

CA-A/B

B44-2018/1

**Valerie Carelse**

**From:** Peter Mashaba <Mashabap@caa.co.za>  
**Sent:** Wednesday, 15 January 2020  
**To:** Civil Aviation  
**Cc:** Albert Morudi; 'Mmanare Mamabolo'; malobam; 'Johannah Sekele'  
**Subject:** Comments on the Civil Aviation Bill to be considered by parliament  
**Attachments:** comments on the Civil Aviation Bill.docx

**Importance:** High

Dear Madam/Sir,

Please find here attached comments in the current civil aviation bill for parliament consideration.

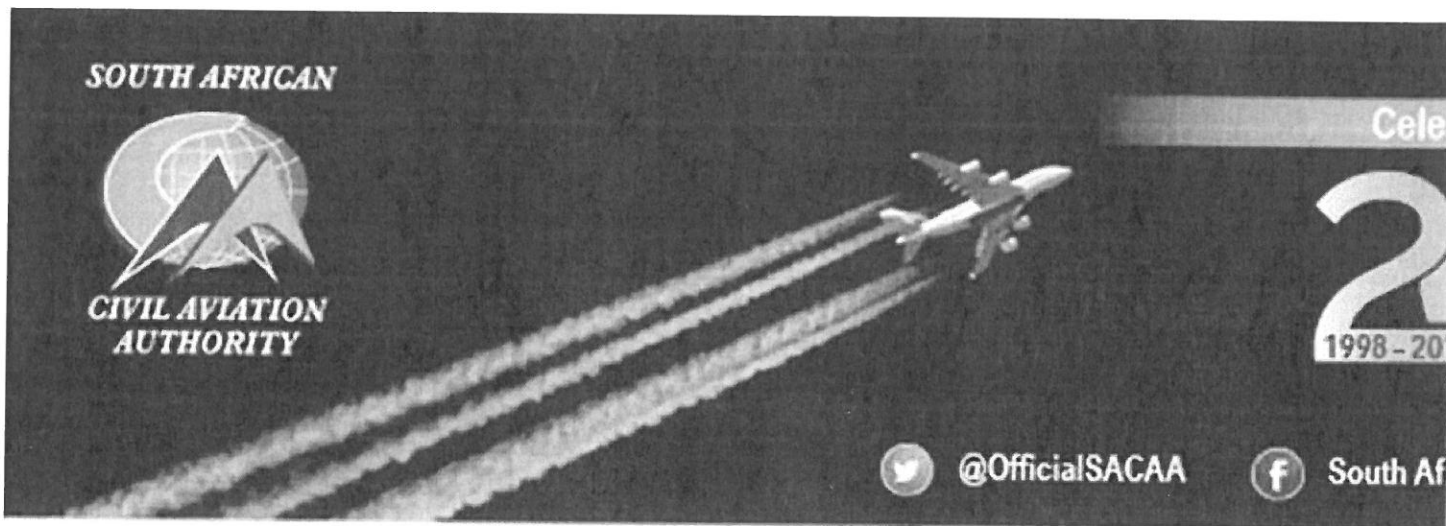
regards

**Peter Mashaba**

Executive: Accident and Incident Investigation Division  
South African Civil Aviation Authority

Tel: 011 545 1188 | Fax: 011 545 1466 | Cell: 083 570 1174 | Email: [mashabap@caa.co.za](mailto:mashabap@caa.co.za) | [www.caa.co.za](http://www.caa.co.za)

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**Comments on the proposed CA Bill which is before the RSA Parliament and in particular, Chapter 4 of the Civil Aviation Bill.**

We are of the view that with only the deletion of Section 16(e) & (f) of CA Act No. 13 of 2009, the current legislation will be acceptable by ICAO and any international convention on civil aviation. Though most of the sections in Chapter 4 of the CA Act No. 13 of 2009 were not in force during the 2017 ICAO USOAP audit, AIID used them to get through the audit of 2017 and they were legislation was found adequate and acceptable by ICAO Auditors due to the intent of bringing them into force.

It will be to the best interest of RSA if this submission can be considered and implemented rather than to seek regress of the current Civil Aviation Act No 13 of 2009. Its worth noting that most changes recommended now, are driven by recent ICAO Annex 13 amendments since 2016 to date.

The matrix bellow detail our specific comments as a result of the proposed Bill and the sections affected by our comments:

<b>CONCERNS RAISED BY AIID ON THE PROPOSED CA BILL WHICH IS BEFORE RSA PALIAMENT CHAPTER 1 AND 4</b>			
<b>SECTION</b>	<b>DETAIL</b>	<b>REMARKS</b>	<b>AGREE / NOT AGREE</b>
Sec 1, Sub-Sec (d)	Inclusion of the definition of Annex 13.	It details what annex 13 is thus accepted.	In agreement with this amendment.
Recommendation	We therefore recommend that we adopt this amendment.		
Sec 1, Sub-Sec (i) & (j)	Deletion of the definition of the "Director of Investigations" and inclusion of the definition of the "Executive responsible for Accident and Incident Investigations".	The current CA Act 13 of 2009 details the definition of the Director of investigations who is appointed by the ASIB and his powers are clearly defined in Section 32. This definition is in line with the ICAO Annex 13, Standard 3.2 which calls for the independence of the investigating authority. The proposed definition is not clear which Authority appoints the Executive and if our assumption that it is the Civil Aviation Authority, then the definition will be in contrast with ICAO Annex 13, Standard 3.2. It should also be noted that the RSA has two findings in this regards,	Not in agreement with this amendment in the Civil Aviation Bill.

		which emanated from the ICAO USOAP audit of 2017 (AIG 6.004 and AIG 6.005).	
<b>Recommendation</b>	We therefore recommend that the current definition of the Director of Investigations in the current Civil Aviation Act be retained in the Civil Aviation Bill in order to align with ICAO Annex 13 requirements.		
Current Definition	<p>“Director of Investigations” means the Director of Investigations appointed in terms of section 26;</p> <p><b>Section 26. Appointment of staff of Aviation Safety Investigation Board.</b>—(1) The Aviation Safety Investigation Board must at its first meeting or as soon as practicable thereafter, after consultation with the Minister, appoint a Director of Investigations, other investigators and such staff as are necessary for the proper conduct of the work of the Aviation Safety Investigation Board.</p>		
Sec 1, Sub-Sec (l)	The removal of Section 26 in the definition of an “Investigator” and the inclusion of Section 33.	The current definition in the CA Act 13 of 2009 is correct and should not be changed as it talks to the appointment of an investigator not the designation. The difference between the appointment and the designation is that an investigator on joining the organisation is appointed as an investigator, whereas prior to conducting any investigation the investigator is designated to conduct the investigation.	Not in agreement with the amendment.
<b>Recommendation</b>	We therefore recommend that the current definition of an investigator in the current Civil Aviation Act not be changed.		
Current Definition	<p>“investigator” means a person appointed under section 26;</p> <p><b>Section 26. Appointment of staff of Aviation Safety Investigation Board.</b>—(1) The Aviation Safety Investigation Board must at its first meeting or as soon as practicable thereafter, after consultation with the Minister, appoint a Director of Investigations, other investigators and such staff as are necessary for the proper conduct of the work of the Aviation Safety Investigation Board.</p>		
<b>CHAPTER 4</b>			
Part 1			
Part 2			
Section 15(2)(b)	Calls for the Minister to appoint a panel of Experts and the Commissioner to assist	AIID does not agree with the inclusion of the Commissioner in the appointment of ASIB board members as this process needs to be	No in agreement.

