

**AUSTRALIAN GOVERNMENT**

**DEPARTMENT OF INFRASTRUCTURE AND  
REGIONAL DEVELOPMENT**

**AVIATION SAFETY REGULATION REVIEW**

**SUBMISSION BY**

**REGIONAL EXPRESS HOLDINGS LIMITED**



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## **ABOUT REGIONAL EXPRESS**

Regional Express (Rex) is Australia's largest independent regional airline operating a fleet of more than 50 SAAB 340 aircraft on some 1,300 weekly flights to 35 destinations throughout New South Wales, Victoria, Tasmania, South Australia and Queensland. The Regional Express Group comprises Regional Express, air freight and charter operator Pel-Air Aviation, Dubbo-based regional airline Air Link and the Australian Airline Pilot Academy.

## **EXECUTIVE SUMMARY**

Whilst recognising that the Aviation Safety Regulatory Review encompasses all those government agencies involved with aviation safety, Rex will concentrate its submission on CASA. Rex feels that there are significant problems with regard to the lack of oversight of CASA, the spectacular failure of its regulatory reform programme, its poor relationship with industry, its disregard of the negative productivity impact of new regulations and its preoccupation with compliance over safety outcomes.

The Australian Government's handbook on Best Practice Regulation states that stimulating productivity remains at the forefront of government policy. It also states that the centrepiece of the Government's best practice legislation is a Regulation Impact Statement (RIS) that is mandatory for all decisions made by the Australian Government and its agencies that are likely to have a regulatory impact on business. Given CASA's blatant disregard for its regulatory impact on productivity and the inadequate or non-existent RIS that accompanies each regulatory proposal, CASA is clearly not following this process but is seemingly a law unto itself.

The resulting increased cost to industry without any demonstrated safety benefit is felt to be a significant factor in the declining regional aviation sector. The regulatory barriers for entry into this part of the aviation industry are now almost insurmountable.

CASA has not met the expectations placed upon it by the 2003 Ministerial directive issued in regard to its Service Charter. As a result the relationship between CASA and the aviation industry has deteriorated to the point where it could compromise safety outcomes. The considerable increase in regulatory compliance costs is itself a threat to safety as smaller operators struggle to find the resources to cope with these demands while at the same time carrying out their core function of maintaining an efficient and safe operation.

The specific concerns of Rex relate to a lack of meaningful consultation in the regulatory reform process, the failed regulatory reform program, the attack on 'Just Culture', CASA's chronic internal inefficiencies and dysfunction and the poor relationship between industry and CASA.

The consultation process is cumbersome and resource intensive. The Standards Consultative Committee is not always representative and is not transparent to the wider industry. Discussion Papers and Notices of Proposed Rule Making are conducted within unrealistic timeframes and without specific feedback to respondents.

The 25-year regulatory reform program has become disjointed and lacks direction. There now seems to be an imperative to get new regulations promulgated at any

cost, with the last three years in particular seeing significant quantities of proposed new legislation. The new legislation is not harmonised with international regulations and some rule changes do not have a sound basis in evidence showing improved safety outcomes. The overly prescriptive nature of parts of the new regulations is not consistent with safety outcome based legislation. At a time of declining yields and profit in the industry, Rex has had to devote extensive resources to manage this programme without any evidence of a commensurate increase in safety.

The push by CASA to gain unrestricted access to all reports made to the ATSB and to operators' SMS databases threatens to destroy the safety reporting culture that is fundamental to a modern safety system. The concept of Just Culture should be maintained and protected. CASA's stance that it can take administrative action, such as the suspension or cancellation of a pilot's licence, on the basis of an SMS or ATSB report, is in effect punitive action and must not be allowed. Rex strongly feels that the current system of information sharing between the ATSB and CASA works well and should be retained. Rex also feels that legislation is needed to protect company SMS databases from CASA administrative action.

There is no doubt that the relationship between CASA and industry has deteriorated. This has the effect of inhibiting the flow of information between CASA and industry essential for good safety outcomes.

To cap it all, CASA itself is extremely inefficient and disorganised, creating a huge impost on industry.

