

'Prune Gate'.

No Confidence - Petition Report.

This report is privately distributed to and prepared exclusively for respondents to the "Pprune" petition. The report is intended to summarise the respondents comments related to the CASA management of aviation, operational safety and various prosecutions of individuals and companies through the AAT system.

The editors have attempted to collate and summarise publicly offered comment, perception and complaint into a succinct report.

Before the report can be offered to the Senate, and thus made public it is important that the editors further test the veracity and assess the scope of complaint to accurately quantify the level and causes of dissatisfaction.

This report is offered for your return comment and submissions so that examples, anecdotes or evidence related to these issues or other matters may be provided. Your response may be submitted either "in confidence", anonymously or anecdotally.

"The Editors".

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Part A.**A1.0. Background.**

The old expression, 'the straw that broke the camel's back' succinctly defines the reason why this report has been distributed to the signatories of the petition offered to industry, November 28, 2011 on the Professional Pilots Rumour Network ("Pprune") website.

The 'straw' that finally prompted a meaningful response from within the General Aviation Industry (the industry) was the cautionary tale of Mr. John Quadrio. The story would have gone unnoticed had it not been published by Mr. Paul Phelan in the Aviation Advertiser (AA), under the title "*Birds, what birds*". The award winning article highlighted an oft repeated story of one mans failure to preserve his dignity, professional reputation, livelihood and happiness.

John Quadrio is only one of many.

The response from the aviation industry was significant, the well documented story simply but with clarity, crystallised the plight of many within the industry. The AA article has broken records for the number of people who read and responded to the piece. The Pprune "threads" have exceeded 25,000 'reads'. In response to interested parties requests a petition was offered through the Pprune medium and reported in the Aviation Advertiser.

Considering the modest sample of industry participants the response was important; 72% of readers have expressed their support and provided signatures. It is interesting to note that a further 18% indicated support, but were not prepared to offer a signature, for fear of reprisal.

It is difficult to define where the journey to the petition began; for some it was the Sea View accident, for others it was the Monarch accident, the Whyalla accident, or the Lockhart River accident, all fatal. For others it was the enforced closure Tiger, Uzu Air, Polar Air, Airtex or any one of a dozen similar cases where jobs, lives and business were devastated.

It is hoped that journeys end will be with the Senate recommending a Royal Commission, leading to reform.

A2.0. Industry response.

This report has been prepared using submitted industry generated comment, reaction and response. The editors have condensed and consolidated the many expressions of industry concern raised by the petition, related to the perceived performance of the Civil Aviation Safety Authority (CASA).

The document has been prepared solely against voluntary input from industry sources.

The editors have, to the best of their knowledge provided what are held to be industry wide beliefs, safety concerns and expressions of disappointment with the Regulator.

A3.0. Petition.

Pprune General Aviation Petition.

28/11/2011.

To the Honourable President and members of the Senate in Parliament assembled. Your petitioners, undersigned, support a statement of no confidence in the current senior management of the Civil Aviation Safety Authority (CASA).

1) Your petitioners from the Australian aviation industry request that the Senate record our statement of "no confidence" in the Director of Aviation Safety and senior management of the CASA.

a) Petitioners have serious concerns that the oversight of aviation operational safety, regulatory reform, incident investigation, immediate and subsequent enforcement actions, their impact on the well being of the industry and the cost of these actions are a public and legal embarrassment to the Government and industry domestically and internationally.

b) Petitioners believe that current mismanagement is producing negative safety outcomes, detrimental to the concept of 'just culture'; inhibiting the industry from freely, and in concert with the 'Authority', developing superior outcome based safety management, compliance and enforcement protocols.

2) Your petitioners request that the Senate initiate a transparent judicial enquiry; supported by independent aviation industry experts into the actions of the CASA which resulted in proceedings against companies and individuals from industry.

a) Your petitioners ask that the Senate request and require the enquiring body to accept, consider and investigate evidence provided under statutory declaration from interested parties, under terms of reference to be decided by the Senate Estimates Committee, allowing wide consultation with, and submissions from industry as part of the due process.

A3.1. Prune Gate – Survey.