	with the shortlist before appointing the ASIB board members.	independent and perceived to be independent as required by ICAO Annex 13 3.2. The inclusion of the commissioner may cast doubt in the process and will be in contrast with ICAO Annex 13, Standard 3.2 which calls for the independence of the investigating Authority from Authorities responsible for civil aviation.	
<b>Recommendation</b>	The Commissioner be excluded from the panel of experts which is to assist the minister with the appointment of the ASIB board members.		
ICAO Annex 13 requirement	<b>INDEPENDENCE OF INVESTIGATIONS</b> 3.2 A State shall establish an accident investigation authority that is independent from State aviation authorities and other entities that could interfere with the conduct or objectivity of an investigation.		
Section 18	<b>Disqualification of members</b>	With the deletion of Section 16(e) & (f), the current CA Act 13 of 2009, Chapter 4 would have resolved all challenges in terms of compliance with international protocols as was accepted by ICAO auditors in 2017.	In agreement
<b>Recommendation</b>	RSA keeps the current Chapter 4 of the CA Act 13 of 2019 with the amendments as proposed by Section 18 of the proposed Bill.		
CA Act 13 of 2009 Section 19 and 20	Section 19 and 20 of the CA Act 2009 were deleted or are not stated in the Bill.	With Section 19 and 20 not included, the powers of the Chairman or Board are not defined and Section 10 of the Bill does not state under what Act is the ASIB established as can be seen with the establishment of the SACAA.	Not in agreement
<b>Recommendation</b>	Section 19 and 20 of the current CA Act 13 of 2009 be reinstated and the inclusion of either the companies Act or another legislation be included in Section 10 of the Bill.		
Current Section 19 & 20	<b>19. Duties of Chairperson.</b> —The Chairperson of the Aviation Safety Investigation Board has exclusive responsibility for managing personnel matters, financial matters, property matters and for all other aspects of	<b>20. Chairperson may delegate powers and duties.</b> — (1) Subject to any limitations specified in the instrument of delegation the Chairperson may—	

	<p>the internal management of the Aviation Safety Investigation Board, including—</p> <p>(a) directing the staff and apportioning the work of the Aviation Safety Investigation Board;</p> <p>(b) directing the members and apportioning their work, subject to section 25; and</p> <p>(c) convening meetings in accordance with section 21 and presiding at meetings in accordance with any rules made under section 31 (3).</p>	<p>(a) delegate to any member any power or duty of the Chairperson relating to—</p> <p>(i) convening or presiding at meetings; or</p> <p>(ii) directing the members or apportioning their work; and</p> <p>(b) delegate to the staff of the Aviation Safety Investigation Board any power or duty of the Chairperson under this Act, except the matters described in paragraph (a).</p> <p>(2) A delegation under subsection 1 (a) may be revoked in writing at any time by the Chairperson.</p>	
Section 22	Calls for the secretariat of the ASIB to be appointed by the Director General in the DOT.	The Executive authority cannot be seen to be interfering with the operational affairs of the investigating Authority, the DoT has appointed capable ASIB members who will be accountable to the DoT (Minister)	Not in agreement
Recommendation Section 26	That the new Section 22 be deleted. The ASIB entering into agreement with the commissioner in respect of reporting lines of the Executive and AIID staff.	The fact that the Executive and Staff of the investigating authority being from SACCA, Sec 26 is in contrast with Annex 13 STD 3.2 the State has two findings regarding this section and the current status quo (AIG 6.004 and 6.005).	Not in agreement
Recommendation	That ASIB to enter into agreement with Director of Investigations as contained in the current Civil Aviation Act No13 of 2009. Not with the Commissioner, the Investigating Authority must be independent from CAA as required by ICAO Annex 13 3.2		
ICAO Annex 13 requirement	<b>INDEPENDENCE OF INVESTIGATIONS</b> 3.2 A State shall establish an accident investigation authority that is independent from State aviation authorities and other entities that could interfere with the conduct or objectivity of an investigation.		

**Part 3**

<p>Section 30</p>	<p>The bill has the following Sub-section deleted in Section 31(1)(a),(c),(f),(l),(m) together with (7),(8) &amp; (9) of the CA Act No. 13 of 2009.</p>	<p>The CA Act 13 of 2009 in Section 31 includes the following Sub sections: (1)(a),(c),(f),(l),(m) together with (7),(8) &amp; (9) and these are key to realizing the Independence of the ASIB and without them there will be a perception that ASIB is not interdependent. Deletion of the Sub-sections will be in contrast with ICAO Annex 13 Standard 3.2, 5.4 and 5.4.1.</p>	<p>Not in agreement</p>
<p>Recommendation Current Section 31</p>	<p>That the current Section 31 of CA Act 13 of 2009 be retained or include deleted section in the Bill.</p> <p><b>31. Powers of Aviation Safety Investigation Board.</b>—(1) The Aviation Safety Investigation Board may do all that is necessary or expedient to perform its functions effectively, which includes the power to—</p> <p>(a) determine its own staff establishment subject to section 26, having due regard to available funds;</p> <p>(b) obtain, by agreement, the services of any person, including any organ of state, for the performance of any specific act or function;</p> <p>(c) acquire or dispose of any right in or to property, but ownership in immovable property may be acquired or disposed of only with the consent of the Minister;</p> <p>(d) investigate aircraft accidents and aircraft incidents;</p> <p>(e) determine categories of aircraft accidents and aircraft incidents that will be investigated by the Aviation Safety Investigation Board;</p>	<p><b>Section 31 Cont...</b></p> <p>(4) The Aviation Safety Investigation Board may make rules in relation to the reporting, investigation of aircraft accidents and aircraft incidents and the conduct and procedures of its investigations, including the participation of accredited representatives, advisers, experts and observers, in compliance with Annexure 13 to the Convention.</p> <p>(5) The Aviation Safety Investigation Board may authorise any of its members to act as the Aviation Safety Investigation Board's accredited representative where the Republic is not the State of Occurrence, and such accredited representative may be accompanied by advisers and experts as the Aviation Safety Investigation Board may consider necessary.</p> <p>(6) The Aviation Safety Investigation Board may authorise any of its members to act on its behalf in any matter.</p>	

	<p>(f) make rules for the internal procedure for the investigation of aircraft accidents and aircraft incidents by the Aviation Safety Investigation Board;</p> <p>(g) delegate, the investigation of any aircraft accident or aircraft incident to any other Contracting State, in accordance with Annexure 13 to the Convention;</p> <p>(h) collect and disseminate relevant information;</p> <p>(i) reopen any investigation in compliance with Annexure 13 to the Convention;</p> <p>(j) establish an aircraft accident and aircraft incident reporting system in compliance with Annexure 13 to the Convention to facilitate the collection of information on actual or potential safety deficiencies;</p> <p>(k) upon request conduct investigations on behalf of other contracting States;</p> <p>(l) open and operate its own bank accounts;</p> <p>(m) insure itself against any loss, damage or risk;</p> <p>(n) perform legal acts, including acts in association with or on behalf of any other person or organ of state;</p> <p>(o) institute or defend any legal action; and</p> <p>(p) do anything that is incidental to the exercise of any of its powers.</p> <p>(2) If the accident occurred within the Republic, the Aviation Safety Investigation Board has the power to—</p> <p>(a) summon and examine witnesses under oath and to call for the production and inspection of books, logs,</p>	<p>(7) The Aviation Safety Investigation Board may, with the approval of the Minister and in consultation with the Minister of Finance, raise money by way of loans.</p> <p>(8) When the Aviation Safety Investigation Board finds it impracticable to comply in all respects with any international standard or procedure it must give notice to all the relevant interested parties in terms of Article 38 to the Convention.</p> <p>(9) The Aviation Safety Investigation Board may make rules in relation to the following matters concerning the staff of the Aviation Safety Investigation Board:</p> <p>(a) subject to the determination as contemplated in section 28 (1) the different categories of salaries and scales of salaries which will apply to the different categories of staff;</p> <p>(b) the requirements for appointment, promotion, discharge and disciplinary steps;</p> <p>(c) the recognition of appropriate qualifications and experience for the purposes of appointment to a specific post;</p> <p>(d) the procedure and criteria for evaluation, and the conditions or requirements for promotion;</p> <p>(e) conduct, discipline, hours of attendance and leave of absence, including leave gratuity, and other conditions of service;</p> <p>( f ) the creation of posts on the establishment of the Aviation Safety Investigation Board;</p>
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	<p>certificates, licences, medical records and other documents, and may grant inspection thereof; and</p> <p>(b) summon any person to give evidence before it, or to produce any official document or such other information or object as may be necessary for the performance of the Aviation Safety Investigation Board's functions.</p> <p>(3) The Aviation Safety Investigation Board may make rules in relation to the conduct and procedure of its meetings.</p>	<p>(g) the training of staff, including financial assistance for such training;</p> <p>(h) a code of conduct to be complied with by staff;</p> <p>(i) the provision of official transport;</p> <p>(j) the conditions on which and the circumstances under which remuneration for overtime duty and travel, subsistence and other allowances may be paid;</p> <p>(k) the legal liability emanating from the use of official transport;</p> <p>(l) the circumstances under which and the conditions on and the manner in which a member of staff may be found guilty of misconduct, or to be suffering from continued ill health, or to be incapable of carrying out his or her duties of office efficiently.</p>
<p>CA Act 13 of 2009 Section 31</p>	<p>Section 31 of the CA Act 13 Of 2009 was deleted and it clearly defined powers of the Director of Investigations.</p>	<p>The Bill does not indicate what exactly will the Executive responsible for accident and incident investigation will be charged with.</p> <p>The current Section 32 of the CA Act 13 of 2009 has a definition of the Director of Investigation which must be retained in order to fulfil the ICAO requirements and to clearly define duties of the Director of Investigations, we already have ICAO Finding in this respect, that South Africa has not defined who is responsible for Accident Investigation In South African Civil Aviation Act.</p> <p>Not in agreement</p>
<p><b>Recommendation</b></p>	<p>To retain the defined powers of the Director of Investigation which is in the current CA Act 13 of 2009.</p>	

