



AUSTRALIAN FEDERATION OF AIR PILOTS POSITION PAPER

Important issues with the Civil Aviation Act Amendment Bill 2019

The Australian Federation of Air Pilots (AFAP) would like to draw your attention to the Civil Aviation Act Amendment Bill (2019), which makes some brief but far ranging amendments to the *Civil Aviation Act 1988* (Cth)¹. The AFAP supports the intent of the Bill however believes that it is at risk of facilitating unintended and adverse safety consequences.

Additionally, the AFAP believes that allowing the Civil Aviation Act amendment Bill to come into force in its present form risks an opportunity being missed, to better enhance both the safety and the financial efficiency of the aviation industry, whilst also improving the internal processes of the civil aviation regulator, the Civil Aviation Safety Authority (CASA).

A relatively simple additional amendment to the Civil Aviation Act (“the Act”) can facilitate all three of these improvement opportunities whilst simultaneously reducing the likelihood of unintended consequences. In our view, the Civil Aviation Act amendment Bill (“the amendment Bill”) must be amended rather than adopted in its present form for a variety of reasons outlined in the **annexed** *Background and analysis* document (below).

Next steps: amend the Bill

Too often cost and safety are paired off as opposing challengers in regulatory reform processes.

The AFAP pursues a modern approach to these pair of important reform and safety concerns by recognising that both are supported and improved by improvements to thoroughness and coordination. The inclusion in the Act of a requirement to consider the system of civil aviation safety as part of CASA’s key performance of function requirements is necessary to unlock greater cost efficiencies and safety risk mitigation for all aviation stakeholders.

This presents a rare opportunity to create uncontentious change and to have a broad spectrum of interested parties agree.

The AFAP requests that you consider the benefits of our proposal and pursue an amendment to the current amendment Bill consistent with our proposal.

¹ The Bill is available and can be tracked at

https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6305

Annexure 1: Background and analysis

The Australian Federation of Air Pilots (AFAP) represents over 4,500 professional pilots in aviation safety and technical matters and is the largest professional pilot association in Australia.

As a founding member of the International Federation of Airline Pilots' Associations (IFALPA), the AFAP also represents these pilots internationally with strong cooperation of over 100 international pilot associations representing well over 100,000 pilots.

Systems-approach to safety management

Aviation is a complex and dynamic safety sensitive industry where no one party or individual can maintain a watch over all of its interrelated parts. The safety of this system is reliant upon the parts of the system working with each other in a coordinated and effective manner. This is sometimes referred to as a systems-approach to safety.

If there is an error or oversight in one part (or more) of the system, other layers of the system exist to protect against an adverse safety outcome, such as an aircraft accident.

This is what is referred to as a defences-in-depth approach to safety management. Both of these require a level of thoroughness and coordination in order to maintain an acceptable level of safety with high regularity of assurance in safety critical industry systems, such as in aviation.

Systems-approach inconsistencies in the Act

The Act does not specifically require CASA to perform its regulatory development and implementation functions in a manner that considers civil aviation safety as a system. Nor does the Act require CASA to conduct its own internal functions in a coordinated or systemic manner. The Act does, however, provide a specific requirement for CASA to “promote the development and improvement of the system” and conduct “regular reviews of the system of civil aviation safety”. (s 9).

It is the view of the AFAP that the promotion of the system and the review of the system do not constitute a requirement to develop and implement regulations with specific consideration of aviation safety as a system-of-safety. Moreover, we believe that the absence of this core requirement means there is insufficient focus or accountability for coordinating reforms with industry to avoid undue burden and unnecessary cost imposts originating from a diminished coordinated regulatory reform process.

It is the position of the AFAP that reviewing and promoting an existing system are somewhat

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secondary functions to that of developing and implementing the regulations, for which the promotion and review are effectively founded upon.

We strongly believe that the development and implementation of reforms should necessarily occur in a systemic manner too.

It is our view that all aviation stakeholders, including the general public, would benefit from an amendment to the Act that requires CASA to conduct their own processes and regulatory reform functions in a manner that involves specific considerations for coordinating its functions and reforms with regard to the aspects of the system that the reforms would interact with.

Such a reform to the Act would help reduce “siloeed” decision making.

CASA’s systems-approach capabilities

The AFAP acknowledges that CASA has been able to introduce reforms which coordinate with and fit the system to which they are meant to function in a sufficient manner.