## **1. CASA SERVICE CHARTER**

In 2003, the then Minister for Transport and Regional Services, the Hon John Anderson, sent CASA a letter setting out a Service Charter. In the letter, the Minister said:

*A good regulator will communicate and consult extensively with stakeholders. Its decisions will be consistent and predictable, based on transparent processes. A good regulator will demonstrate fairness, good judgement, and be flexible and responsive to the changing environment in which the aviation industry operates. It will be effective, efficient, and timely in its operations, and will be accountable for its actions. In the provision of regulatory services, CASA must provide a high level of client service, and treat clients with consideration and courtesy. Finally, it will be independent, enforcing Civil Aviation Regulations as deemed appropriate, while bearing in mind these standards of behaviour.*

Rex feels that CASA has failed this charter.

CASA instituted a service delivery standard in 2006 guaranteeing minimum turn around times for services to industry and tracked this as a performance indicator in its annual reports. However this was seemingly abandoned in 2009 with no further mention of service delivery standards on the CASA website.

## 2. CONSULTATION IN THE REGULATORY REFORM PROCESS

CASA conducts its consultation through a number of processes:

1. Informal consultation through its Standards Consultative Committee;
2. Informal consultation by way of Discussion Papers during the process of legislative development; and
3. Formal, public consultation through the Notice of Proposed Rule Making (NPRM) process.

Rex considers that all three processes are flawed in their execution, which diminishes the effectiveness of the rule making process.

### 2.1. Standards Consultative Committee

The CASA Standards Consultative Committee (SCC) is the focal point for regulatory consultation with the community, including the aviation industry. Rex considers that the SCC lacks transparency because its discussions are held in private with no report of proceedings or outcomes made to industry.

Membership of the SCC is available by application to CASA, but there are no published selection criteria for applicants to address, leaving membership entirely at the discretion of CASA. This selection process, which relies on applications, favours employee interest and other lobby groups, rather than industrial organisations and businesses. Of the 38 members of the SCC, only four are airline operators, but there are five trade unions/labour groups represented.

Rex considers that the selection process should be more deliberate. CASA should actively seek the membership of prominent organisations on the SCC. By taking a more controlled and considered approach to the SCC membership, CASA can ensure a balanced membership that represents all facets of the aviation industry.

### 2.2. Deadlines for Submissions.

Discussion Papers (DP) and Notices of Proposed Rule Making (NPRM) are increasingly issued with insufficient time for industry to respond. The following are examples from the last 12 months:

- **CAAP 235A-1** regarding the minimum runway width requirements for multi-engine aeroplanes. CASA released an exposure draft for comment on 24 May 2013 with the closing date for submissions being 21 June 2013; a period of four weeks. The subject matter of proposed CAAP 235A-1 is highly technical, and required careful consideration of its potentially far reaching effects on operations. It was inappropriate that a period of just four weeks was given for responses to the exposure draft.
- **CAAP 235-2(2)**. A draft of CAAP 235-2(2) in relation to carriage and restraint of small children in aircraft was published on 28 October 2013 with a deadline for submissions of 11 November 2013; a period of only two weeks to respond.

- **NPRM 1202OS** regarding a new CAO 48.1 imposing revised requirements for fatigue management for flight crew members. The NPRM was released for comment on 1 May 2012 with a deadline for submissions of 12 June 2012; a period of six weeks. Considering this Order and its predecessors have been in force for over 50 years and it is such an ingrained component of rostering and crew scheduling, a six week timeframe is bordering on farcical. This irresponsible timeframe did not allow operators adequate time to digest the operational and cost impact, which to Rex amounted to approximately \$1.5 million p.a.

Rex considers these timelines to be unrealistic and considers that CASA should mandate a sixty day response time.

### **2.3 Lack of CASA Feedback**

In recent times, Rex has made submissions in relation to the following DPs, exposure drafts and NPRMs:

- Exposure Draft of CAAP 235A – Multi-Engine Aeroplane Minimum Runway Width;
- Exposure Draft of Manual of Standards Part 61 – Flight Crew Licensing;
- NPRM 1213CS – Addition of Safety-Based Requirements for Hardened Cockpit Doors; and
- NPRM 1202OS – Fatigue Management for Flight Crew.

Rex has not received any specific response from CASA in relation to any of the above submissions. Rex devotes considerable time and resources to industry affairs and the regulatory reform process and finds it most disappointing that CASA does not devote similar resources to providing feedback to industry respondents on their submissions. The CASA Service Charter refers to extensive consultation, and it must be appreciated that providing feedback is an important part of an effective consultation process.

Rex recommends that CASA provide specific feedback to each respondent when it formally requests industry feedback.