Current Section 32	<p><b>32. Powers of Director of Investigations.</b>—(1) The Director of Investigations has exclusive authority to direct the conduct of investigations on behalf of the Aviation Safety Investigation Board under this Act in relation to aircraft accidents and aircraft incidents, but—</p> <p>(a) the Director of Investigation’s authority under this subsection must be exercised in accordance with any policies established under section 25 (1) (b) and (c); and</p> <p>(b) the Director of Investigations shall report to the Aviation Safety Investigation Board with regard to investigations and shall conduct such further investigation as the Aviation Safety Investigation Board requires under section 25 (1) (d).</p>		
Section 34	Section 34(5) calls for investigators to produce the certificate of appointment on request.	In the conduct of the investigation, the investigating authority has to designate the IIC in line with ICAO Annex 13 Standard 5.5 thus on request the IIC should produce his/her designation letter/certificate not appointment letter.	Not in agreement
<p><b>Recommendation</b></p> <p>To align Section 34(5) of the Bill with Section 33(1) of the Bill.</p>			
<b>Part 5</b>			
Section 51	Section 51 calls for the sharing of on-board recordings with any person carrying out a coordinated investigation in line with Annex 13.	This section may be in contrast with Annex 13 STD 5.4(b), but in line with 5.4.1, and recommendation 5.4.4, STD 5.10. Section 51 must align with STD 5.12 which requires a competent authority (like the High Court) to compel the investigation authority to release an on-board recorder or its transcript. We have two findings (AIG 6.029 and 6.031) which this does not mitigate.	Not in agreement
Recommendation	<p>Section 51 must align with STD 5.12 which requires a competent authority (like the High Court) to compel the investigation authority to release an on-board recorder or its transcript in line with the international convention. The need to identify a competent authority has to be done after getting a legal opinion.</p>		
ICAO Annex 13 requirement	<b>Protection of accident and incident investigation records</b>		

	<p>5.12 The State conducting the investigation of an accident or incident shall not make the following records available for purposes other than accident or incident investigation, unless the competent authority designated by that State determines, in accordance with national laws and subject to Appendix 2 and 5.12.5, that their disclosure or use outweighs the likely adverse domestic and international impact such action may have on that or any future investigations:</p> <ul style="list-style-type: none"> <li>a) cockpit voice recordings and airborne image recordings and any transcripts from such recordings; and</li> <li>b) records in the custody or control of the accident investigation authority being: <ul style="list-style-type: none"> <li>1) all statements taken from persons by the accident investigation authority in the course of their investigation;</li> <li>2) all communications between persons having been involved in the operation of the aircraft;</li> <li>3) medical or private information regarding persons involved in the accident or incident;</li> <li>4) recordings and transcripts of recordings from air traffic control units;</li> <li>5) analysis of and opinions about information, including flight recorder information, made by the accident investigation authority and accredited representatives in relation to the accident or incident; and</li> <li>6) the draft Final Report of an accident or incident investigation.</li> </ul> </li> </ul> <p>5.12.5 States shall take measures to ensure that audio content of cockpit voice recordings as well as image and audio content of airborne image recordings are not disclosed to the public.</p> <p>5.12.6 States issuing or receiving a draft Final Report shall take measures to ensure that it is not disclosed to the public.</p>
<b>Recommendation</b>	Section 52 must call for a board of enquiry and when appointed, ASIB stands down and submits all evidence to the board of enquiry.
ICAO Annex 13 requirement	<p><b>Protection of accident and incident investigation records</b></p> <p>5.12 The State conducting the investigation of an accident or incident shall not make the following records available for purposes other than accident or incident investigation, unless the competent authority designated by that State determines, in accordance with national laws and subject to Appendix 2 and 5.12.5, that their disclosure or use outweighs the likely adverse domestic and international impact such action may have on that or any future investigations:</p> <ul style="list-style-type: none"> <li>a) cockpit voice recordings and airborne image recordings and any transcripts from such recordings; and</li> <li>b) records in the custody or control of the accident investigation authority being: <ul style="list-style-type: none"> <li>1) all statements taken from persons by the accident investigation authority in the course of their investigation;</li> <li>2) all communications between persons having been involved in the operation of the aircraft;</li> <li>3) medical or private information regarding persons involved in the accident or incident;</li> </ul> </li> </ul>

	<p>4) recordings and transcripts of recordings from air traffic control units;</p> <p>5) analysis of and opinions about information, including flight recorder information, made by the accident investigation authority and accredited representatives in relation to the accident or incident; and</p> <p>6) the draft Final Report of an accident or incident investigation.</p> <p>5.12.5 States shall take measures to ensure that audio content of cockpit voice recordings as well as image and audio content of airborne image recordings are not disclosed to the public.</p> <p>5.12.6 States issuing or receiving a draft Final Report shall take measures to ensure that it is not disclosed to the public.</p>
<p><b>Section 56</b></p>	<p><b>Section 56 calls for the sharing of statement with any person carrying out a coordinated investigation in line with Annex 13.</b></p> <p><b>ASIB cannot make statements available to anyone in line with Annex 13 STD 5.12(b)(1) unless a competent authority compels ASIB to do so.</b></p> <p><b>Not in agreement</b></p>
<p><b>Recommendation</b></p>	<p>Section 56 should call for a competent authority to compel the ASIB to provide statements in line with the international convention.</p>
<p>ICAO Annex 13 requirement</p>	<p><b>Protection of accident and incident investigation records</b></p> <p>5.12 The State conducting the investigation of an accident or incident shall not make the following records available for purposes other than accident or incident investigation, unless the competent authority designated by that State determines, in accordance with national laws and subject to Appendix 2 and 5.12.5, that their disclosure or use outweighs the likely adverse domestic and international impact such action may have on that or any future investigations:</p> <ul style="list-style-type: none"> <li>a) cockpit voice recordings and airborne image recordings and any transcripts from such recordings; and</li> <li>b) records in the custody or control of the accident investigation authority being: <ul style="list-style-type: none"> <li>1) all statements taken from persons by the accident investigation authority in the course of their investigation;</li> <li>2) all communications between persons having been involved in the operation of the aircraft;</li> <li>3) medical or private information regarding persons involved in the accident or incident;</li> <li>4) recordings and transcripts of recordings from air traffic control units;</li> </ul> </li> <li>5) analysis of and opinions about information, including flight recorder information, made by the accident investigation authority and accredited representatives in relation to the accident or incident; and</li> <li>6) the draft Final Report of an accident or incident investigation.</li> </ul>

