



## **INDEMNITY AND INSURANCE ARRANGEMENTS – *Department of Infrastructure and Regional Development and Civil Aviation Safety Authority* POLICY PAPER**

The purpose of the policy paper cited above is for the aviation industry to consider a number of options with respect to insurance coverage whilst performing roles and functions on behalf of CASA. For 25 years CASA indemnified industry delegates and authorised persons performing functions under the civil aviation legislation, expressed in CAAP Admin 1.

CASA has recently changed the arrangements whereby delegates and authorised persons are to now perform those tasks as a privilege under an authorisation. As a result of this change, CASA is seeking to repeal the indemnity arrangements currently found in CAAP Admin 1. CASA assume that private market insurance is appropriate and readily available.

### **ISSUE**

According to the policy paper proposal page 3 paragraph 2; 'Indemnity arrangements of any kind necessarily involve the availability of appropriate and sufficient insurance coverage for CASA. *Additionally, those individuals or corporate entities which are not covered by an indemnity need to be able to access reasonable insurance coverage on the private market.*'

The RAAA agrees with the premise quoted above. That is, any individual carrying out CASA work on behalf of CASA should have access to exactly the same insurance coverage as CASA employees and under the same terms and conditions. In the absence of appropriate insurance cover, CASA would need to employ additional numbers of qualified staff to carry out the functions of the current ATOs. That number was circa 320 in July 2017.

We also agree that individuals need to be able to access appropriate insurance coverage in the private market, however that coverage does not exist to the extent required for individual ATOs and FERs. The industry has to date been unable to identify any policy that provides coverage that even approximates that afforded under CAAAP Admin 1. If the Government is aware of the existence of an appropriate coverage, then they should make those policy details available to the industry.

Investigations with the Insurance Industry have revealed that less than 50 FERs have taken out insurance. This would cause major reputational damage to CASA and the Government if there was a significant damages claim and the injured parties were unable to recover damages due to no indemnity and no commercial insurance cover.

### **BACKGROUND**

Before commenting specifically on the 4 proposals, context is important. It appears that the government has embarked on this policy development and partial implementation without adequate research into either the availability of appropriate coverage, or the costs of alternative insurance cover for individuals performing work on behalf of CASA.



**Firstly, CASA ignoring the Ministers Statement of expectations (SOE)** in relation to the Regulatory approach has caused this problem.

His expectations are to:

(b) consider the economic and cost impact on individuals, businesses, and the community in the finalisation of amended regulatory changes.

(c) take a pragmatic, practical and proportional approach to regulation, having regard to risk.

**This policy is clear evidence that CASA are not following the Statement of Expectations.**

**Secondly - Risk based approach Director of Aviation Safety directive 01/2015**

The risks are very low according to CASA's own statistics, but the consequences are potentially severe, and Commercial Insurance does not provide the limits of Indemnity to adequately cover a loss of severe consequence, and likely never will, for individuals.

With such a low risk exposure, why would the Commonwealth not continue Indemnities, as it is clear from the policy paper the Indemnity may extend to those where Commercial Insurance is not available. This is clearly the case.

Illogically, the higher end risks such as Design Engineers continue to be covered. If the Commonwealth is prepared to extend Indemnities to the high end risks, why will they not cover the lower end risks?

**Thirdly, this policy is likely to have a negative impact on CASA resources.**

Refer to the discussion under Proposal 3 and calculations in the conclusion. One would have expected CASA to have conducted a study akin to a Regulatory Impact Statement to determine the likely cost impost on the regulator. The RAAA is not aware of any such study.

**Fourthly, CASA is saying Commercial Insurance is available.**

However, industry is not aware of any comparative study having been conducted between the coverage offered by commercial insurance and CAAP Admin 1, that would support this assertion. This is in spite of the Working Groups Terms of Reference requiring a 'comprehensive analysis of the nature, scope and propriety of CASAs ... proposed industry indemnity regime and outline the range of possible options for the future (including) The availability of private market insurance for relevant activities'.