### 3. THE CASA REGULATORY REFORM PROGRAM

The regulatory reform program commenced with the introduction of the *Civil Aviation Act 1988* meaning that the process has been ongoing for more than 25 years. A key part of the regulatory reform process is harmonisation with international regulations which in most cases has not occurred.

An example of this is the recent NPRM 1213CS in relation to hardened cockpit doors, in which the proposed CASR 90.810(2) does not concur with FAA policy ANM 01-115-11 upon which the NPRM change proposal (3.4.2) was based.

The regulatory reform process has been mismanaged by CASA. Some recent examples are:

- **CASR Part 61 – Flight Crew Licensing.** For the proposed CASR Part 61, CASA released a Manual of Standards which was over 600 pages in length. This was excessive, unnecessary and unduly burdensome. Rex provided comment on the Manual of Standards (MOS) as requested by CASA, noting that components and reference material were not completed, including the Flight Examiner's Manual and Flight Examiner's Standards. Furthermore, there was no Acceptable Means of Compliance provided. This lack of clarity and omissions from the MOS contributed to CASA having to delay the implementation of CASR Part 61 until September 2014. Significant cost, time and effort were invested in preparation for CASR Part 61. Whilst much of that expenditure will not be wasted if the regulations come into force in September 2014, there will be additional costs incurred due to the delay, especially if there are amendments made to the proposed regulations in the meantime.

Rex feels that CASA should have a policy setting out guidelines for when it issues an Acceptable Means of Compliance in relation to a CASR.

- **Airworthiness Directive AD/INST/9.** In November 2011, Rex responded to an NPRM on the subject matter of Airworthiness Directive (AD) AD/INST/9 supporting the proposed change to remove the AD and replace it with CAO 100.5. In June 2013, the AD was repealed with no advance warning other than the weekly email from CASA regarding ADs. This AD was embedded in the approved maintenance program and system of maintenance for Rex Group fleets, and so required significant changes to operational manuals. Advance notice through proper channels would have made this transition more efficient.

The Office of Best Practice Regulation (OBPR), in the Department of Prime Minister and Cabinet, has published a handbook of guidelines [Dept of Finance and Deregulation, July 2013] for Australian Government agencies involved in regulatory reform. Any agency that introduces new rules that may have a regulatory impact on business must first produce a RIS as part of the regulatory process. The OBPR must be notified and the agency is required to publish an Annual Regulatory Plan. It appears that CASA does not comply with any of these OBPR mandatory guidelines.

Rex has not received a RIS for all NPRMs. One was received for the new CAO 48.1 which Rex found to be inadequate and against which it made a submission. Rex did not receive a reply.

CASA does refer to an Annual Regulatory Plan on its website but essential information is lacking. The OBPR handbook under 'Expected Timetable' says:

*This field should include information about the estimated timetable for major stages and milestones in the development of planned regulation such as:*

- when reviews are scheduled to commence and conclude;*
- when public consultation will commence and how long the public consultation period will be;*
- when policy approval is to be sought; and*
- when it is proposed to introduce regulation into the Parliament.*

CASA does not comply with these provisions and often the first indication to industry of a new rule is the sudden arrival of a DP or NPRM with an inadequate deadline.

CASA should provide information in relation to its regulatory reform projects that complies with the OBPR guidance. Such information would allow industry to plan for when new regulations will take effect, and also to consider responses to requests for submissions in advance.

### **3.1 Costs Incurred by Operators**

Regulatory reform comes at a high cost to industry which has a negative business impact on operators, particularly at a time when industry revenues and margins are dramatically falling. CASA needs to consider the impact on productivity of its new regulations and must therefore demonstrate an evidence based cost/safety case to justify the introduction of costly new regulations.

CASA does not do this as shown in the following examples:

- **CASR Parts 42 and 145.** Rex has established a Continuing Airworthiness Management Organisation (CAMO) in accordance with CASR Part 42 and in fact was the first airline in Australia to do so. This was done at a substantial start up cost and involved the employment of additional staff to set up and manage the CAMO.

The CASR Part 145 organisation was established within a constrained time frame to comply with the strict deadline imposed by CASA. This strained available resources and imposed extra costs.

The implementation costs of CASR Parts 42 and 145 together amounted to \$420,000 for Rex, predominantly due to increased labour required during the implementation period. The ongoing costs of maintaining compliance with CASR Parts 42 and 145 amount to \$243,000 p.a. including the two new full-time positions of a Training Manager (Part 145) and a Continuous Airworthiness Review Manager (Part 42).

