REGULATORY FRAMEWORK

In 2001, the Civil Aviation Safety Authority's Deputy Director, Mr Bruce Gemmell, produced a report titled "***Review of Regulatory Reform Program***" which documented reasons why regulatory change had not been successful and how the purpose for change had been lost. Nothing has changed.

Gemmell's ***Review of Regulatory Reform Program*** states under "History of Regulatory Reform" the various phases since government listed the prime objective (see below) in the late 1980s for change.

- 1990 – **Harmonisation with the New Zealand Civil Aviation Regulations**
  - Director of Aviation Safety Mr Ron Cooper
- 1993 – Regulatory Structure Validation Project (RSVP)
  - CEO Doug Roser/Director of Aviation Safety Mr George Macionis
- 1996 – Regulatory Framework Program (RFP)
  - CEO/ Director of Aviation Safety Mr Leroy Keith
- 1998 – Aviation Safety Standards Division (ASSD)
  - CEO Mr Mick Toller/Deputy Mr Richard Yates
- 1999 – Regulatory Reform Program
  - CEO Mr Mick Toller/Deputy Mr Bruce Gemmell

Post Gemmell's Report

- 2003 – European Aviation Safety Regulations Harmonisation
  - CEO Mr Bruce Byron
- 2008 – Regulatory Reform Program – Application of Criminal Code
  - CEO Mr John McCormick.
- 2010 – Recreation of Aviation Safety Standards
  - CEO Mr John McCormick

Mr Gemmell clearly stated that "*repeated changes in* [CASA] *management and direction over the last decade have restricted progression of regulatory reform.*" The government's prime objective for regulatory change back in the late 1980s is still seen as the reasons for change by the industry. The prime objectives stated by the Minister in 1986 post a Parliamentary Inquiry (not a CASA Inquiry) to provide for cost effective safety system were as follows:

1986 Ministerial Statement:

The **prime objective** of the Regulations is to reduce costs to the aviation industry by:

- ***simplifying*** the previous maintenance requirements and improving safety standards by harmonisation with overseas standards;
- ***eliminating*** unnecessary administrative processes;
- ***eliminating*** unique Australian maintenance requirements unless such differences are clearly justifiable;
- ***aligning*** Australian procedures with the internationally accepted approach towards aircraft maintenance;
- ***increasing*** the flexibility for maintenance of general aviation aircraft; and
- ***correcting*** deficiencies identified in the previous maintenance regulations and Orders that have resulted in unnecessary or ambiguous maintenance requirements and practices.

New Zealand, who continued with regulatory reform when CAA changed direction, now has an aviation regulatory system that has been adopted by nearly all our Pacific trading countries. Gemmell clearly identified that CASA/CAA moved away from harmonisation with NZ at the first opportunity.

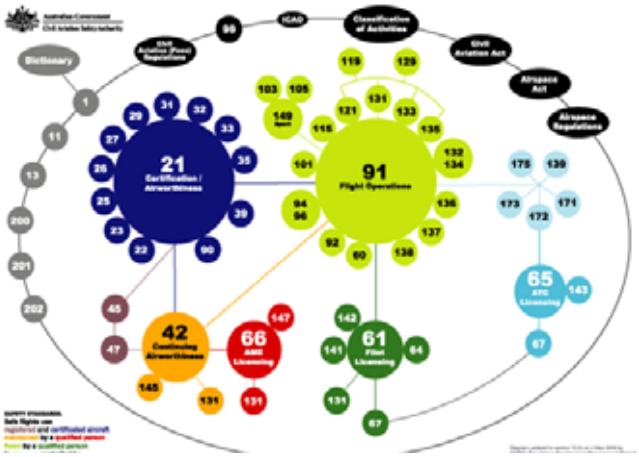
At the start of this government initiated regulatory change there was industry support to harmonise with New Zealand to reduce any differences with personnel qualifications to meet the intent of the Trans Tasman Mutual Recognition Agreement and to provide an outcome of minimal differences to achieve a Single Aviation Market not only for the airline sector but general aviation as well. Every CAA/CASA regime, since the original objectives were identified by government, has changed the objectives mainly to meet their own internal perceptions of aviation – many current proposals resurrect the requirements that caused the government review in the 1980s.