There is no point in seeking any form of written advice from Insurers as they currently do not, and likely will not, provide the exact same Indemnity as Com-cover, and as they have not got access to the Com-cover Fund wording they could not perform a comparison. Additionally, Commercial Insurance could never cover the PI risk without exclusions and conditions. The significant difference here is that Com-cover is in fact a self-insurance fund, not based on typical commercial insurance.

The main provider of commercial coverage does not even have a Professional Indemnity policy. They simply have a remanufactured Hanger-keepers Liability policy. The QBE policy



only covers ATO's/ FER's but not any other form of delegates such as design or airworthiness.

In any case, having been no claims to date, the policy is untested at common law. This is a major problem.

**Fifthly, the Aviation Safety Regulation Review** at recommendation 15 says, 'The Civil Aviation Safety Authority continues to provide appropriate indemnity to all industry personnel with delegations of Authority'. Pressure has been placed on some individuals to transition from ATO to FER. Doing so in the absence of reasonable and appropriate insurance cover has not been welcomed.

### **Government Proposal 1**

**This proposal to maintain the Status Quo is unacceptable under any circumstances.**

Whilst it is agreed that sufficient insurance coverage would be necessary, it is simply not available. The situation in which the industry, through no fault of its own, now finds itself with some ATOs and some FERs performing essentially identical roles on behalf of CASA is unacceptable. The stated difficulty in maintaining the status quo that sustains the inequity that currently exists is untenable, as this situation was created entirely and deliberately by government. Again, without proper research or industry consultation.

### **Government Proposal 2**

**This proposal is unacceptable under any circumstances.**

In relation to paragraph 63, 'the proposal needs to be assessed having regard to the increased cost to the Commonwealth'. Given that CASA would need to assume the work currently being conducted by about 320 ATOs, the increased cost to the Commonwealth would be significant. For example 320 staff at \$250k pa (including on costs) is \$80M, assuming CASA could attract and retain this number of suitably experienced people.

### **Government Proposal 3**

**This proposal is unacceptable under any circumstances.**

The one stand out consideration that gazumps all others is found in paragraph 66. 'the ability and capacity of CASA to provide, or to arrange for the provision of, those services effectively and efficiently'. Without the current cohort of ATOs, CASAs ability to provide these services in the manner prescribed would be very challenging. For example, as at July 2017 there were 322 individuals holding ATO delegations who had not transitioned to become FER holders. If those 322 individuals had transitioned there would be no need for this policy paper. It is therefore not unreasonable to assume that very few of the 322 will transition. Anecdotally, most will surrender their ATO delegation.

What we have identified after speaking with the insurance industry is that less than 50 people have taken out the scant insurance policies that are available. We know the pricing, we know the policy wording offered and we know that it only covers FER's, and no other class of delegates.

The fact is that whilst some form of Cover is out there, it is simply not adequate, and it is an increased cost to Industry, which is against the DAS Directive 01/2015 and the Minister' SOE. It is solely and directly as a result of the introduction of Part 61, so here is yet another clear case of regulation increasing the cost, without any demonstrated safety benefit or indeed demonstrated savings to the Government.

The obvious question is how are CASA planning to arrange for the provision of these services without these individuals, post July 2018?

#### **Government Proposal 4**

**This proposal is unacceptable under any circumstances.**

It has been demonstrated that comparable insurance is not available, and is never likely to become available.

#### **Conclusion**

This policy is fundamentally flawed with three observations.

Firstly, there is no emerging trend to indicate there would be any increasing costs to the Commonwealth with the continued provision of CAAP Admin 1. In fact it has been demonstrated that the costs to the Government could in fact increase by as much as \$80M pa.

Secondly, the government have failed to perform their role of adequately testing the proposal.

Thirdly, Finance have then supported the proposal, on what one can only assume was at best ill-informed briefing.

#### **RAAA RECOMMENDATION**

##### **Proposal 5**

The CAAP Admin 1 system has been serving CASA perfectly well for decades. Reverting to the previous system, whereby industry is recognised for carrying out one of CASAs vital functions and by the Government providing adequate insurance coverage, seems to be the only logical approach.



Mike Higgins  
Chief Executive Officer  
Regional Aviation Association of Australia