Rex is not satisfied that there is a cost/safety case to justify this considerable extra expenditure.

- **CAO 48.1.** The RIS that accompanied the Notice of Final Rule Making for the new CAO 48.1 estimated that for a large business, such as Rex, the upfront cost of developing and implementing a Fatigue Risk Management System (FRMS) would be \$250,000, and the ongoing costs would be \$100,000 p.a. Rex questions these figures and believes the cost will be far greater.
- **NPRM 1213CS.** Following the introduction of the *Aviation Transport Security Act 2004*, Rex procured and installed Hardened Cockpit Doors (HCD) in accordance with the aviation security regulatory framework. Rex installed HCDs in its entire SAAB 340 fleet, and the installation process was undertaken with CASA oversight. Last year, the NPRM 1213CS was released, proposing additional requirements to those stipulated at the time of original aircraft fitment. Rex has completed a cost analysis for the installation of an electrical emergency unlock feature (remote access switch) to its SAAB 340 fleet and estimates a capital expenditure in the order of \$1 million. These additional costs and proposed regulations are not accompanied by a RIS. Rex does not believe this expense is justified considering the safety case CASA has presented.

Rex recommends that all regulatory reform projects are subjected to a published RIS in accordance with OBPR guidelines.

### **3.2. Safety Outcome Based Regulation**

It is understood that one of the aims of the regulatory reform program is to enact safety outcome based regulations rather than prescriptive regulations. Rex supports the concept of safety outcome based regulations but unfortunately does not always see this carried out in practice. For example, the proposed amendment to CAR 235A effectively removes the ability for CASA to facilitate air operations where equivalent levels of safety can be achieved. It does this by prescribing the method of compliance rather than the safety outcome required.

The new CAR 235A will require operators using runways narrower than the arbitrary default standards set by ICAO to have procedures for the use of narrow runways set out in both the aircraft's Aeroplane Flight Manual (AFM) and the operator's Operations Manual. If the manufacturer does not supply the necessary narrow runway certification then the operation is prohibited. For the Rex operation, SAAB has indicated they will not engage in further flight testing to gain narrow runway operation certification to comply with the ICAO aircraft reference codes (ARC). The SAAB AFM does currently make provision for narrow runway operations, however they are not in accordance with the mandated requirements of the CAAP and therefore not acceptable under the proposed new CAR 235A. The new rule will prohibit Regional Express Airlines, Pel-Air Aviation and Air Link from operating into airports with narrow runways thus denying essential air services to some remote regional communities.

For Rex, this will prevent operations to Coober Pedy where it and Kendell Airlines have operated continuously since 23 August 1986. Coober Pedy Airport has a 30 metre wide runway with a homogenous 18 metre sealed centre section and to date CASA has seen fit to issue Regional Express with an exemption (CASA Instrument EX37/12) from the requirements of the current CAR 235A. The new prescriptive CAR 235A will remove CASA's ability to issue such exemptions in the future and will prevent Rex from operating to Coober Pedy after the exemption instrument expires on 28 February 2015. This is despite more than 27 years of demonstrated safe

operations. Coober Pedy Airport has applied to the Commonwealth Government for funding to widen its runway but this has been refused by the Department of Infrastructure and Regional Development (see attachment A).

If regional operators are unable to operate into Coober Pedy, there will be a significant economic and social impact on the District and its 3,500 residents. It is a remote rural centre being 8.5 hours from Adelaide by road. The consequences of it losing its air service could have been highlighted by a RIS.

The application of CAO 82.3 demonstrates another example of CASA's preference for prescriptive rules. Paragraph 8.3 of the Order sets out the minimum experience requirements for pilots of aircraft in low capacity RPT operations, however Paragraph 8.5 enables CASA to vary these requirements where an equivalent standard of skill and knowledge is achieved. When approached with a request under Paragraph 8.5, CASA advised they were unwilling to exercise discretion in this regard due to the political environment relating to the increase in pilot experience requirements in the United States. It is therefore surprising that CASA was unwilling to consider, even in principle, a request to apply the new United States Federal Aviation Administration requirements to CAO 82.3.

### **3.3. Evidence - Based Rules**

Rex maintains that the formation of new regulations must be accompanied by a sound, evidence-based cost/safety analysis. This is also in accordance with Government policy as laid out in the OBPR guidelines. CASA does not do this.

