



**SUBMISSION:  
REMOVAL OF ANTI-COMPETITIVE  
REGULATORY RESTRICTIONS ON FLIGHT TRAINING**

August 2021

## EXECUTIVE SUMMARY

The Aircraft Owners and Pilots Association (AOPA) of Australia, an affiliate of AOPA International, invites interested parties to support a fresh approach towards flying training. Flying training is the bedrock activity of General Aviation (GA) that can grow jobs and businesses.

Flying training stimulates job growth in a number of associated fields, such as aviation engineering, aircraft maintenance, manufacturing and education.

Australia's GA industry needs a fresh approach in order to provide the Nation with the aviation skills and expertise to carry us forward in a post COVID era, AOPA Australia looks to one specific legislative change as the initial requirement in order to achieve a new dynamic for Australia's General Aviation industry.

This change is to align the Commonwealth's commitment to the Competition Principles Agreement of the Council of Australian Governments (COAG). This will allow independent flight instructors to conduct flying training in harmony with the International Civil Aviation Organisation, (ICAO) standards, via it's Annexes stated to which we are signatory.

This submission is based on the COAG's ***Competition Principles Agreement*** that have not been applied to aviation regulatory development since 2003. In fact, we assert that anti-competitive aviation regulations have been created since 2003 that have restricted safe competitive growth of small businesses by removing safe competitive regulations consistent to the Chicago Convention Annexes as implemented by the USA's Federal Aviation Regulations. NZ has adopted the FARs and NZ small aviation and manufacturing are much healthier than Australia's small civil aviation sectors.

### AOPA Australia recommends

- Civil Aviation Safety Regulations should be reviewed and directed to comply with the Governments' ***Competition Principles Agreement***.
- The Ministers direction to CASA must set a timetable to review and reform regulations to enable civil aviation businesses plan a long-term future.
- The Civil Aviation Act should be amended to include the ***Competition Principles Agreement*** section 5 so the same mistake does not happen in the future.

## **CASA Past Management Ignored COAG's Competition Principles Agreement**

### **Competition Principles Agreement – 11 April 1995 (As amended to 13 April 2007)**

#### **LEGISLATION REVIEW**

**5.(1) The guiding principle is that legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated that:**

- (a) *the benefits of the restriction to the community as a whole outweigh the costs; and*
- (b) *the objectives of the legislation can only be achieved by restricting competition.*
- (2) *Subject to subclause (3), each Party is free to determine its own agenda for the reform of legislation that restricts competition.*
- (3) *Subject to clause (4) each Party will develop a timetable by June 1996 for the review, and where appropriate, reform of all existing legislation that restricts competition by the year 2000.*
- (4) *Where a State or Territory becomes a Party at a date later than December 1995, that Party will develop its timetable within six months of becoming a Party.*
- (5) *Each Party will require proposals for new legislation that restricts competition to be accompanied by evidence that the legislation is consistent with the principle set out in subclause*
- (6) *Once a Party has reviewed legislation that restricts competition under the principles set out in subclauses (3) and (5), the Party **will systematically review the legislation at least once every ten years.***
- (7) *Where a review issue has a national dimension or effect on competition (or both), the Party responsible for the review will consider whether the review should be a national review. If the Party determines a national review is appropriate, before determining the terms of reference for, and the appropriate body to conduct the national review, it will consult Parties that may have an interest in those matters.*

#### **Ten years has passed since Competition Principles have been applied to current and proposed new regulations - a review is due.**

CASA's regulatory reform program under CEOs Keith & Toller (1995-2003) were fully aware of the Governments' *Competition Principles Agreement*. CASA management, installed by DAS Byron post 2003, obviously have been unaware of these principles.

Obviously, the COAG's *Competition Principles Agreement* with Commonwealth and States was totally ignored by CASA management post 2003 who have created *Anti Competition* regulations by removing small businesses from providing safe competition to larger businesses. Small business that supports a sector of aviation not supported by larger businesses.