	<p>5.12.5 States shall take measures to ensure that audio content of cockpit voice recordings as well as image and audio content of airborne image recordings are not disclosed to the public.</p> <p>5.12.6 States issuing or receiving a draft Final Report shall take measures to ensure that it is not disclosed to the public.</p>		
<b>Section 61</b>	<b>Section 61 calls for investigators to appear before a judicial inquest and prohibits the appearance of investigators to a court.</b>	<b>AIID agree with the prohibition to appear in court but not in agreement with the appearance before a judicial inquest as that will be in contrast with ICAO Annex 13 Standard 3.1</b>	<b>Not in agreement</b>
<b>Recommendation</b>	Section 61 must call for the appearance before a board of enquiry which the minister can appoint and with this appointment ASIB stands down and submits all evidence to the board of enquiry.		
<b>Part 7</b>			
<b>Section 64</b>	<b>Rules making process</b>	<b>The process excludes the consultation with the industry or forums such as CARCOM. This may delay rulemaking as cabinet will require Investigating Authority to consult with industry players and the public in respect of rule making.</b>	<b>Not in agreement</b>
<b>Recommendation</b>	In the same way the commissioner makes the rules, the director of investigations/Executive should have the same or similar powers in this regard.		



CA - A/B  
B44 - 2018 / 2

**Valerie Carelse**

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**From:** Dexter Tangocci <dexter@iasystems.co.za>  
**Sent:** Wednesday, 15 January 2020 1:14 PM  
**To:** Civil Aviation  
**Subject:** Att: Valerie Carelse Re: civil-aviation-amendment-bill-b44-2018  
**Attachments:** civil-aviation-amendment-bill-b44-2018\_0.pdf

Good Day Valerie,

I picked up a spelling error on the following pages:

Page 22; 53(b): "*aerodrone*" is meant to be spelled "*aerodrome*"

Page 32; 28(a): "*aerodrone*" is meant to be spelled "*aerodrome*"

Regards,

Dexter Tangocci  
Co-founder/Director  
Integrated Aerial Systems (Pty) Ltd

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## Valerie Carelse

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**From:** Dexter Tangocci <dexter@iasystems.co.za>  
**Sent:** Wednesday, 15 January 2020 1:09 PM  
**To:** Civil Aviation  
**Subject:** Att: Valerie Carelse Re: civil-aviation-amendment-bill-b44-2018  
**Attachments:** civil-aviation-amendment-bill-b44-2018\_0.pdf

Good Day Valerie,

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Page 32; 28(a): "*aerodrone*" is meant to be spelled "*aerodrome*"

Regards,

Dexter Tangocci  
Co-founder/Director  
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CA - AIB

B44 - 2018 / 3

**Valerie Carelse**

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**From:** Chris Zweigenthal <chris@aasa.za.net>  
**Sent:** Wednesday, 15 January 2020 12:47 PM  
**To:** Civil Aviation  
**Cc:** Chris Zweigenthal; Josephine Freese; Poppy Khoza; Mmanare Mamabolo; Welcome Makamo; Thulisile Mashaba; AASA Global Group  
**Subject:** Civil Aviation Amendment Bill-b44-2018\_0 : Comments from the Airlines Association of Southern Africa NPC  
**Attachments:** PORTFOLIO COMM TPT AASA LETTER ON CIVIL AV AMENDMENT BILL final 15JAN20docx.pdf; AASA MEMBERS LIST 4 DECEMBER 2019 .pdf; civil-aviation-amendment-bill-b44-2018\_0.pdf  
**Importance:** High

The Chairperson  
Portfolio Committee on Transport  
3rd Floor W/S 3/79  
90 Plein Street  
Cape Town 8001

Att : Ms Valerie Carelse

Dear Chairperson of the Portfolio Committee on Transport

Please refer to the attached letter from the Airlines Association of Southern Africa NPC in respect of comments on the draft Civil Aviation Amendment Bill B44-2018\_0 presented as required by 15 January 2020. We thank you for the opportunity to provide comments on the proposed amendments to this very important Act. As noted in our letter, we are available to appear before the Committee should the Committee deem it advantageous to enable us to provide clarity to our comments and add value to your process.

Please acknowledge receipt.

Kind regards

Chris Zweigenthal  
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Mobile +27 82 8518706  
Fax +27 11 6090169 / 0865112332  
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15 January 2020

The Chairperson  
Portfolio Committee on Transport  
3<sup>rd</sup> Floor, W/S 3/79  
90 Plein Street  
Cape Town 8001

Att : Ms Valerie Carelse  
e-mail : [civilaviation@parliament.gov.za](mailto:civilaviation@parliament.gov.za)

Dear Chairperson of the Portfolio Committee on Transport

#### COMMENTS ON THE DRAFT CIVIL AVIATION BILL

1. The Airlines Association of Southern Africa (AASA) is the association representing all South African domestic airlines and the majority of regional based airlines of the SADC States and the Indian Ocean islands. We have a total of 21 member airlines and 37 Associate Members which include infrastructure service providers, aircraft and engine manufacturers, airports, air traffic and weather services and several other partner organizations which add value to the airline business. A copy of our Members is attached.
2. AASA and its member airlines have a direct interest in the proposed Civil Aviation Amendment Bill. The existing Civil Aviation Act 2009 is the foundational legislation according to which aviation is regulated and operates. Under the leadership of the DOT, AASA and the Airlines participated in the consultations on the proposed amendments to the existing Act together with other members of the industry. We appreciate the Portfolio Committee for Transport providing industry with an opportunity to comment further on the current final draft prior to it being processed through Parliament for final approval. The comments below are presented by AASA on behalf of its airline members. Whilst having been involved in previous consultations, the final draft presented does raise some issues which we deal with in our comments below and request consideration by the Portfolio Committee.

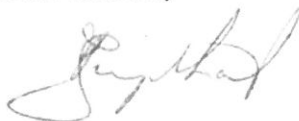
3. Art 1 (c) - Definition of “air service”. Reference is made to the Air Services Licensing Act of 1990. The DOT and all Stakeholders are currently in the process of finalizing consultations on the proposed new Air Services Bill which is intended to replace both the Air Services Licensing Act of 1990 and the International Air Services Act of 1993. These Bills are in different stages of finalization and we raise the question whether it would be worth synchronizing the finalization of both pieces of legislation to minimize amendments probably required after finalization of both Acts.
4. Art 1 (j) – Definition of “Executive responsible for Accident and Incident investigation”. It is stated “... official appointed by the Authority ...”. It is not clear which Authority. In considering Art 26(1)(a), it appears to be the SA Civil Aviation Authority. It is not clear from further reading of the Bill what this Executive’s responsibility is – is it effectively a liaison role between the SACAA and the Accident Safety Investigation Board? This should be stated in the draft Bill. Art 28(5) further refers to a person appointed by the Accident Safety Investigation Board to do an investigation, and that person must report to the Board through an Executive designated for that purpose. It is not clear if this is the same Executive referred to in Art 1 (j). If so it calls into question the independence of the Executive especially if as per the definition, the Executive is appointed by the Authority. It is recommended that this be clarified and rectified in the draft to remove this apparent uncertainty.
5. Art 15 deals with the appointment of the Aviation Safety Investigation Board. Whilst going through the process the article does not specify that the Minister appoints the Board. In later Articles, Article 17 in particular, it is mentioned that the Minister will appoint replacement members of the Board or ad hoc members to fill vacancies, it is recommended that between Art 15(1)( c) and (d), it is stated that “In considering the recommendations of the Commissioner and the Aviation experts, the Minister shall duly appoint the members of the Aviation Safety Investigation Board”.
6. Art 41 provides details regarding the presentation of the Aircraft Accident or Incident Investigation report. Whilst it is acknowledged that no time frame can be provided for completion of an investigation, it is recommended that in the public interest, the Accident Safety Investigation Board provides regular updates, at least monthly, on progress of the investigation. What is reported at those intervals, is up to the Board, but communication is essential. This could be included in Art 41(5) where mention is made of interim statements made available to the Minister. Some accidents or incidents may carry great public interest and some form of communication update to the public is recommended.
7. Amendment of Section 74 of the Act. The amendment proposed is as follows :  
 “Substitution for subsection (3) of the following subsection: “(3) The Civil Aviation Authority shall endeavour to consult with the relevant stakeholders as part of the process to determine the charges, fees and levies contemplated in subsection (1)”.  
 It has become an accepted practice for consultation to take place between the Civil

Aviation Authority and the Aviation Industry. It is recommended that the words "endeavour to" are deleted and that consultation does take place.