1. Do you have confidence and trust in the regulator, the Civil Aviation Safety Authority ?. 94.74% – No.
2. Do you know of any CASA misconduct that has occurred?. 79.12%. Yes.
3. Did this CASA misconduct involve you personally?. 55.26%. Yes.
4. Did this CASA misconduct involve your employer?. 57.89%. Yes.
5. Was any commercial harm done to the company?. 74.03%. Yes
6. Was any commercial harm done to yourself?. 53.95%. Yes.
7. Are you aware of any CASA misconduct towards any of your associates?. 85.93%. Yes.
8. Are you aware of factual information regarding conduct against another operator?. 67.11%. Yes.
9. Are you aware of factual information regarding conduct against another pilot that you know?. 67.09%. Yes.
10. Are you aware of any instances in which CASA has been dishonest towards yourself?. 69.74%.Yes.
11. Are you personally aware of CASA dishonesty towards a group or individual other than yourself?. 76.32%. Yes.
12. Did this CASA misconduct or dishonesty involve any of the following? (Please tick for Yes). 76.32%.
Falsifying etc. 19.25%. Fabrication etc. 20.86%. Losing Info etc. 17.32%.
Tampering etc. 12.85%. Blatant Lying etc. 30.17%.
13. Have you witnessed any past CASA conduct that you would consider malicious or vindictive?. 86.08%. Yes
14. Are you aware of any behaviour that suggests a vendetta against a pilot or operator?. 86.08%. Yes.
15. In which area offices have you witnessed misconduct? Please tick below.
CASA HQ. Canberra – 23.53% : Cairns/Townsville 16.54% : Bankstown 14.96%.
Melbourne 9.56% : Darwin 8.09% : Archerfield 5.15 : Jandakot 3.68% : Parafield 2.21% : Tamworth 2.21% : Other 14.07%.
16. Should a Judicial Inquiry or Royal Commission into CASA misconduct be initiated?. 92.63%. Yes.
17. If suitable protection was guaranteed for a witness in either form of inquiry above;
Would you be prepared to testify. 38.21%.
Do you have factual testimony etc. 25.20%.
Do you have anecdotal evidence etc. 36.59%.

Part B.**B0.0. Editorial.**

Perspective is essential if the reader is to fully understand the issues raised within this report.

General Aviation is a small, but significant element of aviation in Australia. The industry employs, directly and indirectly around 100,000 people, supports many associated businesses and provides valuable infrastructure services to remote communities. These include Air Ambulance, Medical evacuation, Patient transport, Bush fire fighting, Police airborne support, Search and Rescue, cargo, mail and passenger transport in remote areas, tourism services, executive and corporate charter services, flying training and private aircraft operations.

The demise of this industry would have a significant effect on rural and remote Australia, the cost to Government in human and fiscal terms would be significant if the industry devolves.

The majority of qualified working Australian pilots and Licensed Aircraft Maintenance Engineers (LAME) are employed by major airlines. The 'airlines' have internal legal advice, contract external legal services and have highly developed internal administrative structures to support flight operations. The people employed in 'airlines' rarely, if ever have deal directly with the Civil Aviation Safety Authority (CASA).

The people employed or associated with 'General' aviation have a much more hands on approach; of necessity the CEO of a GA operation will be obliged, in one way or another to deal with the CASA. The employees of these companies are almost always more aware of CASA and its potential to impact on their daily lives.

Marine biologists study the humble oyster as an indicator of the oceans health, so it is with GA. If the GA sector is showing signs of being unhealthy it is certain that the rest of the industry is being affected in a similar manner.

For many years the GA industry has fought off the negative effect of CASA culture, tolerated the legal aberrations, operational incompetence and fiscal dissolution. These elements have and continue to promote a detrimental, demoralising effect within the industry which prevents the natural development, implementation and incorporation of many years practical operational experience into sound, operationally sensible, sustainable safety practice.

The CASA culture is now pervading the major airline systems, this is clearly visible as senior, safety related management personnel retire. The recent Senate inquiry demonstrated this. We believe it is only a matter of time until there is a serious accident involving a major Australian carrier directly attributable to CASA culture, it is now only a matter of when.

B1.0. The need for regulatory reform.

a) As the aviation industry has progressed through its history there has always been a requirement that the rules which govern the operational and legal safety of airborne enterprise keep pace with technological and operational development.

b) This should occur as a matter of course, the changes in law anticipating industry progress, through consultation. For example; the Boeing 777 aircraft has recently been approved for extended over water flight, this has been a long, technically demanding process which allows the operator to shorten the aircraft flight path, providing economic and human benefits.

i) Rather than anticipate the change and amend the current Australian regulations, CASA will wait until the operator produces an internal procedure, this will eventually be approved by a CASA delegate issuing an individual exemption against the existing rules. Clearly, this is a flawed practice. Utilising a subjective, individual approval system it is, by its nature, able to be subjected to manipulation, 'cronyism' and potentially, corruption.

c) The need for Australian legislative reform was identified and commenced some twenty three years ago; so far industry estimates CASA have expended in the region of AUD\$200,000,000 and provided very little intelligent, useful, outcome based easily understood legislation during this time.