#### **Compliance with International treaty, the Chicago Convention.**

This particular submission is also based on compliance with the Convention on International Civil Aviation and its Annexes, ratified by Australia in 1947, applicable to the independent flight instructor. This treaty provides international Standards and Recommended Practices in the interest of aviation safety for Contracting States to adopt and implement.

Australia prides itself as being in the top ten nations complying with these Standards but, in the case of independent flight instructors, have implemented unnecessary economic anti-competitive

restrictions preventing the independent flight instructor from training a student unless employed by a CASA approved flight training organisation.

- This is not a treaty (Convention) requirement.
- It regulatory protects approved flight training organisations from competition.
- It regulatory imposes restrictive practices.
- It prevents a more cost effective, proven safety method being used to train student pilots and pilots adding ratings to their licence.
- It is not based of any “safety” issue. The USA has had independent flight instructors for decades without any safety issue.
- The **FAA independent flight instructors train around 70% of all American pilots.**

Why isn't this available to Australian flight training sector?

## History

The case for removing economic restrictions on flight training by independent flight instructors, affecting the growth of civil aviation in Australia, should be a priority based on implementing the Convention's Annex 1, Personnel Licencing Standards. Same as USA, NZ and other countries.

CASR Part 61/141 has applied economic, anti-competitive regulations on civil aviation that is affecting the training of new pilots by requiring a flight instructor must be employed by a CASA approved flying school instead of enabling the flight instructor to provide flight training independently as has safely been done by the USA for many decades.

There is **no safety reason** why this economic anti-competitive restriction has been implemented. It is not a requirement of the Convention's Annexes. The only conclusion that can be drawn is that CASA was 'captured' by the approved training schools sector lobbying to protect their sector by removing competition. Anti-competitive regulations have added unnecessary costs to potential pilots from becoming a CASA approved pilot.

The independent flight instructor is supported by the Convention's Annex 1 and has been in operation for decades in the USA where **independent flight instructors provide 70% of all new pilots.**

Aviation has lost over 1200 small flight training businesses since the creation of Civil Aviation Regulations, 1988 (CAR). Civil Aviation Safety Regulations replacing CARs have applied anti-competitive restrictive regulations explained further on in this submission.

The Convention requires independent flight instructors must provide training using the promulgated syllabus for each pilot category/rating whereas approved flying schools can provide courses of shorter periods based on an approved training program.

Pilots taught by independent flight instructors have the same opportunities to progress to become an Air Transport pilot as those that opt to use an approved flight training school.

Australia is being denied this more cost effective safe method used extensively in the USA. A proven safe method with decades of experience. Adopted by NZ.

## The Convention Annex 1 states:

*2.8.2 Privileges of the holder of the rating and the conditions to be observed in exercising such privileges*

2.8.2.1 *Subject to compliance with the requirements specified in 1.2.5 and 2.1, the **privileges of the holder of a flight instructor rating shall be:***

- a) *to supervise solo flights by student pilots; and*
- b) *to carry out flight instruction for the issue of a private pilot licence, a commercial pilot licence, an instrument rating, and a flight instructor rating provided the flight instructor:*
  - 1) *holds at least the licence and rating for which instruction is being given, in the appropriate aircraft category;*
  - 2) *holds the licence and rating necessary to act as the pilot-in-command of the aircraft on which the instruction is given; and*
  - 3) *has the flight instructor privileges granted entered on the licence.*

2.8.2.2 *The applicant, in order to carry out the instruction for the multi-crew pilot licence, shall have also met all the instructor qualification requirements.*

**Note:** - *Specific provisions for flight instructors carrying out instruction for the multi-crew pilot licence are found in the Procedures for Air Navigation Services – Training (PANS-TRG, Doc 9868)*

There is no restriction in the Annex's Standards and Recommended Practices to require a flight instructor to be employed by an approved flight training organisation.

Civil aviation in Australia has had a pilot shortage ever since the regulations changed from ANRs to CARs and the minimally regulated independent flight schools disappeared along with the minimally regulated directly supervised maintenance organisations.

It must be assumed that bigger businesses captured CASA's predecessors to remove competition when the CAA was created.