8. In respect of the amendment of Section 103 of the Act, it is not clear why the sections 103 (m), (n), (o) are being deleted unless included elsewhere. Surely the Civil Aviation Authority should be required to develop new strategies as necessary and be aware of new developments, technology in aviation safety and security, and adapt and innovate where appropriate?
9. In respect of amendment of Section 155(5), the proposal is that a regulation in respect of a financial matter, except in respect of user fees, may only be made in consultation with the Minister. It is not clear on what basis an amendment to a regulation can be made in respect of user fees. Is this in consultation with the users and then approval of Minister (as is currently the case for user charges)? These needs to be clarified and appropriate wording inserted.
10. The repeal of sections 156, 157, 158, 159, 160, 161, 162 appears to have been covered by the amendment to 155 which includes text to the effect of the consultative structures being established. This formed a great deal of debate during the consultation on the draft Bill. We require the assurance that all existing consultative structures will remain in place and further as discussed, the details of the formation, roles, functions, mandates and administration of these structures will be included in the regulations to be drafted to underpin the amendments to this Act.
11. In conclusion, we appreciate the opportunity to make comments to the Portfolio Committee on Transport to request clarity and consideration of certain issues on the latest draft of the Amendment Bill as detailed above.

We also appreciate that we do have the opportunity to make representation to the Portfolio Committee on our comments. Whilst we believe that the above comments do cover the issues which we request the Portfolio Committee to consider, we do not see the need to appear before the Portfolio Committee unless the Committee believes that such representation would provide clarity to our comments and assist the Committee with its work. We therefore remain at your disposal should you require our attendance at the Committee's sitting and / or any further clarification and further information in this regard.

Yours sincerely



Chris Zweigenthal  
Chief Executive







## LIST OF MEMBERS – AS AT 4 DECEMBER 2019

### **AIRLINE MEMBERS**

Air Austral  
Air Botswana  
Air Mauritius  
Air Namibia  
Air Zimbabwe  
Airlink  
Cemair  
Comair  
Congo Airways  
Federal Air  
Fly Blue Crane  
Kulula  
LAM Mozambique Airlines  
Mango Airlines  
Mozambique Express  
Proflight Zambia  
Safair  
South African Airways  
South African Express  
Eswatini Airlink  
Taag Angola Airlines



## ASSOCIATE MEMBERS

Air Cargo Operators Committee  
Air BP  
Airbus  
Airports Company South Africa  
Amadeus  
ASATA  
ATNS  
Bidair Services  
Blake Emergency  
Boeing Commercial Airplanes  
Bombardier  
Cape Town Air Access  
CFM International  
De Havilland Aircraft  
Embraer  
Engen Petroleum  
Flight Safety International  
Fujitsu  
GE Aviation  
GHAASSIST SA  
Hahn Air Systems  
Huawei  
Investec  
Kruger Mpumulanga Intl Airport  
Lanseria International Airport  
Lufthansa Technik  
Nacelle Aviation  
Nordic Aviation Capital  
Polokwane International Airport  
Puma Energy International  
Pratt and Whitney

Rolls Royce plc  
Sabre Airline Solutions  
Shell AviationSITA  
SITA  
South African Weather Service  
Swissport

CA - A / B

B44 - 2018 / 4

**Valerie Carelse**

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**From:** Rennie Van Zyl <rennievanzyl@aol.com>  
**Sent:** Monday, 13 January 2020 9:45 PM  
**To:** Civil Aviation  
**Cc:** rrvanzyl@telkomsa.net  
**Subject:** COMMENTS ON THE CIVIL AVIATION AMENDMENT BILL [B 44 - 2018].  
**Attachments:** RVZ\_CA Amndt- Comment\_Jan20.pdf

Dear Ms. Valerie Carelse,

Please find attached a letter including some comments for consideration by the  
Portfolio Committee on Transport.

Thank you for your assistance.

Regards,

Rennie van Zyl

Independent Aviation Consultant and ICAO retiree.

079 7787343.

[rennievanzyl@aol.com](mailto:rennievanzyl@aol.com)



24 Murray Park  
269 Gloudina Ave  
Murrayfield X1  
Pretoria 0184  
10 January 2010

By E-mail

Attention: Ms Valerie Carelse

civilaviation@parliament.gov.za

The Chairperson  
Portfolio Committee on Transport  
Parliament of South Africa.

Dear Mr MJ Zwane, MP,

#### **COMMENTS ON THE CIVIL AVIATION AMENDMENT BILL [B 44 - 2018].**

With reference to the call for comments dated 26 November 2019, may I herewith respectfully submit the following comments for considering by the Portfolio Committee on Transport.

My comments covered in this letter is mainly related to the following proposed amendments involving the appointments and separation of the CEO of the South African Civil Aviation Authority and that of a Commissioner for Civil Aviation.

It appears that the proposers of the amendments are ignoring what had happened on 2007 or are not ware thereof. This relates to the ICAO Universal Safety Oversight Audit (USOAP) conducted in July 2007 and the FAA International Aviation Safety Assessment (IASA) program done in August 2007.

In summary these audits and assessment can be summarized as below in respect of the split between CEO and Commissioner functions.

##### 1.0 USOAP Finding

Within the South African Civil Aviation Authority (SACAA) established as a juristic person, two persons are currently delegated with authority and assigned with corresponding responsibility: the Commissioner for civil aviation (hereinafter referred to as the Commissioner) and the Chief Executive Officer (CEO) of the SACAA.

As a consequence, the current framework does not ensure that there will not be any conflict or overlap between the functions of the Commissioner and those of the CEO with regard to the development, issuance and revision of operating regulations.

## 2.0 FAA IASA Finding

The different Acts, ... does not establish an adequate legal foundation for a civil aviation authority as the authority for safety oversight is split between CCA and CEO.

This is creating a confusing and inefficient structure for safety oversight where there is no clear authority for safety decisions of a purely technical nature.

The USOAP audit and FAA assessment very nearly led to the downgrading of South Africa's performance in International aviation. Fortunately, the political will existed through intervention by the then Minister of Transport, honourable Jeff Radebe, who by travelling personally to Washington to present his Department's Corrective Action Program, prevented this downgrading of being implemented.

The findings quoted above were addressed by the combination of the CEO and Commissioner position into that of the Director, commonly referred to as Director of Civil Aviation.

By now again splitting the position can result in similar findings again being raised by ICAO and the FAA. It may again result in the downgrading by the FAA from Category One to Category Two.

It is suggested that this splitting of the roles be carefully evaluated by the Portfolio Committee.

It does imply that any licence, certificate or approval as issued by the current Director requires re-issuance of such licence, certificate or approval with consequential financial impact on the civil aviation industry. The statement that all financial impact will be for the Department of Transport is not correct.

Note as well that no transition arrangements appear to be in place to allow for the validity of a licence, certificate or approval until its due expiry date. It has to be kept in mind that all manuals currently in existence will need to be revised to change the wording from Director to Commissioner.