So why is aviation regulatory change so difficult? – Gemmell again answers this in an observation. "*Reasons for embarking on the complete rewrite of the regulations have become clouded over time.* [CASA] *Management has failed to consistently articulate the key objectives for the review leaving project managers with the difficult task of resolving conflicting priorities."*

The prime objectives stated by government in 1986 still exist today – regulations now being produced do not meet the original prime objectives. With no corporate knowledge left in CASA why the regulatory rewrite began, and no political corporate knowledge as to why the government wanted new regulatory requirements, the outcome will be another unique Australian regulatory system that will have a negative impact on the future of aviation, especially the non airline segment.

Another reason seen by Gemmell as a reason why the regulatory reform continues to falter is "*No one person/group* [within CASA] *has a clear understanding what the '**big picture**' is in terms of product release. Linkage between Parts, implementation and transitional arrangements.*"

The '**big picture**' has been reproduced three times by CASA's predecessors to the industry, in 1990, 1996 and 1998 by Cooper, Keith & Toller. At all other times separate CASA project managers have worked to objectives & time frames created internally by CASA. From an industry perspective, the regulatory change process has been flawed ever since prime objectives were changed. For example, Part 21 and associated Parts were made under the Keith era of CASA and the process was supported by industry. Part 91 is still to be made.



The Parts numbering is based on the Federal Aviation Regulations of the United States and the pivotal regulations in their system is Part 21 and Part 91. Without them, the individual making of any other Parts is a flawed concept. Part 21 through 35 was made in 1998 but Part 91 is still outstanding. Part 42, the other minor pivotal regulation really should not be made before Part 91 through Part 138 are made. CASA still does not prioritise regulatory change in a structured manner.

Gemmell's ***Review of Regulatory Reform Program*** report also recommended that the "*CASA Board and Executive need to provide clear and unambiguous guidance on the objectives of the program; what it is to achieve and when (ie. Timelines, quality, costs, priorities, etc.).*"

How many new CASA Executives & Boards need to repeat this process? Industry has watched the prime objectives change with every new CEO of CASA. The current direction once again does not meet the prime objectives originally set by the Minister, in 1986, post a Government initiated Inquiry.

The original prime objectives have not changed as far as industry is concerned but it is CASA that continues to change direction and objectives at great costs to government and industry. Considering the rewrite of the regulations were Parliamentary endorsed objectives, industry cannot fathom why CASA and its predecessor has to continually attempt to change the 'objectives' to a proposal that will not achieve the prime objectives provided by the Minister in 1986.

What has been missing from time to time in CASA is the direction to comply with ICAO Standards and, where necessary, Recommended Practices. CEO Leroy Keith was successful in getting Part 21 made based on US Federal Aviation Regulations (FAR) by using a process where the FAR wording was adopted with minimal changes. New Zealand used a similar approach except they based the rules on the European model for the airlines and the United States model for the non airline sector. Those in Australia that interact with New Zealand state that their system is safe and their rules are clear and concise – those that have dealings with New Zealand companies support the New Zealand aviation rules and admire their capability to do what CASA has not been able to do. The major reason is that those responsible for developing the rules were directly responsible to the Minister.

In hindsight, it is now obvious that any complete regulatory rewrite to align with the other international aviation regulatory systems should have started by a complete review of the Civil Aviation Act to comply with the International Civil Aviation Organisation's (ICAO) recommendation for the creation of a Civil Aviation Authority. ICAO provides a sample enabling Act for the creation of a contracting State's Aviation Authority. Unless CASA is correctly structured with the duties and responsibilities as recommended by ICAO, then regulatory requirements produced will not harmonise with other countries. See ICAO/FAA endorsed Model Act attached.

