgraded to encompass the wide range of approvals, authorisations, permits and certificates which are given by CASA, many of which, including the authorisation for the appointment of a Chief Pilot and a CFI, are pivotal to the continuation of the business.

By introducing the "automatic stay" provisions into s31A of the *Civil Aviation Act*, it is clear that Parliament intended that, except in extreme cases where there is a serious and imminent risk to air safety (which would enable CASA to immediately suspend the authorisation or certificate pursuant to s30DC of the *Civil Aviation Act*), intended that an aviation business, pilot or maintenance engineer would not be immediately shut down and/or precluded from any further aviation activities pending an application to the ASAT for a Review of the decision in dispute to preserve the status quo pending the application for Review and a Stay.

The anomaly in this process is the omission from the definitions in CAR 263(1) to include the approval of the Chief Pilot and the CFI. The Minister is empowered to amend the Regulations without the need to have recourse to Parliament, and accordingly we would request that the definition in CAR 263(1) be widened to include the approvals, authorisations, permits and certificates to encompass, *inter alia*, the Chief Pilot authorisation and CFI approval; which would bring these authorities within the ambit of CAR 269(3); and thus invoke the "automatic stay" provisions of s31A *Civil Aviation Act*, as Parliament intended.

I thank the Panel for their time last Friday.

If I can be of any further assistance in relation to the above, or any other matter, please do not hesitate to contact me.

Yours faithfully

A black rectangular redaction box covering the signature of John Maitland.

**JOHN MAITLAND**  
**Principal**