

Hi Bev & Bronwyn

Underlying philosophy of the CA Act 1990

Back in the 1970's through into the early 1990's I was active in Recreational Aviation (Chief Safety Officer of the NZ Parachute Federation and other roles). As a result I assisted with the writing of a number of the new rules that were introduced under the 1990 Act.

For the last 19 years I have been an ISO 9001 Quality Management Systems auditor and have several aviation businesses as my clients. As a result I have kept partially up to speed with how the Act has been implemented.

I don't know about your backgrounds but the changes made by the introduction of a Rules based (deemed Regulation) system were significant and had the possibility of keeping the aviation system current and all participants engaged in a way that ensured CAA, rules and industry remained in-step.

The situation prior to the Rules based system was that there were a set of Regulations that were simply too hard to change. As a result a "Catch-22" power to authorise "exemptions" was introduced. I think the intent was to be a bridging approval system until changes to the baseline regulations could be approved. Unfortunately delays in regulation updates (years) meant that exemptions became more important and were sometimes the norm rather than the exception.

Unfortunately the power of the exemption became a powerful tool that some of the inspectorial/regulatory staff could then use to hold the aviation system to ransom. If the "inspector" or one of his fellow workers or the Director himself didn't like you personally or for any other reason "delays" in approval of an exemption could occur or further "clarification" may be required until finally an exemption was approved or the applicant just gave up. Meanwhile lots of bowing and scraping of foreheads on the ground to ensure the "exemption" would be approved may have been required.

As there was considerable power to be wielded in the application of exemptions why would anyone within the regulator then want to accelerate an update to the Regulations!

So the new Act was introduced with the intent of managing the "**Entry**" of companies, people and equipment in to the aviation system via an "aviation document"; "**Maintenance**" of those approved entities through their life in the system; the finally managing their "**Exit**" from the system.

The rules were created in a consultative manner with a cost benefit analysis to ensure only realistic rules acceptable to industry and CAA would result.

Unfortunately bureaucracy has a habit of identifying levers that can be pulled and then using them to full effect. The current Act allows CAA to specify that certification will last for a period and then has to be renewed. The definition of renewal is not clear so it has been loosely interpreted to the point that renewal

may as well be a complete reissue. In other words holders of an Airline Operators Certificate (AOC), are effectively now entered into the system, maintained for five years then effectively exited as a full re-audit takes place as if they had never been previously certified.

In contrast as a pilot I was issued a Certificate for Life and only had to maintain my medical and operational check status to be able to exercise privileges under that certificate.

This "exiting" is insane and drives all the AOC holders that I know to distraction not to say the amount of money it costs i.e. minimum of four hours to process a renewal!.

In other words the original intent of the Act has been subverted and certified entities are essentially forced out of the system, not effectively maintained.

So it is my opinion that the future Act needs to be quite specific about the Entry-Maintenance-Exit phases and how they are to be handled.

Fit and proper person test

Approval under the fit and proper person test appears to be the last bastion of total discretionary control exercised by the Director. In the Act it is defined in terms of aspects that the Director must take into regard however nothing requires that information to be assessed objectively and without bias. The principles of natural justice should prevail with a right of appeal to the District Court under section 66. I can see how the late consideration of information by the Director could be used to frustrate a District Court decision.

In addition the Director is not applying the Fit and Proper Person test to persons employed within CAA. Why is there one rule for the goose and another for the gander?

I have discussed this with the current Director and he stated that their internal HR requirements deal with those sorts of issues. Unfortunately that does not appear to be as robust as it should be and certainly does not present a level playing field to anyone external to CAA.

My suggestion is to take evaluation of the Fit and Proper Person test out of the hands of CAA staff (Director) and put it under the control of a separate statutory entity within the CAA system that will take information from the applicant and from CAA and will make an objective decision without the in-built biases that despite denials still occur.

I would suggest a panel with a significant legal grounding be appointed as the decision maker to adjudicate on the evidence presented.

That would mean that everyone within CAA would then be subject to the same fit and proper person test as those in the wider Aviation Community. For example why should a Board member be appointed to CAA that has drink driving convictions? I don't know if any past or present CAA Board Members

or Directors have been but that is the problem we just don't know if they would pass the test.

Also what about those staff members who otherwise wouldn't be able to hold a current Aviation Document but are still able to be employed and make decisions or recommendations that are then rubber stamped by the Director. I believe there is at least one and possibly several current staff members who would not pass the test.

Good luck with the renewal process.

I hope this little bit of information is of some use.

Regards

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