i) The New Zealand Civil Aviation Authority (NZCAA) and the Papuan Civil Aviation Safety Authority (CASA-PNG) managed, within a 5 year period to produce an effective regulatory suite of practical, outcome based law. Whilst no one holds these examples up as perfect, the intent and methodology incorporated fosters operators providing and monitoring their own safety ethos, rather than ensuring legally 'safe' judgements for prosecution.

d) The intent and requirement in the manner the regulator performs its function should be clearly written into the Civil Aviation Act (the Act) in a way that cannot be reinterpreted or misconstrued to allow an individual, subjective opinion to replace factual data and empirical evidence.

(i) The need for consultation and consensus on matters of standards, within an internationally binding framework must be required of, and written into any new Act and regulations or parts thereof.

(ii) The examples that support such reform and the need for reform to be urgently conducted are evident in the many major and dozens of minor cases. Examples go back to the Staunton Inquiry into the 'Sea View' accident (1994) where the Authority has been repeatedly shown and allowed to continue to conduct its affairs with the same cultural perspective and powers. This has been achieved through seemingly subjective, legally unsafe interpretation of convoluted, poorly written prescriptive regulations and orders; which appear to effectively ensure that in all things that it does; CASA remains judge, jury and executioner.

This occurs without risk of public accountability or Court hearing, under the rules of evidence. This right is freely available to all citizens charged with committing a crime.

B2.0. Administrative accountability.

a) The industry wide call for all CASA officers to be accountable for their actions has been generated for many reasons. The current regulator is unaccountable to, and unrepresentative of the industry or the broader community which it is required to serve.

b) The misuse of regulatory power is well documented and supported by clear case evidence. This element of complaint is extremely detrimental to air safety producing a culture of fear which restricts open admission of an 'honest' mistake; this prevents a pilot from exercising command discretion and inhibits free and open discussion with the regulator. It is clearly by any measure, identified as being the highest ranked problem, for the past 25 years, the industry contends with when dealing with the authority.

c) The industry bears witness to the perversion of the rule of law by the authority. This defines the corruption and incompetence that the Authority has come to represent to the industry. The community (travelling public and industry) has a need of, and pays handsomely for a body that regulates aviation activity by way of clarity, probity, commonsense and the setting of appropriate expectations, from both sides. Common opinion is that the regulator has completely lost this imperative. It is widely believed that:-

(i) The regulator has degenerated into an ineffective, self aggrandising, destructive and malicious organisation where personal ambition and outdated practice is the accepted norm.

(ii) The regulator is where misguided and inappropriate legal opinion holds sway and is held to be evidence.

(iii) The regulator is where scientific empirical data and rational decision making has ceased to hold sway, influence or guide practice or indeed, even be generated.

(iv) The actions of CASA destroy any desire or will within industry to uphold honesty and integrity or even report an issue where relevant.

d) Human lives, peoples dignity, reputation and freedom to earn a living in a chosen profession should not be allowed to be destroyed for no better reason than an unaccountable public servant whim, or one not having the strength of character to admit to being in error or simply targeting a subject for reasons of gaining 'personal' kudos within the department.

(i) The effort and public money that is willingly expended to support 'flawed' or hearsay evidence in the AAT alone would, if publicly revealed prompt a taxpayer demand for a full, transparent forensic examination of the true cost of CASA services to aviation safety.

e) Contentious issues with CASA officers who hold alternate subjective 'views', opinions or 'interpretations', means the industry has to deal with a wide variance of subjective interpretation on a day to day basis. Further, the base manager or Inspector can be changed at short notice, which almost invariably, immediately presents compliance issues based against an individual 'interpretation'.

As non compliance is a criminal matter, compliance interpretation should not be subject to change at a moments notice.

B3.0. Contentious Issues.

a) The authority is widely perceived to be engaged in a well camouflaged, deeply hidden, untenable, antagonistic relationship with the industry. There are several matters which must, if creditable effective reform is to be achieved, be addressed in the public interest; immediately, thoroughly, with probity, clarity, good will and intentions. Furthermore, it is considered essential to the health, safety and longevity of the industry that the spirit and intent of a regulation be exercised in its application. To achieve this :-

(i) "Safety" and the intent to be 'criminally unsafe' must be unambiguously defined within in the Act which prescribes the statutory powers, limitations and functions of the regulator.