By not applying the **Competition Principles** when developing civil aviation safety regulations over the last decade, aviation now has many anti-competitive provisions that has stymied the growth of small aviation businesses, private ownership and training.

**Government's economic anti-competitive restriction on growth of general aviation as applied to flight training.**

**CASR 61.1170 Limitations on exercise of privileges of flight instructor ratings—general**

- (1) *The holder of a flight instructor rating is authorised to exercise the privileges of the rating in an aircraft of a particular category only if the holder has:*
  - (a) *completed the aeronautical experience; and*
  - (b) *passed the flight test;**required under regulation 61.1185 for the grant of the rating in an aircraft of that category.*
- (2) *The holder of a flight instructor rating is authorised to exercise the privileges of the rating in a flight simulation training device that represents an aircraft of a particular category only if the holder has:*
  - (a) *completed the aeronautical experience; and*
  - (b) *passed the flight test;**required under regulation 61.1185 for the grant of the rating in an aircraft of that category.*
- (3) *A flight instructor is authorised to conduct flight training for a pilot licence, a rating on a pilot licence or an endorsement on an operational rating only if the instructor is engaged*

*to conduct the flight training by a Part 141 or 142 operator that is authorised to conduct flight training for the licence, rating or endorsement.*

- (5) *A flight instructor is authorised to conduct flight training in an aircraft only if the instructor holds a medical certificate.*

**At the end of this regulation it states that is an offence to provide flight training unless under Part 141/142.**

*(4) A flight instructor commits an offence if:*

*(a) the instructor approves a person (the **student**) to conduct a solo flight of a kind mentioned in subregulation (5) as a student pilot for the first time; and*

*(b) the instructor is not satisfied that the student:*

*(i) has completed the training specified by the authorising Part 141 or 142 operator for the conduct of a solo flight of that kind by a student pilot; and*

*(ii) has been assessed by the Part 141 or 142 operator as competent to conduct the solo flight; and*

*(c) for a cross-country flight or night flight—the student has not completed at least 2 hours of dual instrument time, 1 hour of which is conducted during dual instrument flight time.*

*Penalty: 50 penalty units.*

## **Annex 1 Approved Training Standards**

### **Annex 1 Appendix 2-2 paragraph 3.1**

3.1. *A Licencing Authority may approve a training programme for a private pilot for a private pilot licence, commercial pilot licence, an instrument rating ..... that **allows an alternative means of compliance with the experience requirements established by Annex 1**, provided that the approved training organisation demonstrates to the satisfaction of the Licencing Authority that the training provides **a level of competency at least equivalent to that provided by the minimum experience requirements for personnel not receiving such approved training.***

The knowledge and skills required under an approved training programme is exactly the same as that provided by an independent flying instructor who must meet the experience standards promulgated in Annex 2 specific to the type of licence to be issued stated in CASRs

An approved training organisation can reduce the experience requirements based on the course the Licencing Authority has approved.

### **Sport Aviation Exempted by Anti-Competitive Regulations**

Finally, a recreational private entity has been approved by CASA to provide training for aircraft that have been exempted from being on the State's (CASR) civil aircraft register.

This entity is providing pilot training but not to the promulgated pilot training standards of the Civil Aviation Safety Regulations.

This entity approves its own pilot instructors to their standards whilst a CASA approved flight instructor cannot provide flight instruction independently.

This is anti-competitive restrictive regulation that treats those working under regulatory control of the CASRs very differently than those operating under private entity delegated under Civil Aviation Safety Regulation Part 149.

Not only is Part 149 anti-competitive, it is economically protective for these delegated organisations to operate under their own procedures and not having to meet the same Standards specified in regulations that apply to CASA registered aircraft.

**Part 149 generated pilot training standards are not subject to Parliamentary review.**

This approach is not covered by the international treaty that Australia is supposed to be in compliance with.

Canada has similar types of recreational aircraft and also have pilot standards for pilots that operate these recreational aircraft all covered under the nations aviation regulations.

## **Summary**

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