Submitted for the Portfolio Committee consideration.

Yours sincerely,



Rennie van Zyl

Independent Aviation Consultant and ICAO retiree.

079 7787343.

[rennievanzyl@aol.com](mailto:rennievanzyl@aol.com)

CA - A/B

B44-2018/S

**Valerie Carelse**

---

**From:** joachim@icon.co.za  
**Sent:** Monday, 13 January 2020 5:41 PM  
**To:** Civil Aviation  
**Subject:** Written Submission on the Civil Aviation Amendment Bill [B 44 - 2018]  
**Attachments:** Written Submission on the Civil Aviation Amendment Bill [B 44 - 2018].doc

Dear For the Attention of Ms Valerie Carelse

I would appreciate it you can bring the attached written submission to the attention of Mr MJ Zwane, MP Chairperson of the Portfolio Committee on Transport.

Kind regards  
Dr Joachim Vermooten  
0834682111  
joachium@icon.co.za

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<http://www.eset.com>







## **Dr. Joachim Vermooten**

BCom (Hons) Acc. CA (SA),  
MCom Tnspt Econ *cum laude*,  
DCom Tnspt Econ

439 Elizabeth Grove  
Lynnwood  
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0081  
South Africa

Mobile: +27 83 468 2111

Tel/Fax: 012 348 8216

Email: [joachim@icon.co.za](mailto:joachim@icon.co.za)

**Mr MJ Zwane, MP**  
**Chairperson of the Portfolio Committee on Transport**  
**Parliament**

**For the Attention of Ms Valerie Carelse** at [civilaviation@parliament.gov.za](mailto:civilaviation@parliament.gov.za) tel (021) 403 3272 or cell 083 709 8445

Dear Ms Carelse

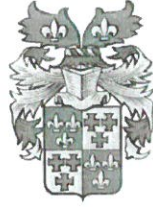
### **Written Submission on the Civil Aviation Amendment Bill [B 44 – 2018]**

Submission by Dr Joachim Vermooten, Senior Research Associate, Department of Transport and Supply Chain Management, University of Johannesburg

Please Note: The views expressed in this submission represent the opinion of the author and not necessarily that of the University of Johannesburg.

#### Contact details:

- Dr. Joachim Vermooten: Email: [Joachim@icon.co.za](mailto:Joachim@icon.co.za), Mobile: 0834682111



## **WRITTEN SUBMISSIONS ON THE CIVIL AVIATION AMENDMENT BILL [B 44 – 2018]**

### **The aims and roles within the organisation:**

The Department of Transport and Supply Chain Management at the University of Johannesburg provides world-class tuition with undergraduate and post graduate degrees in transport economics and logistics, academic research, bridging programmes as well as diplomas in transport and logistics management.

In addition, the Department conducts aviation research through its Masters and Doctoral research and publishes on a regular basis. The Department also facilitates the monthly Transport Forum discussions which feature contemporary air transport issues from time to time.

Within this context the general research objective is to foster competition within the South African airline industry. This has been a basic objective of economic liberalization and economic deregulation in which economic regulatory constraints have either been completely lifted or are progressively removed.

Within this context, it is important that operational and technical regulations should not impose or result in restrictions that may affect market entry, competition and market exit within the air transport sector. This has been the case for 42 years under the previous Air Services Act 1949, which should be avoided.

Dr Vermooten has a Masters in civil aviation economic regulation and a Doctorate in airline competition and competition law judgements (in the USA, Canada, Europe, Nordic countries and South Africa) and is a chartered accountant. He participated in aviation policy establishment in South Africa and adjacent countries. He taught a post-graduate course in aviation management at UJ, aviation on Honours level at UP and was aviation specialist from DPE 2006 to 2011 and currently advise other airlines and competition authorities.

## **CONCERNS WITH REGARD TO THE CIVIL AVIATION AMENDMENT BILL [B 44 – 2018]**

### **Lack of Consultation**

The consultations of the Department have focused on industry organisations, which represent the suppliers to the airline industry. There does, however, not seem to have been any positive steps taken to involve the users (demand side of the industry) in the consultation process. It must be noted that thousands of users (booked passengers) were inconvenienced and suffered millions of Rands in losses as a result of the '*precautionary suspension*' due to the grounding of all airline services in circumstances where such action by the SACAA have been found excessive by the High Court and Civil Aviation Appeal Committee (CAAC). A press advertisement placed during the annual holiday shutdown for comments hardly seems to be a fair process in terms of the Batho Pele and Constitutional principles.



### **Inadequate objectivity or decision making within the SACAA**

There is concern that recent decisions of the SACAA (e.g. in relation to Cemair and SAA Technical) demonstrates regulatory overreach and unequal application of oversight over technical requirements.

It appears that the separation of inspectorate from adjudication of matters to prevent conflict of interest and excessive measures (like 'precautionary' grounding of an airline for disputes relating to specific aircraft) should be adopted. This requires some organizational restructuring to separate the inspectorate from the adjudication of decisions, where the principles of natural justice would require submissions from the affected party be heard before adjudication is made by an independent body (an Independent Tribunal or the High Court) and not the inspectorate.

The appeal process in the Cemair case clearly demonstrates the unfairness of actions taken by the SACAA, both with regard to the scope of the SACAA ruling, and especially with regard to the timing of the ruling, which inconvenienced passengers (public) on their legitimate expectations to be carried. An appeal or review process does not cure decisions made especially due to the time that is involved in such a process. The SACAA has not responded to the appeal judgement with regard to assurances or revision of its internal adjudication process and structure.

Essentially, the entry and financial success of smaller airlines in South Africa is important for the development of competition on smaller routes in South Africa, as the SAA franchise agreement and loyalty schemes of SAA with SAX and Airlink has resulted in most of the domestic routes in South Africa being operated as monopoly routes under the SA code of SAA. This inhibit the entry and development of new entrants to the market.

The complete closure of the operation majority of narrow-body civil aircraft operations in South Africa due to the SACAA's intervention with regard to its inspections at SAA Technical is unprecedented not only in South Africa but also on a world-wide basis. This appeared to have only been resolved as a result of the personal intervention Minister of Transport a few days later. Apart from the multitude of airlines affected, this caused even more inconvenience to users (booked passengers) which resulted in even more losses in millions of Rands.

The (worldwide) unparalleled sudden effective grounding of most of the South African domestic air services clearly demonstrates that there is a problem in the direct relations between the supervisory authorities and the industry (airlines).

Following this recent nationwide cessation of the entire civil aviation operations, no structural or procedural changes of the SACAA are indicated in the Memorandum to the Bill or are apparent in the proposed Bill.

Constructive engagement and guidance to monitor implementation of Service Bulletins (SBs) and Airworthy Directives (ADs). An annual publication of a review of supervisory matters and guidance for the future would also assist.



The possible overnight closure of the entire South African domestic market imposes substantial additional risks to the industry and negatively affects future investment into the domestic industry. It also negatively affects the growth that is necessary for the industry.

#### **African Liberalization Measures**

South Africa has, on a political level, agreed to implement SAATM and the Africa Continental Free Trade Area (AfCTA), both of which have technical and operational supervisory implications. The Bill should reflect South Africa's implementation of such liberalization measures. For example, the SACAA should advise its intention of oversight of 'eligible airlines' and African registered aircraft for AOCs for consecutive cabotage and grand cabotage in terms of the AfCTA.

#### **Discretionary Powers of Commissioner**

According to the memorandum on the Bill, *'Clause 37 amends section 120 of the Act to remove from appealable decisions, those decisions which relate to privileges granted at the discretion of the Commissioner'*. These specifically relate to deletion in subsection (2) of paragraphs (c) and (f):

- (c) a decision taken in regard to the designation or withdrawal of a designation as inspectors, authorized officers or authorized persons contemplated in section 88(1);
- (f) the issuance, amendment or withdrawal of technical standards for civil aviation in terms of section 162(1)(a).