(ii) That the provision of criminal sanctions and penalties for administratively (non safety related) defined non-compliance matters be curtailed. Criminal sanctions must only be provided for proven wilful, grievous or seriously negligent actions and for those matters only. Offences under the rules with a criminal penalty provision must be restricted to proven grave and wilful acts causing actual loss of life or damage.

(iii) That the bringing of such allegations must be constrained within the rule of law and brought into the appropriate Court jurisdiction where only the CDPP is allowed to prosecute, under the established rules of evidence.

(iv) That 'strict liability' be removed from all discretionary, administrative and non safety related regulation. Alleged 'non safety' breaches should be dealt with by way of CASA administrative action only. The alleged breaches should then be subject to independent review only by the AAT or the Commonwealth Ombudsman.

(v) Due to constant, almost automatic misuse the 'fit and proper person' clause in provisions when suspending or removing licensing and operating privileges, the clause must be either removed from the regulations, or; its use re defined, clearly, unambiguously and in plain English. The clause must be written so that the provision may not be easily, continually and fecklessly used as a 'catch all' final argument for punitive CASA administrative action; further that such an accusation or allegation may be defended.

(vi) That the investigative powers of CASA contained within the Act and Regulations, be repealed and replaced by powers with checks and balances, reflecting those of the Police. Investigators should require training in, testing and examination on and be certified as competent to act as independent "Aviation Investigators". The investigators are currently perceived as protecting the CASA case, rather than impartially and objectively considering all elements with respect to due process.

c) The parts of the Act which allow Orders, Directives and Policy to be issued arbitrarily, without consultation or challenge must be repealed, excepting those adopted by reason of international agreement.

(i) Those replicating and critical to airworthiness or air safety and any other such directives should have an automatic right of challenge, at law, or through independent arbitration by any person who believes that the matter does not conform to the meaning of Safety as defined within the Act.

B4.0. Operational failure of the regulator.

a) The following list is by no means exhaustive, the industry widely agrees that the items below are indicative of a failed, moribund authority, out of touch with the industry it serves.

(i) That CASA does not provide timely, accurate and useful responses to enquiry. This includes failure by regulator to react to, or anticipate Industry requirements within the published standards of service memorandum for a 7-day reply.

(ii) Regulator failure to reply to urgent safety inquiries. Response to urgent operational queries from Industry have often take years to receive.

(iii) There is widespread belief and evidence to support the claim that the manufacturing and manipulation of "hearsay evidence", to support CASA allegations has become a systemic, normalised deficiency. The apparent selective use of this 'evidence', and 'blindness' to any other evidence or information which is contrary to, or does not support CASA to their pre determined outcome is clearly visible in the AAT public record transcripts.

(iv) The perceived misuse of safety regulation and economic control by the regulator. The regulator does not have separation of economic power and safety regulation. The regulator appears to consistently demonstrate the blatant misuse of the powers and tools (Regulations, legal resources, Exemptions, AAT) etc. available to them.

(v) The management of Serious Defect Report (SDR). Ignored notifications recently had an effect on over 200 aircraft. This is a matter of public safety and is in need of urgent corrective attention.

(vi) Similarly, CASA improper or un-timely promulgation of Airworthiness Directives (AD) require urgent corrective attention.

(vii) The use of "legal force" in pursuing minor infringement or enforcement of misdemeanours, which could be dealt with on an amicable, in house basis.

(viii) The perceived misuse of a pilots 'need' for instant, unchallengeable decision-making (Command discretion). That prerogative has been misconstrued, connived, altered, corrupted, manipulated and used in contempt of AAT rules, with full hindsight, to prosecute the CASA cause in an advantageous manner.

(ix) The perceived CASA connivance to make the cost of taking a matter to the AAT expensive and in most cases, unbearable is of great concern. The AAT is designed to be inexpensive, but the cost of obtaining a comparable defence team, the loss of income and business due to the deliberate drawing out of events has underscored the demise of many adversaries.

B5.0. Public failure of the regulator.

a) Legal opinion is that the regulator would fail the test of being a "Model Litigant" as required by law. The robust waving of the "Safety" banner does not exempt CASA from the constraints placed, by the Parliament, on all government instrumentalities to act as a Model Litigant, nor does it place them 'above the law'. It is considered politically and legally unsafe for them to be allowed to be or act so.

b) Being a model litigant, does not embrace withholding pertinent evidence, perjury, fabrication of facts after the alleged event, or continuing prosecution until the victim is physically and financially broken and the business extinct - this is akin to rendition.

c) The regulator has misled Parliament in its undertakings and embarrassed the industry domestically and internationally. This is evident in:-

(i) Untrue, misleading or blunt refusal to answer a Senator's legitimate questions.