In the RIS relating to CAO 48.1, fatigue management for flight crew, CASA states:

*It is difficult to quantify the likely reduction in the fatigue-related accident risk. Indicative international evidence suggests that the proposed option will generate safety benefits.*

When formally queried as to the lack of scientific evidence to justify expensive changes to flight crew work and rest rules CASA's reply contained this extraordinary statement:

*Data received from the ATSB suggests that there have been approximately 78 incidents/accidents in the last 10 years in which human fatigue could have been a factor. Some of these occurrences have been in the RPT sector of the industry. [Emphasis added.]*

CASA did not supply any scientific data to indicate that there is a fatigue problem in regional airline operations in Australia or that the new regulations will deliver improved safety outcomes.

The new CAO 48.1 provides six sets of prescriptive rules to manage fatigue in flight crews. For Rex, these new prescriptive rules reduce productivity and if adopted will add approx \$1.5m p.a. to our costs. The new rules were promulgated without any scientific evidence to support them.

CASA's proposed new CAO 48.2, fatigue management for cabin crew, contains a prescriptive requirement to provide a meal break every 5 hours whilst on duty. This was not supported by WHS requirements or other evidence. If introduced, this will require Rex to employ an extra 24 Flight Attendants at a cost of \$1.3m p.a. based on its current schedule

CASA currently has a requirement under MOS 139H for airports to have an Aviation Rescue and Fire Fighting (ARFF) service whenever passengers reach the prescriptive number of 350,000 p.a. This is in contrast to CASA's Office of Airspace Regulation which takes a purely risk based approach to the provision of Air Traffic Services at airports rather than using a prescriptive trigger of a certain number of passengers. Currently five regional airports are approaching the figure of 350,000 passengers p.a. and Airservices Australia will be forced to introduce ARFF services at those airports at a cost to industry of \$58.9m. Industry has long argued for a scientific evidence-based approach to the provision of ARFF but this has fallen on deaf ears at CASA.

Rex maintains that the evidence of improved safety outcomes that forms the basis for any regulatory change should be set out in the Notice of Final Rule Making.

#### **4. INCONSISTENT REGULATORY INTERPRETATION**

CASA has long been renowned for inconsistencies of interpretation of the regulations between different CASA staff and offices. This problem is not a product of current CASA management and has been acknowledged to industry by successive CASA CEOs but has never been rectified.

Some examples that Rex has experienced are as follows:

- **Interpretation of Simulator Approval**

In the early days of Rex its AOC was placed in the care of the CASA Melbourne Airline Office. At this time it applied for and was granted approval to conduct Metro type ratings in the simulator. Prior to this, Metro type ratings had been done in the aircraft. As the simulator available to Rex did not have full visual displays the programme included some work in the aircraft, being two-engine visual circuits and stall recovery. All asymmetric work was done in the simulator.

The Rex AOC was subsequently transferred to the CASA Sydney Airline Office (SAO) and underwent an AOC audit in October 2004 which examined Metro Command Type Ratings. The Sydney audit team determined that asymmetric take offs ('V1 cuts') could not be performed in the simulator and declared they must be done in the aircraft and that all command endorsements done under the CASA approved Metro simulator type rating programme were invalid. The issues revolved around two different CASA interpretations of what constitutes a take off and therefore whether the simulator was accredited for this exercise. It was elevated to the SAO Manager and the CASA CEO at the time. The issues were eventually resolved but placed Rex in an awkward position as it had Metro Captains conducting line operations that CASA claimed did not have valid type ratings. Fortunately, Rex was not forced by CASA to carry out asymmetric training in the aircraft, which would have lowered standards and decreased safety.

- **Interpretation of Maintenance Approval**

After the acquisition of Pel-Air by Rex in 2006, it was decided to introduce SAAB freighter aircraft into the Pel-Air freight operation, and 3 A-model SAAB 340s were consequently converted to freighter configuration. Additionally, Pel-Air procured a mining contract that required the exclusive use of two SAAB 340s based in Townsville. Rather than set up a separate maintenance control function under the Pel-Air system of maintenance for these 5 aircraft, it was decided to sub-contract their CAR 42 function to Rex and have them administered under the Rex RPT maintenance control system. Given the Rex's expertise and history of operating a large fleet of SAAB 340s in RPT operations for many years, Rex felt this would provide a safety benefit and of course reduced duplication of resources. There was precedent for this type of contract as it was patterned on the arrangement that existed at the time between Qantas and Air Pacific for the operation of its Boeing 747.