In principle, objective standards of regulatory regulation are preferable to discretionary measures, which is really unacceptable in an open and transparent society. The exclusion of appeal processes by Law of the discretionary powers of commissioner is definitely draconian and unacceptable. I am surprised that the Bill contains such an unacceptable principle, especially without substantial motivation. This would elevate the Commissioner to be above the Law and outside the scope of the Minister's and Parliament's authority and supervision, which is clearly unacceptable.

This submission is prepared by Dr. Joachim Vermooten, Senior Research Associate at the University of Johannesburg with contact details: Email: [Joachim@icon.co.za](mailto:Joachim@icon.co.za), Mobile: 0834682111

With kind regards

A handwritten signature in black ink, appearing to read 'J. Vermooten'.

Dr Joachim Vermooten

13 January 2020

CA - AIB

B44 - 2018/6

Valerie Carelse

---

**From:** htpaine@gmail.com  
**Sent:** Wednesday, 11 December 2019 11:38 AM  
**To:** Civil Aviation  
**Subject:** Civil Aviation Amendment Bill B 44 - 2018 submission  
**Attachments:** B 44 - 2018 submission Sect 118.pdf

Good Day

The invitation for public submissions regarding the above amendment bill refers.

Attached please find my submission for consideration.

I don't believe that there is any need for a verbal presentation as the document is self-explanatory.

Regards,

H.T. Paine

Sent from [Mail](#) for Windows 10



**SUBMISSION ON CIVIL AVIATION AMENDMENT BILL (B44 – 2018) TO THE PORTFOLIO COMMITTEE ON TRANSPORT: Amendment of Section 118 of Act 13 of 2009 par 35 (f) (3)**

The Commissioner and staff of CAA have very little appreciation or regard for the extent of the damage their decisions can have on a business. These officials have vast powers that can be used to ground aircraft and personnel and cause a business to cease operations in the name of safety. While these powers are very necessary, it is critical that there are efficient and effective mechanisms in place where poor or substandard decisions can be challenged expediently to avoid serious and unreasonable damage to a business.

Due to generally low experience levels of the officials they very often don't understand the true intent of regulations, resulting in poor interpretation of these regulations and subsequent poor decisions. These decisions can have unreasonable and devastating consequences for a business. As it is common practice for officials to ignore emails and telephone calls very often go unanswered, one is obliged to visit the official at their place of work and even then there is a very low probability that the decision will be reversed. Although aviation businesses are generally very reluctant to resort to the formal appeal process due to the risk of victimisation, this process is very often the only chance of resolving the matter. For this reason it is critical that this process is efficient, effective and treated with the seriousness that is required.

Personal experience has shown that CAA officials have no regard for the current timescales as captured in the Act, which draws out the period needed to resolve issues. In my particular case the documentation that was hand delivered to the Commissioner's office and acknowledged was later lost, resulting in a week's delay before any action was taken. Due to the limited personal experience in many of the aviation environments the Commissioner merely refers the matters back to very departments that created the original problem without obtain new objective inputs. Even though I asked for an opportunity to explain my case to the Commissioner, this was denied and it was only when it became clear that the matter was due to be elevated to the Appeal Committee that the matter received the necessary attention. The matter was finally resolved in my favour, but it took nearly two months and there is no indication that the Commissioner had any personal involvement. We were effectively prevented from doing any pilot training for a period of two months for no valid reason, which had a serious impact on the business. There is documentary evidence available to support the above.

Any further relaxation of these timescales would further aggravate this total disregard of their legal obligations and greatly harm the businesses that they should be supporting. A refusal to extend these timescales would send a very clear message to the Commissioner and the CAA officials that they should be dealing with these appeals with the seriousness that they deserve.



(H.T. PAINE)

11 December 2019





CA - AIB

B44 - 2018/7

Valerie Carelse

---

**From:** Brian Suckling <brian@brinairaviation.co.za>  
**Sent:** Friday, 10 January 2020 3:01 PM  
**To:** Civil Aviation  
**Cc:** 'Nivashnee Naraindath'  
**Subject:** Comment on Civil Aviation Amendment Bill B44-2018

Dear Ms Carelse,

I would like to make the following comment regarding the Civil Aviation Amendment Bill B44-2018. (The Bill) Section 1 of the Civil Aviation Act, No 13 of 2009 (The Act) refers.

The definitions contained in The Act do not include a satisfactory definition of "Flight."

The definition of "aircraft in flight" as contained in the The Bill, is with respect, inaccurate and not in line with the accepted definition and intent as contained in the American FAA Regulations (14 CFR 1.1) the ICAO Annex 1 definition or the JAR-FCL 1.001 definition. It is recommended that the above agency definitions of flight time, be incorporated into the definition of "aircraft in flight" in order to portray a more accurate definition.

The inclusion of defining an aircraft in flight from the moment all its external doors are closed following embarkation, does not define if this means external passenger doors or to include cargo doors as well. Similarly it very often occurs that cargo doors are closed some considerable time after the passenger doors are closed prior to departure, which would give an unclear definition of aircraft in flight. Aircraft movement, either under its own power or on push-back by a tractor, must also be considered.

May I with respect suggest the following definition of "aircraft in flight."

*"Aircraft in flight refers to any time, following the closure of all external doors, that an aircraft first moves for the purpose of taking off, until it finally stops at the end of the flight and the passenger doors are opened for disembarkation. In the case of a forced landing, flight shall be deemed to continue until such time competent authorities assume responsibility for the aircraft including all passengers, crew, property and freight on board the aircraft."*

I trust that this suggestion to The Bill will be considered in due course.

Kind regards,

**Dr Brian Suckling**                      **SACAA Non Executive Board Member**

B.Iur LLB LLM (University of South Africa) MBA (Henley, UK)

D.B.A (University of KwaZulu Natal)

Advocate of the High Court of South Africa

Tel +27 31 764 3851

Cell 079 495 3947

Email [brian@brinairaviation.co.za](mailto:brian@brinairaviation.co.za)

6 Spencer Place, Kloof, 3610, South Africa



CA - AB  
B44-2018/8

**Valerie Carelse**

---

**From:** Nivashnee Naraindath <NaraindathN@caa.co>  
**Sent:** Wednesday, 15 January 2020 3:01 PM  
**To:** Civil Aviation  
**Cc:** Michelle Phenya; MasetiT@dot.gov; Zintle Jessick Groepe; 'NgwetjanaT@dot.gov.za'; Thulisile Mashaba; Wisani Kola  
**Subject:** SACAA Comments on the CA Bill  
**Attachments:** letter PCOT CA BILL Jan 2020.pdf

Dear Valerie

I hope that you are well.

Kindly find attached comments from SACAA on the CA Amendment Bill for the kind consideration of the Portfolio Committee.

Kind regards  
Nivashnee

CC: Office of the Minister of Transport  
Office of the Deputy Minister of Transport  
Office of the Director General  
Office of the Deputy Director- General : Civil Aviation

**Nivashnee NARAINDATH (Ms)**  
Executive / Company Secretary  
Office of the Company Secretary

Tel: 011 545 1415 | Fax: 011 545 1635 | Cell: 076 010 0321 | Email: [naraindathn@caa.co.za](mailto:naraindathn@caa.co.za) | [www.caa.co.za](http://www.caa.co.za)