Recommendation: That the original objectives, as stated in 1986, be confirmed by the Minister so that the Act, Regulations and Instruments will provide the community and aviation industry with:

Efficient regulations where the total benefits to some people will exceed the total costs to others by:

- ***simplifying*** the previous requirements and improving safety standards by harmonisation with overseas standards, especially New Zealand for general aviation;
- ***eliminating*** unnecessary administrative processes;
- ***eliminating*** unique Australian requirements unless such differences are clearly justifiable;
- ***aligning*** Australian procedures with New Zealand's approach towards aircraft maintenance;
- ***increasing*** the flexibility for regulations of general aviation aircraft; and
- ***correcting*** deficiencies identified in Regulations and Orders that have resulted in unnecessary or ambiguous requirements and practices.

Regulatory and administrative changes that CASA's predecessors have imposed on the industry during this period of regulatory change have contributed to the current Pilot and LAME shortages. Past regulatory changes and structural/responsibility changes within CASA has not provided Regulations where the total benefits to some people exceeded the total costs to others. Cost benefits to the community have not been considered by CASA as they state their only concern is safety.

Gemmell clearly identified in 2001 four principle assumptions that had to be met so that regulatory reform can be completed.

1. *There will be no significant government policy changes;*
2. *There will be no [CASA] senior management changes during the reform period;*
3. *CASA resources will remain reasonably constant;*
4. *The current risk profile of the industry will remain relatively stable.*

When three out of the four 2001 assumptions have already been overtaken by government decisions, it clearly demonstrates that the ability of CASA, as a government agency, is probably the wrong body to be responsible for developing and managing aviation regulatory change. Except for a brief period of hope under the era when Leroy Keith was the CEO, all other regimes have manipulated the reasons and objectives of regulatory change to meet their own internal perceptions. The only constant over this time has been a suffering industry and local communities.

Though CASA has, as Gemmell reported, produced several statements of what CASA wants to achieve from the regulatory rewrite, they now do not state the original objectives that the government set in the 1980s to support what can be a growth industry employing many more people providing benefits for many local communities in Australia.

Nowhere in Gemmell's report, or the many other statements of CASA, has there been any consideration to the benefits to the community that aviation can provide, nor do they consider community needs when developing proposed regulations.

Glimmers of hope arise every so often when a new CASA project manager is assigned to a CASR Part and that project manager listens to the industry and community. This has happened on and off during the last twenty years of aviation regulatory rewrite but what has been produced does not look like a complete aviation regulatory system such as New Zealand, United States, Canada or Europe.

General aviation has always had a close association with New Zealand with interchange of qualified personnel – dropping the original objective to harmonisation with similar Australasian aviation regulations unnecessarily adds costs and trade with New Zealand and associated Pacific countries.

What has been clearly identified is that CAA/CASA, as an agency of government, is probably too low in the government structure to address a legislative rewrite program that affect many communities, especially Regional Australia. Gemmell's survey of selected industry Opinion Leaders and CASA staff confirmed the same objective as the government Inquiry did in the 1980s.

The government's Green and White Papers on aviation has basically identified the same issues as previously, except it missed some very important specific needs. There is no mention in the White Paper to the Trans Tasman Mutual Recognition Agreement (TTMRA) signed between the following:

> *The Commonwealth of Australia, The State of New South Wales, The State of Victoria, The State of Queensland, The State of Western Australia, The State of South Australia, The State of Tasmania, The Australian Capital Territory, The Northern Territory of Australia,* ***and***
> *New Zealand*
> *Relating to Trans Tasman Recognition principles relating to the Registration of Occupations.*

Though the White Paper does make reference to a South Pacific Single Aviation Market, there was already a signed agreement with New Zealand. Consistent with the principle is the intention to minimise exemptions and exclusions to the 'Arrangement'.