The Pel-Air AOC was under the care of the CASA Bankstown office and the Airworthiness Inspector responsible refused to approve the application as, under his interpretation of the regulations, he found it to be illegal. This was despite a personal visit from the SAO Team leader (Airworthiness) to show him how it had been done for Qantas. The SAO firmly believed the application to be legal. The matter was elevated to the CASA CEO and senior management and eventually resolved after several months. Fortunately, the Rex Group was not forced by CASA to set up a

separate SAAB 340 maintenance control function in Pel-Air, which would have decreased both efficiency and safety.

- **Interpretation of Reporting Requirements**

In May 2012 as part of its AOC audit Rex received a Non Compliance Notice which included a finding that there was a lack of consultation between Rex and aerodrome operators. Under instruction from the lead auditor, Rex sent a letter to aerodrome operators requesting certain information. Several aerodrome operators refused to supply the information requested and stated that they had been told by their CASA Aerodrome Inspector that they did not need to supply it.

Rex was therefore placed in the position where it had the CASA lead auditor telling it that there was a requirement to obtain more information from aerodrome operators and a CASA aerodrome inspector telling the aerodrome operators not to supply it. In the event, the CASA internal contradiction was resolved although Rex still does not receive reports from all aerodrome operators.

- **Interpretation of Pilot Maintenance Approvals**

There are differences between what has been approved by CASA in the Rex CAMO exposition and what has been approved for other CASR Part 42 operators. Rex is aware of a regional operator managed by a different CASA office that is not allowed to include in its exposition the ability for flight crew to defer non airworthiness defects and Minimum Equipment List defects discovered while operating an aircraft. The Rex CAMO exposition allows this to be carried out.

Another example occurred within the Rex Group. CAR 42 allows for pilot maintenance if approved in the system of maintenance. The system of maintenance regulations do not have a specific list of pilot maintenance items for class A aircraft and this is left to the discretion of the approving authority within CASA, with the proviso being that the aircraft must be adequately maintained. The CASA Bankstown office approved Pel-Air pilots to carry out SAAB 340 LC1 inspections whereas the CASA Sydney office would not approve Rex pilots to carry out exactly the same inspections.

In this example we had a difference between two CASA offices on what pilot maintenance could be carried out on the same type of aircraft under the same system of maintenance and operating under the same pilot operating manual.

- **Interpretation of Requirements under the Rex PICUS Programme.**

In September 2011, Rex submitted and had approved an exposition for its Pilot-in-Command Under Supervision (PICUS) Programme to allow its cadets to qualify for command. Specifically, this was to enable in-house compliance with CAO 82.3 which requires the pilot in command to have 500 hours multi-engine command experience. This requirement does not exist for high capacity operators under CAO 82.5. Without the PICUS Programme, Rex would have to abandon the cadet programme and source external Captains, which is not always possible. Rex believes there is a safety benefit in a well-run cadet programme and associated PICUS Programme.

In the AOC audit for 2012 Rex received an Observation claiming that pilots logging time under the PICUS must be under the supervision of a specially trained and appointed Captain and could not log PICUS time with a normal line Captain. This

was contrary to the exposition approved in the previous year by the SATFO Team Leader (Operations) and the SATFO Flying Operations Inspector assigned to Rex and would impose an unnecessary burden on the PICUS Programme.

## 5. JUST CULTURE

Just Culture is now well established as a fundamental part of any mature safety management system and is designed to foster a healthy safety reporting culture by preventing the taking of punitive action against anyone making a safety report, except in cases of wilful or deliberate contravention of the law or for gross negligence.

In Australia, Just Culture is protected by the *Transport Safety Investigation Act 2003* (TSI Act) supported by the *Transport Safety Investigation Regulations 2003* (TSI Regulations). These instruments prevent information provided in the course of a safety investigation from being used in legal proceedings or being the subject of punitive action by CASA. They do not protect safety information contained within an operator's SMS database.

CASA's push to have the TSI Act amended to allow access to all safety reports provided to the ATSB, plus its insistence on having unrestricted access to company SMS databases threatens to destroy the concept of Just Culture in Australia and consequently the healthy safety reporting culture essential to an effective SMS. The removal of the term Just Culture by CASA in proposed amendments to the MOS 145 is equally concerning.