However, it is also true that there exist too many examples where CASA have clearly not performed their functions or introduced reforms in an adequately coordinated manner. It is this type of inconsistency of CASA function to which all aviation stakeholders consistently agree is a problem.

A lack of coordination effects safety and cost efficiencies

The actual process of regulatory reform can often be the wave that rocks the boat of safety assurance due to the manner of the reform development and implementation creating disconnects, deficient system interactions and reduced levels of coordination in the system.

Undue “red tape” from regulations are something to which the AFAP agrees is a worthy cause for concern and avoidance due to their effect in causing unnatural disconnects in the system with detrimental effects upon both safety and the financial efficiency of the aviation industry. The AFAP believes that the manner in which any reforms are introduced by CASA to the industry can be a real source of unnecessary cost impost upon aviation stakeholders and that these could be more readily avoidable through reform of the regulator, through an amendment to the Act.

However, the AFAP also strongly believes that it is important to make the distinction between unnecessary red tape and the necessary introduction of changes to the system of aviation safety.

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Unintended consequences of the amendment Bill

Improving our understanding of how a system works, and in turn endeavouring to address and introduce the changes to the industry as a result of the improved understanding, are important and necessary safety initiatives. The AFAP acknowledges that these changes can, at times, lead to some cost impacts borne by individuals, businesses and other aviation stakeholders. However, given the improved understanding of an identified deficiency, these costs should not be allowed to be easily dismissed or used to diminish safety initiatives beyond effectiveness but rather, they should be minimised as much as is reasonably possible.

Furthermore, as a signatory to the International Convention on Civil Aviation (Chicago Convention 1944), which created the International Civil Aviation Organisation (ICAO), Australia is required to, as far as possible, incorporate the Annexes to the Convention into Australian law, which it does through the Air Navigation Act 1920 (Cth) and other legislation. Australia has thus adopted and implements aspects of ICAO Annexes into regulation as changes to the industry, as a result of these improved understandings, and should be able to continue to do so effectively.

The AFAP acknowledges, and agrees with, the underlying philosophy of the current amendment Bill seeking to address the concerns of the industry regarding the unnecessary cost impacts to various stakeholders however, we have significant concerns that this amendment could also be a source for those seeking to stymie genuinely necessary safety reforms when there exists *any* cost impact to their interests.

To be clear, the AFAP wishes to support the current amendment Bill's consideration for costs but believes that the amendment Bill in its current form is lacking in sufficient nuance to adequately prevent unintended consequences upon civil aviation safety.

Furthermore, we believe that real improvements in the efficiency of the aviation industry, as a whole, can be achieved through a focus of considering changes and regulations with regard to the system to which they interact, due to the efficiencies gained through enhanced coordination.

Thoroughness and coordination – the positive links between safety and efficiency

The AFAP believes that if CASA was able to perform its functions with a more thorough and coordinated approach with both internal and external stakeholders, the type of cost imposts associated with the manner in which reforms are introduced, could mean that unnecessary cost impacts upon individuals, businesses and other aviation stakeholders would more readily be avoided. Furthermore, such a required focus on coordination to the system has positive benefits to the important consideration of safety.

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Annexure 2: Compilation of s 9A of the Act showing proposed Bill amendments with AFAP proposals

Example AFAP proposal for Section 9A of the Act:

In order to better enhance an improved understanding of the AFAP's position, we have provided an example draft of how it may be possible to include a systems-approach to safety into the amendment and eventually, the Act. Incorporating the "systems" discussion above need not be onerous and is likely to be acceptable to a broad range of aviation associations and organisations, many of which we have discussed this possibility with.

The amendments we propose in conjunction with the Bill would facilitate the link to safety systems we argue should underpin any amendment to s9A of the Act.

The suggestion of the AFAP is to complement our changes in blue to the present (Bill) amendments shown in red. These changes (or rather the policy and international safety related obligations they express) are necessary enhancements to the Bill amendments.

Section 9A - Performance of functions

- (1) In exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration.
- (2) Subject to subsection (1), CASA must exercise its powers and perform its functions in a manner that ensures that, as far as is practicable, the environment is protected from:
 - (a) the effects of the operation and use of aircraft; and
 - (b) the effects associated with the operation and use of aircraft.
- (3) Subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9(1)(c), CASA must:
 - (a) consider the economic and cost impact on individuals, businesses and the community of the standards; and
 - (b) take into account the differing risks associated with different industry sectors; and
 - (c) take into account that civil aviation is a system of safety.

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