"The Governments of Australia and New Zealand:

- *reaffirming their commitment to the Closer Economic Relations (CER) Trade Agreement;*
- *acknowledging the benefits of competition to consumer satisfaction;*
- *committed to maintaining an environment in which safe, reliable, and efficient aviation services are encouraged; and*
- *recognising that the handling of services beyond each country to third countries will continue to be governed by the 1961 Air Services Agreement and understandings made pursuant to it, including the 1992 Memorandum of Understanding on Air Services Arrangements*
- *will implement the following arrangements to give effect to the creation of a single aviation market (SAM)"*

The government's White Paper states what the CASA Board has committed CASA to achieve:

> We will progress the civil aviation regulatory reform program as a priority so that our standards align appropriately with best practice international safety requirements. We are cognisant of and share concerns about the inordinate length of time that this program has taken. The Board will, accordingly, put in place an effective and timely process for completion of the regulatory reviews now underway and develop a long term process to ensure that Australia's aviation safety regulations are regularly reviewed and updated in consultation with the aviation industry so that regulatory outcomes are achieved without adding unnecessarily to industry costs.
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> The Board recognises the importance of Australia continuing to advocate aviation safety objectives through active membership of the International Civil Aviation Organization (ICAO) and participation in other international forums. CASA will maintain its commitment to the Memorandum of Understanding between CASA, the Department, and Airservices Australia on the management of Australia's ICAO responsibilities. CASA will continue to progress the establishment of bilateral aviation safety arrangements that aim to reduce regulatory duplication and provide greater market access opportunities for Australian manufacturers.

In addition the White Paper is committed to a Single Aviation Market in the Pacific Region.

> The Government is also assisting the Pacific Aviation Safety Office (PASO) – a small regional organisation based in Port Vila, Vanuatu – increase its capacity to provide targeted aviation safety and security services to smaller Pacific Island countries. Working with funds provided by AusAID, the Government is providing PASO with technical assistance to support the regional harmonisation of aviation safety and security regulations and Australia will continue to work as a member of the PASO Council.
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> The Pacific Islands Forum has spearheaded the goal of a single aviation market in the South Pacific, to be underpinned by the Pacific Islands Air Services Agreement (PIASA). PIASA is currently in force between the Cook Islands, Nauru, Niue, Samoa, Tonga and Vanuatu. Australia and New Zealand are considering accession to PIASA from April 2010. The Australian Government has previously indicated it will consult Pacific Islands governments prior to acceding to PIASA.
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> Noting the value of a renewed commitment to liberalisation in the South Pacific region, and the opportunities presented by a single South Pacific aviation market, the Government will pursue the liberalisation of Australia's air services arrangements with South Pacific countries, and will commence a process of consultation with South Pacific governments regarding the possibility of Australia's accession to PIASA.

To achieve these White Paper objectives, harmonised regulations will be needed, in particular in the Pacific region. To overcome the last two decades farcical attempt to achieve objectives and the expectations of industry, there needs to be changes to the management of regulatory change. The White Paper clearly supports a freer single aviation market in the Pacific region – industry supports adoption of the New Zealand aviation regulations for at least the airworthiness and maintenance aspects. The New Zealand aviation regulatory system is the basis of most aviation countries in the Pacific region.

Government needs to look carefully at internationally recognisable aviation legislative systems and compare it to the farcical unique regulatory structure that the industry is being asked to accept.

Ever since the regulatory reform started, mutual recognition of Australian aviation businesses by Asian Pacific countries has continued to be lost though there has been some success with the United States. Maintenance organisations have lost trade in our own region because these countries no longer recognise Australian Government aviation documents used to release parts into service.

Two decades ago, many Australian aviation businesses had access to Asian markets. Today, though there is regulatory acceptance of any ICAO contracting State's maintenance release of parts, Australian businesses are denied access to their markets. This matter is known to CASA but little has been done to address this loss of aviation maintenance markets.

Conclusion.

The logical conclusion is that the regulatory reform project, because of the potential economic benefits to various communities around Australia, should be managed by the Minister's Department of Infrastructure's Aviation Policy Division.

Regulations that are simple and easy to follow promote a higher level of understanding and increased level of compliance must be the outcome. Regulations developed in conjunction with aviation communities and industry advocates lead to widespread acceptance of the standards.

Recommendation: [to be decided]