(ii) The general obstructionist attitude by the regulator in dealing with issues raised by the Senate. Refusal by the regulator to answer the Senate Review process:

(iii) A response to the questions by the Senate to seek a cent by cent analysis on how much CASA has spent, on which projects and on which consultants is still awaited. To provide evidence of what was undertaken, what was completed, what the outcomes were and where deficiencies were found after spending substantial amounts of money?. How were those deficiencies corrected, by what means?. The industry still awaits a satisfactory creditable response.

d) The selective grounding of Tiger Airlines as an alleged 'risk to safety', based in primus, against perceived 'deficiencies' created by administrative outsourcing, was effectively cloaked by the citing some minor, questionable in flight transgressions; this whilst completely ignoring or condoning similar situations with other carriers. Thus reflecting the absolute refusal to support operators unless there are subjugated to CASA policy, not the law as writ. **These issues are both domestically and internationally embarrassing to the Government and industry.**

e) The contrived emasculation of the ICC and interference by senior regulator management. The ICC has been reduced in its ability to ask and answer questions of the authority, to the point where the process is a non-event. For example:-

(i) The "Industry Complaints Commissioner" refuses to answer questions independently over a large range of issues.

(ii) The removal of a former Industry Complaints Commissioner who dared to be independent.

(iv) Interference in the 100% independence of the Commonwealth Ombudsman by the regulator. Evidenced by the placement of an "aviation adviser" in the Commonwealth Ombudsman's office who is perceived by the industry to be a regulator 'stooge'.

B6.0. Internal failure of the regulator.

a) Several CASA employees have provided anonymous evidence which supports the perception of an almost total collapse of morale, dedication and probity within the regulator's own operational structure, this may be defined by the following anecdotal examples.

(i) There are many incidents of internal Human Relations (HR) problems within the regulator. The systemic bullying and harassment of regulators staff across Australia is endemic. The CASA HR is seen to be complicit in protecting bullies in the workplace and by their selection process; which more or less encourages the "bully boy" image.

(ii) A current executive member, who scored 7% on a staff engagement survey for leadership of his department was subsequently promoted to Executive. This individual was seen to be responsible for a very experienced, able fair manager exiting after 20yrs service, under a "very nasty" litigious cloud.

(iii) CASA employees believe the review needs to start with the Executive, down through to field office managers and inspector team leaders. It has been stated that many have exhibited arrogance, mendacity and bullying in management, this is evidenced by the numerous internal and industry complaints made against them. In the past, these people have been internally exonerated by their own internal 'ethics' committee.

(iv) There is an industry and internal call for the various 'special projects', policy and assorted non essential 'consultant' services to be investigated in order to define the purpose, cost and true value of these services.

(v) All parties encourage an investigation of the regulators records to reassure the industry that whilst employed by CASA:-

No former salaried employees, who have resigned then returned to the same task, in a 'consulting' capacity fully or partly owned or worked for a consultancy utilised by CASA during their tenure

That no employee has used, whilst employed by CASA, their position to gain financially.

This matter as an example was raised with the regulator by a Senate committee.

The CASA employee in question was actively employed in an area (CLARC), which gave permission for a parachute 'drop zones'. This approval action was pivotal in the subsequent Council approval of a parachute operation. At time the CASA employee was a Director of and shareholder in the applicant company for an AOC to conduct the flight school operations at the aerodrome and the company would derive a benefit by Council approval.

The regulator refused to answer questions raised in relation to the matter.

Part C.

C1.0. Overview.

a) The industry firmly believes it is essential that the travelling public be made aware of how the systemic failure of the regulatory authority is affecting their safety, escalating the costs of providing an inferior standard of safety management and that without change, the deterioration will continue, unchecked.

- **We have been advised that a detailed comparison of air safety outcomes in the USA, versus Australia, shows Australia in a very unfavourable light.**
- **The FAA* and ICAO* audits of CASA fully support the industry conclusions.**

*Federal Aviation Authority (USA). *International Civil Aviation Organisation.

b) **The current oversight system is being subjected to abuse, by all operating companies as a matter of course,** solely to avoid CASA attention and adverse audit leading to prosecution, loss of company income and operating privileges.

c) The 'law', by definition provides for the minimum acceptable standard. The CASA 'micro management' policy is relentlessly and ruthlessly prosecuting minor, non safety related breaches of aviation law. **This practice ensures that, in self defence, only the minimum standard becomes the acceptable standard.**

(i) For simple peace of mind, operators expend their limited resources to ensure that the 'minimum' standards are seen to be maintained and that CASA is satisfied.