CASA internal documents obtained under the *Freedom of Information Act 1982* show that they class any action taken on the basis of a safety report to be administrative rather than punitive and therefore not against Just Culture. This is nonsense. Action such as the variation, suspension or cancellation of a civil aviation licence or authorisation is by its very nature punitive no matter what it is called.

In a working paper of the 37<sup>th</sup> Session of the International Civil Aviation Organization (ICAO) Assembly, it was stated that:

*In many cases, however, administrative proceedings are initiated by the aviation safety regulator solely in the interests of safety; that is, for the primary purpose of preventing (or minimizing the likelihood of) an accident. To achieve this purpose, the most suitable administrative action may involve the variation, suspension or in some cases even the cancellation of a person's civil aviation authorization. This is certainly the case in Australia.*

This working paper extract reinforces the fact that CASA regards any information it receives as a potential basis for administrative action. The TSI Regulations should be amended to afford protection to any information provided for safety purposes. Protection similar to that currently provided for voluntary reporting under the TSI Act should be applied to reports contained in an operator's SMS database, preventing their disclosure to CASA.

## 6. INDUSTRY RELATIONSHIP WITH CASA

This has deteriorated in recent years. CASA seems preoccupied with acting as a 'Big R' regulator rather than working in partnership with industry to achieve better safety outcomes. The amount of enforcement activity has increased while the service delivery standards established in 2006 are no longer applied.

Examination of CASA annual reports show a strong upward trend in the number of infringement notices issued by CASA.

FY	05	06	07	08	09	10	11	12	13
Notices	79	107	109	146	153	171	135	197	190

The CASA Service Charter says, in part:

*A good regulator will demonstrate fairness, good judgement, and be flexible and responsive to the changing environment in which the aviation industry operates... CASA must provide a high level of client service, and treat clients with consideration and courtesy.*

Rex is of the view that CASA is not fulfilling its obligations with respect to client services. As an example, there has been a lengthening of the processing time for aircrew medical certificates leading to periods when pilots are unable operate aircraft. Over the past year Rex has lost 20 pilot days as a result of the late renewal of aircrew medical certificates.

The CASA approved Rex Group Audit Manual provides at section 2.2.4:

### **2.2.4 Third Party Supplier/Contractor Self Assessment Review and Reminder.**

*Self assessment forms are distributed to each supplier/contractor via email or posted via mail biennially. Once returned, the completed forms are reviewed, the supplier/contractor is risk rated and the relevant "Third Party Suppliers Register" is updated.*

CASA is a supplier of regulatory services and accordingly was requested to complete a Third Party Self-Assessment Review form. CASA denied the request on the grounds that the services it provides to Rex are in accordance with its statutory obligations, and are not subject to contract. Rex considers that the regulatory services functions of CASA are the same as any other supplier and should be subject to the same scrutiny. In some cases services have been contracted out by CASA to third parties where they are then subject to audit.

The relationship with CASA presents a significant business risk for the Rex Group and it is only prudent that Regional Express should seek to scrutinise the internal processes of CASA to ensure they comply with its statutory obligations and requirements.

Alternatively, CASA should be subject to scrutiny from an independent body. CASA's Industry Complaints Commissioner is a part of CASA and reports directly to the Director so cannot be considered independent. Rex believes that CASA should be oversighted by a specialist Ombudsman similar to those that exist in other industries such as telecommunications.

## 7. SUMMARY

The general industry perception is that CASA is badly in need of structural reform and as a result this safety review is warmly welcomed by Rex. Rex sees the following issues as requiring critical attention:

- **Lack of oversight and governance:**

The CASA Board is seen as ineffectual and out of touch. It is too small and lacks the expertise to properly oversight CASA. This has the effect of allowing the Director of Aviation Safety to run CASA without any safeguards or proper accountability. CASA should be subject to proper governance either through the Department or through a properly reconstituted board.

- **Failed Regulatory Reform Programme:**

This has been a sorry saga for over a quarter of a century now and is beyond any quick fix. The Regulatory Reform Programme should be taken out of CASA and administered by the Department. At the very least it should be placed under the Department's strict oversight. Regulations are a reflection of Government policy which is the prerogative of the Minister and his Department. Allowing CASA to formulate regulations can allow it to make de facto Government policy

- **Failure to follow best practice regulatory reform:**

Wherever future regulatory reform takes place it should be done in accordance with the mandatory guidelines laid down by the Office of Best Practice Regulation (OBPR). CASA is thumbing its nose at this process. Properly following the guidelines will give effect to stated Government policy of increasing productivity where possible and formulating regulations with an evidence based process. The requirement to publish a RIS for new regulations that impact business must be enforced.