(ii) Operators realise that innovation, adding value, designing tailor made operational policy and managing their business in a manner which best suits their environment, is fraught with compliance peril, subject to CASA whimsy and will be discouraged, if not destroyed by policy, not law.

d) This becomes problematic when a 'sub culture' is discretely operating, subverting the company stated policy which 'satisfied' CASA. There are literally thousands of examples of this written into Company Operations Manuals within Australia.

e) This situation is amplified by a dogmatic enforcement of the 'latest' CASA policy as law. This is not conducted in an open, consultative fashion, but clandestinely by fiscal blackmail.

(i) It can take up to 12 months to have a simple modification of an Air Operator Certificate (AOC) 'approved'. The requested modification simply will not occur unless the person responsible for the operation (Business owner) accedes to the dictates of an individual officer, here again there are countless examples available.

(ii) Where the "My way or No way" approach is 'accepted', all is well until there is a change of officer, then suddenly, responding to non compliance 'paperwork' is required and essential management assets are diverted from safety related tasks in a desperate attempt to meet the 'new' compliance translation. This of itself creates safety problems by removing assets from predetermined safety oversight functions, to fight a rearguard action against a 'perceived' subjective opinion of non compliance issue. .../Cont---

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f) In summary, the industry believes it is held to ransom by whimsy, subjective individual interpretation and fear. These elements alone continue to place the public at risk. Simply put, it is much easier to satisfy CASA by meeting the minimum standards, than to provide honest, open, practical, legally compliant operating procedures which meet the operational demands of the air service being provided.

(i) Both Government and industry have a legal and moral responsibility to ensure the safety of aviation and particularly for the safety of the travelling public.

(ii) The industry strives to achieve the most efficient systems to protect its significant investments and meet regulatory compliance.

(iii) The Government meets its obligations and in part funds, at tax payer expense, the Civil Aviation Safety Authority. (CASA). In this equation, industry wide opinion is that CASA is not providing Australia with the safety oversight service required, frivolously wastes vast sums of tax payer money, deceives the Minister and achieves demonstrably inferior safety outcomes.

(iv) The negative impact of management ideology and practices of CASA are acting to provide a probable negative safety outcome which will, one day result in a serious accident.

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C2.0. A way forward.

a) No one, who has a significant investment in an aviation venture deliberately sets out to be non compliant, or operate in a dangerous manner. Pragmatically, 'illegal' operation will cancel all insurance policies, and is simply counter productive. It is essential to public safety that the rift between the two 'combatants' be bridged. Without cooperation and a sound working relationship there will, sooner or later be a major incident or accident attributable, in industry eyes, solely to CASA.

b) The Minister and the public should be able believe implicitly in the impartiality, expertise and probity of CASA. However, sadly this is not the case. Industry believes there are demonstrable examples of 'cronyism', mendacity, vindictive practice, thinly veiled contempt for industry opinion and an entrenched belief that the CASA is above the law; **indeed this very argument has been offered in a recent WA court hearing, and reiterated at proceedings in north Queensland and in the NSW Local Courts.**

c) We believe it can honestly be stated that there are several significant areas in which CASA not only breach the Commonwealth Authorities and Companies Act (1997) provisions, the Civil Aviation Act (1988), the Civil Aviation Regulation, CASA policy manuals and the CASA 'Mission Statement' but cynically, actively seek to 'hoodwink' the Minister; **and by these actions are effectively creating an unsafe, fear driven aviation environment.**

e) Policy and personal opinion is not, nor can it be law. This is an industry wide problem and almost every operator has encountered this aberration. Without, on both sides, personal probity, mutual respect, a willingness to listen and a sound understanding of both the spirit and intent of all the regulations; no matter how contradictory, complex or antiquated they may be, the danger of a 'bad' CASA policy becoming a Standard Operating Procedure (SOP) is magnified a hundred fold.

f) There are four essential elements in urgent need of reform if the responsible Minister and the incumbent Director are to have any credibility within the aviation industry:-

(i) Political will and courage to make effective changes within the constitution of CASA to provide a climate in which the regulator and industry can function under a just, open culture without fear of criminal repercussions, where intent is not proven.

(ii) Provide a CASA, under sane leadership, with industry professionals who are capable of working within industry to ensure that all operational facets are within regulatory compliance, best safety practice, operationally supportable, practical and financially realistic against the perceived safety benefit.

(iii) Provide the Authority and Industry with a regulatory suite which is legally unambiguous, may not be manipulated to present 'policy' as law and; which can easily be 'translated' into compliant operational practice.

(iv) Support active prevention of individual CASA officers from embarking on 'personal vendetta' against an individual or company combined with strict enforceable guidelines for personal accountability and probity.