- **Failure to harmonise regulations with overseas rules:**

Despite this being a key part of the regulatory reform process CASA has ignored it to the detriment of international trade. Europe has adopted a harmonised set of regulations as has the South Pacific while Australia stands alone with its ever more complicated and bureaucratic set of rules. The Single Aviation Market between Australia and New Zealand has not eventuated due to a lack of harmonisation despite clear direction by successive Ministers of Transport from both Governments to formulate a common set of regulations. The OBPR handbook states that it is government policy to increase international competitiveness through regulatory reform. Future reform must address the issue of harmonisation.

- **Lack of meaningful consultation:**

CASA does not carry out effective consultation with industry and future reform must address this. Consultation forums need to be representative and transparent and reasonable deadlines must be allowed for submissions. Feedback should be provided to all submissions rather than just having them ignored.

- **The attack on Just Culture:**

CASA's attempts to obtain unrestricted access to ATSB safety reports and to operators' SMS databases to allow it to take 'administrative' action against those providing safety reports threatens the healthy reporting culture vital to an effective SMS. CASA have attempted to push these changes at ICAO which Rex sees as an example of CASA making de facto government policy. Despite its claims CASA is out of step with international practice. The policy on safety reports and any associated amendments to the TSI Act should be administered by the Department. Rex recommends that protection of SMS databases be provided for in future regulation.

- **Poor Relationship with Industry:**

CASA seems no longer to be interested in building a partnership with industry in order to achieve the mutual goal of better safety outcomes. Its approach is often adversarial and the number of infringement notices it issues has increased markedly in the past 5 years. Its Service Delivery Standards have been abandoned and regulatory services can now take an excessive time at a cost to industry. The CASA Service Charter needs to be reinstated.

- **Safety Based Outcomes:**

CASA has given lip service to safety based outcomes many times in the past but at the field officer level it is firmly focussed on prescriptive surveillance and compliance over safety outcomes. CASA audits are unique in their attention to paperwork compliance and new CASA regulations are too prescriptive. CASA needs to re-focus on achieving safety based outcomes.

- **Inconsistency:**

CASA is notorious for inconsistent interpretation and administration of the regulations between its different field offices. This is a problem acknowledged by more than one CASA Director but none have been able to achieve any improvement. One problem is the seemingly excessive authority given to field office delegates who often seem to be a law unto themselves. CASA must somehow achieve more consistency between delegates or provide better avenues of appeal for the industry.

- **Inefficiency and Disorganisation:**

Day to day dealings with CASA can be frustrating as, like many bureaucracies, it suffers from inefficiencies and disorganisation. Too often a task is only performed expeditiously through the efforts of an individual rather than the workings of the CASA system. Industry has no choice but to rely on CASA's Regulatory Services and it is critical that they are performed in the same manner and accountability as other industry service providers.

- **Accountability:**

The CASA ICC is ineffective by virtue of the fact that it is not independent and reports to the Director of Aviation Safety. There is therefore no real avenue of appeal for industry to contest unfair CASA decisions. Rex recommends that an independent umpire be set up along the lines of the telecommunications ombudsman or similar.

## 8. RECOMMENDATIONS

Rex offers the following recommendations for consideration:

1. CASA should be subject to proper oversight and governance, either through the Department or through a properly reconstituted board with members possessing comprehensive aviation knowledge and experience.
2. The Regulatory Reform Programme should be taken from CASA and administered by the Department.
3. Future regulatory reform should be done in accordance with the mandatory guidelines laid down by the Office of Best Practice Regulation.
4. The requirement to publish a Regulatory Impact Statement for new regulations that impact business must be enforced.
5. Future regulatory reform must address the issue of harmonisation with international rules.
6. Consultative Groups for new regulations need to be more representative.
7. Deadlines for submissions to Discussion Papers, Notice of Proposed Rule Making and other consultative documents should be at least 60 days and feedback should be provided by CASA on all submissions.
8. The policy on access to safety reports by the regulator and any associated amendments to the *Transport Safety Investigation Act 2003* should be administered by the Department and not CASA.
9. Protection of Safety Management System databases should be provided for in future regulation, specifically in CASR Part 119.
10. The CASA Service Charter needs to be reinstated and enforced.
11. CASA must be made more accountable through the establishment of an industry ombudsman. Alternatively the Department could play this role.