C3.0. Root and Branch Reform of Aviation Regulation.

a) To be clear, by almost any definition, CASA is perceived, domestically and internationally as a failed organisation. The internationally embarrassing audits, combined with repeatedly failed attempts to reform the Australian aviation regulation suite demonstrates that the attempted removal of the dictatorial regulatory powers, which are so often the subject of misuse by employees of the Commonwealth, remains 'the' stumbling block to reform. **The industry has repeatedly been the victim of the gross perversion of the rule of law.**

(i) This perception of abuse, corruption and incompetence that the Authority has come to represent is manifested by the actions of past and present officers. Clearly by any measure this is a significant problem for the Minister.

b) Many hold a view that the only acceptable solution is that both CASA and its Board should be abolished, the current Act be repealed and the rule set of the USA Federal Aviation Authority (FAA) be adopted without delay, with minor changes only.

c) There is a general call for all current staff to be made redundant, or dismissed; to be replaced by a new organisation within a Government department.

(i) That the terms and conditions of future employees, or those returned to employment comply with the standards of the Public Service Act and they be subjected to oversight by the Public Service Commission and the Commonwealth Ombudsman.

(ii) The inspectorate, licensing and standards functions need to be separated, then placed within a framework under the control of a Government body such the Department of Transport and their roles provided for separately. This, so that the powers and inappropriate influence of one by the other is prevented, in a clear and unambiguous manner by appropriate legal statute.

(iii) The future organisation should have, by way of oversight, a permanent Industry Consultative Body, a committee made up of properly selected representatives of the Industry. This body should be given the right of veto on any decision by the regulatory body with respect to the increase in, or exercise of its powers or function as policy. **It is essential that CASA policy should not be allowed to subvert or bypass the law as writ and approved by Parliament.**

d) The new authority should be required by the Civil Aviation Act (the Act) and its charter to properly consult with industry, in a publicly accountable manner. Industry consultation in the preparation and the incorporation of any law, directive or instruction prior to issue should be clearly apparent, accountable and ensure changes are issued only in accordance with the law that provides its legislative head of power.

Part D.

D0.0. Industry Submissions.

D1.0. Introduction.

a) The Industry Petition Report is not intended be used in an adversarial or litigious manner. The published document is designed to collect and reflect the beliefs and opinions of the aviation community participating in the petition. It is not proposed that this document be used for any purpose other than voicing, freely and without fear the concerns of the participants.

b) It is important that the participants provide, where possible a submission to this part of the report. All submissions received will, if published be under a general declarative statement of opinion and anonymity.

c) It is up to the individual to decide how much detail, how many or which elements they wish to respond to, or any other issues they may wish to have included within this report. However;

Rules of Engagement: Please note:-

(i) It is vitally important that any submission provided be able to withstand scrutiny, it would be counter productive to have a submission 'de bunked', proven to be a fabrication, exaggeration or deliberately misleading.

(ii) **If** you expressly wish that your submission remain anonymous it is important that you state this fact in your submission, de identify the submission (**do not** forward any supporting documents) and, where possible, provide a simple reason for wishing it so. We (the editors) believe and expect that the majority of submissions will be made anonymously, as expressions of concern.

It is important that the 'Culture of Fear' supported by inadequate legislation and unrealistic policy is exposed for the negative impact it has on 'just culture' safety based outcomes.

(iii) **If** your submission (s) are hearsay or anecdotal then you must clearly label them as such, and indicate that the statements made are "in your opinion", or 'you believe'. etc.

(iv) Please **avoid** making personal attacks, insults or defamatory remarks. Your submission should reflect a calm, detached, pragmatic attitude, which best represents the professional concerns of the industry and the intelligence of its members.

e) All submissions received will be read, by a panel of senior industry people and where (if) required, edited; the edited version will **not** be included until the 'owner' approves any edited part.

(i) The final right to include a submission in the report rests with the editors.

(ii) Please try to limit your submission to a maximum of 5 pages, ideally 250 words per item should suffice.

D1.1. Sample Industry Response.

The following part of the report presents various headings, with examples in point format. This is not an exclusive list, concerns in any other area, within the ambit of this report will be accepted.

For example:-

My submission is anecdotal and refers to Item D2.0, CASA management of 'Administrative' actions' against companies or individuals.

I was informed by my Uncle XXXX that a size 10 CASA 'enforcer', with a long white beard woke him at 5 am on the 25th of December, 2011 and threatened him with a chook shed explosion if his chimney was not cleaned out by 0830 ESDT. He then produced a letter stating in detail that my Uncle was in clear breach of policy 362436, which referred to miscellaneous material piled up by the chook shed, which would prevent, in the event of non compliance, the destruction of said chook shed and the confiscation of the chooks, although not necessarily in that order.

Uncle XXXX attempted, after the departure of the 'enforcer', to decipher the letter. The 'facts' seemed to contradict 'evidence', so a Solicitor was contacted, After a mad dash to the bank to provide the required cash prior to service, the legal eagle eventually arrived. He carefully placed the cash into his brief case, then solemnly, with great gravitas, read through the missive. He slowly stood up, picked up his bag and walked to door, as he opened it he looked back over his shoulder and said 'Your stuffed mate', this is policy, not law'; no one can help you.

I became personally involved at this point; Uncle XXXX need a small skinny junior pilot type who could be inserted into the dark, dirty chimney and find his way, unaided to the top without a fear of height. Well, up I went into that dark place, did the job, climbed down and got rid of the mess.

The 'enforcer' duly arrived, only smelling slightly of Gin and Christmas cake, inspected the chimney and declared himself partially satisfied. "Wuz up says Uncle XXXX"; "Well" says the big guy, "I can only see a dirty kid and the first two foot up the chimney here, so, (he whipped out a calculator), I'll do a quick estimate of how much soot you should have produced to meet the minimum compliance requirements".

Well, Uncle XXXX is fine now, but I'm in jail for the next while; apparently, it was my responsibility to inform Uncle XXXX that I was not qualified for unlit chimney stacks (Strict liability offence) for concealing the evidence of my misdoings (binned the soot), fraudulently stating that I had cleaned all the chimney, while failing to prove that I had actually removed the estimated amount (dropped some on the way to the bin), not wearing a high viz jacket in a work environment and concealing my ASIC (more soot).

Perhaps the AOCS can help, no; a polly then, no. Oh well, I can't afford a Barrister, so much for my career as a chimney sweep. Perhaps I will learn to fly. Pprune is the answer, soon as I get out of here, I'm logging on.

Merry Xmas.

OK.

D2.0. CASA management of 'Administrative actions' against companies or individuals.

- The use of "legal force" in pursuing people for infringement enforcement and misdemeanours.
- Demonstration of the 'misuse' the powers (Regulations, legal resources, Exemptions. etc) available.
- The use of selective evidence, blindness to or omission of evidence that doesn't support a pre determined outcome against a company or an individual.
- Investigators protecting CASA, rather than impartially and objectively assessing the evidence presented or discovered.
- The dismissal of a pilot's legal command discretion in an adversarial manner, denying the benefit of doubt, particularly where the decisions were ultimately correct 'at the time, under the circumstances'.
- The willingness to prosecute a pilot for committing an error of judgement when "forced" by the operator, where the pilots livelihood is threatened.
- Refusal to grant indemnity for reporting a known regulatory violation.
- The use of manufactured or manipulated "evidence", to support CASA allegations under the rules of evidence in the AAT.
- Deliberate manipulation of the AAT system to protract, delay and increase the cost penalty of becoming involved in an 'administrative' hearing.

D2.1. Operational issues.

Examples:-

- The Opinions/ interpretation of operational matters, dependant on the FOI of the day.
- FOI /AWI approved process/procedure being declared non compliant then 'modified' under another FOI/AWI.
- FOI/AWI insistence on the adoption, by the protagonist of their personal methods, such as 'modified' check lists, SOP or against accepted industry practice.
- Potential 'smoking hole' issues.
- Policy has been 'enforced' over the top of legal compliance.
- Regulations are open to multiple interpretations, even within CASA.
- Inability or reluctance to support 'bone fide' safety issues brought to their attention by Senior or management pilots.

D2.2. CASA oversight of major safety issues:-

Examples:-

- Sea View. Monarch. Whyalla. Lockhart River. Airtex. Tiger Airways. Qantas. Jetstar.
- Prevention of the ACCC enquiry into the "Av Gas" Contamination.
- Delays in Serious Defect Reports (SDR) notifications.
- Improper or untimely promulgation of AD's.
- Delay in response to safety related requests from industry or individuals.

D2.3. Administrative issues.

Examples:-

- Cost and delay involved in 'doing business' with CASA.
- Difficulty of obtaining all information under Freedom of Information Act, delaying tactics and 'missing' paperwork.
- Provision of timely, accurate and useful responses to safety or legally related enquiries.
- Failure to meet the published standards of service memorandum (7-day reply).
- Lost or 'not received' communications.
- Clerical and administrative errors etc.

END REPORT.