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4. The SACAA is therefore self-sustaining and is dependent on user fees, passenger safety charges and fuel levies.
5. Currently there is no provision that compels licence holders/persons to ringfence the collected money, fees, charges or levies into a trust account and as a result these monies are treated as normal business finances and not as revenue collected on behalf of and due to the SACAA by the licence holders/persons.
6. In terms section 74(1) of the Civil Aviation Act, 2009 (Act 13 of 2009) (Act), read with regulation 187.02.1 of the Civil Aviation Regulations, 2011 ("Regulations"), an Operator is obliged to collect passenger safety charge on behalf of the SACAA as prescribed.
7. In terms section 74(1) of the Act, read with regulation 187.02.2 of the Regulations, an Operator has an obligation to pay, directly to the SACAA, the passenger safety charge, collected over a period of a calendar month, within twenty-one (21) days after the last day of the month to which the collected charge relates.
8. An Operator is thus obliged to collect the passenger safety charge on behalf of the SACAA and pay the said charge over to the SACAA. If the operator does not transmit the collected passenger safety charge to the SACAA after 21 days, as things stand, the SACAA is at the mercy of Operators and they can transmit the collected passenger safety charge to the SACAA as and when they feel like and the SACAA has limited or no legal remedy to recover the collected monies in a cost effective manner.
9. The SACAA faces challenges in collecting the passenger safety charge particularly in instances where an operator-
  - a. is placed under liquidation;
  - b. is placed under business administration;
  - c. is placed under business rescue; or
  - d. fails to pay the amount within 21 days, as prescribed.
10. In instances that are mentioned under 9 (a) to (c) above, the SACAA is treated as an unsecured/ non-preferential creditor and is unable to recover some or all of the already collected passenger safety charge.
11. Unpaid passenger safety charges have a potential to collapse the financial stability of the SACAA and can make the SACAA unable to achieve its mandate, as the bulk of the SACAA revenue is derived from the passenger safety charge.
12. In order to reinforce the SACAA financial model and financial stability, there is a need to strengthen the legislative requirements in this regard.

13. We therefore propose an amendment to be incorporated in the Civil Aviation Amendment Bill, for the SACAA to:
- a) be regarded as a preferential creditor, in cases of liquidation, business administration or business rescue; and
  - b) empower the Minister to make Regulations regarding administrative measures to be taken for any failure by a licence holder/person to pay over to the SACAA any money, fees, charges or levies collected on behalf of the Civil Aviation Authority.

14. We thus propose the following amendments to the Civil Aviation Amendment Bill:

a. Proposal 1:

The insertion in section 74, after subsection (3) of subsection (4) as follows:

“(4) In instances where any person is liquidated, placed under business rescue or administration, the Civil Aviation Authority is entitled, as a preferential creditor, to recover any money, fees, charges or levies collected on its behalf by such person.”

b. Proposal 2:

- (i) The addition in section 155, subsection (1) after paragraph (xx) of paragraph (yy) and the renumbering of paragraph (yy) to paragraph (zz) as follows:

“(xx) requiring any person who collects any money, fees, charges or levies on behalf of the Civil Aviation Authority to establish a trust account where such money, fees, charges or levies may be kept for onward transmittal to the Civil Aviation Authority;

(yy) administrative action to be taken for any failure by any person to transmit to the Civil Aviation Authority, as prescribed, any money, fees, charges or levies collected on behalf of the Civil Aviation Authority; and

(zz) the establishment of a structure that brings together aviation role players to pursue transformation of the aviation industry.”.

15. The above proposals have an effect that the SACAA shall be categorised as preferential creditor to enable the SACAA to recover some or all the already collected money, fees, charges or levies in instances listed under paragraph 9 (a), (b) and (c) above i.e. liquidation, business administration, or business rescue.

16. We therefore propose, as a schedule to the Amendment Bill, an amendment to the Insolvency Act, 1936 (Act No. 24 of 1936) as follows:

a. Proposal 3:

The addition in section 99 subsection (1) after paragraph (f) of paragraph (g) as follows:

"(g) any money, fees, charges or levies which the insolvent has collected on behalf of the South African Civil Aviation Authority in terms of the Civil Aviation Act, 2009 (Act No. 13 of 2009)."

17. In order for the SACAA to carry out its mandate in terms of the Civil Aviation Act, being that of controlling, regulating and promoting civil aviation safety and security in South Africa and to oversee the functioning and development of the civil aviation industry, the SACAA must be enabled to collect maximum revenue by strong legislative provisions that support the prescribed self-funding revenue model. We believe that the proposed provisions will go a long way in achieving the above objective.
18. Please contact the writer hereof should you need any further clarity.

Yours Faithfully



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**Mr Ernest Khoza**  
**Chairman of the SACAA Board**

**CC: Office of the Minister of Transport**  
**Office of the Deputy Minister**  
**Office of the Director General**  
**Office of the Deputy Director-General: Civil Aviation**



CA- A/B

B44-2018/9



## My COMMENTS

8.12.2019

HAVING READ CAREFULLY THROUGH YOUR ADVERT CONCERNING THE SUBMISSION OF COMMENTS ON THE AMENDMENT OF CIVIL AVIATION ACT, MY MAIN CONCERN IS THE SAFETY OF THE AIRLINERS, PASSENGERS IN PARTICULAR. FOR THE PAST FEW YEARS VARIOUS ACCIDENTS HAD BEEN REPORTED IN AVIATION. THE CRUCIAL POINT IS, WHERE LIES THE FAULT. ARE THESE AIRLINERS PROPERLY SERVICED. MOST MECHINERY INVOLVED IN LONG DISTANCES MUST BE UNDER STRICT SURVEILANCE.

ON THE OTHER HAND, MAKE SURE THAT YOUR FLIGHT ENGINEERS ARE PROPERLY TRAINED. PROPER EMOLUMENTS ARE PAID TO THESE CREW TO CONCENTRATE ON THEIR WORK.

IT IS THE DUTY OF THE DEPARTMENT AND SENIOR OFFICE-BEARERS TO MAKE SURE THAT THE TRANSPORT INDUSTRY IS MANAGED BY COMPETENT PERSONNEL. DURING THIS ERA THE COUNTRY IS EXPERIENCING LOT OF HARDSHIPS BECAUSE OF TRANSFORMATION. MY BEST ADVICE TO STAKE-HOLDERS IS, WHEN EVER YOU EMPLOY PEOPLE, MAKE SURE YOU TRAIN THEM PROPERLY SO THAT THEY DO NOT OVER-RIDE THE



II. ~~III~~  
RULES LAID DOWN. MOST DISADVANTAGED  
PEOPLE ARE EMPLOYED. DO THEY HAVE  
RELEVANT SKILLS TO EXECUTE THEIR  
DUTIES? RUNNING THE GOVERNMENT IS  
NOT AN EASY TASK. MANY ARE  
NOT FAMILIAR WITH WHAT IS EM-  
BRACED IN THE CONSTITUTION. HUMAN  
RIGHTS COMMISSION MUST BE WARY  
HOW THEY ADDRESS THE PUBLIC  
ON HUMAN RIGHTS. BE CAREFUL NOT  
TO CAUSE CONFUSION.

HUMAN RIGHTS GOES HAND IN  
HAND WITH RESPECT FOR THE  
ELDERLY PEOPLE. OUR YOUTH WILL  
GO TO THE EXTENT OF OVERLOOKING  
OUR ELDERLY PEOPLE. POOR PRACTICE.

FINALLY, ALL THE STAKEHOLDERS OR  
MINISTRIES MUST TRY TO JOIN HANDS  
TO CONTROL ALL THE RELEVANT ORGANS  
OF THE GOVERNMENT TO FUNCTION  
EFFECTIVELY. TAKE TIME TO WORK  
DILIGENTLY FOR THE PUBLIC. BY SO  
DOING, YOUR EFFORTS WILL BE SUCCESS-  
FUL AND MORE JOBS WILL BE CREATED

V.R. Mmusi

NORTH WEST.

2027 MAKAPANSTAD OF



# COMMENT AFTER DEADLINE

**Valerie Carelse**

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**From:** craig@aviation4SA.co.za  
**Sent:** Friday, 24 January 2020 8:52 AM  
**To:** Civil Aviation  
**Subject:** RE: Civil Aviation Amendment Bill-b44-2018\_0

Many thanks Veronica

Please can you pose the below question to the Committee or suitable person

**The Civil Aviation amendment Bill seems to be replacing "Protocol" with "Transit agreement". Where can I obtain this Transit agreement being referred to?**

Kind regards  
Craig



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Chief Executive Officer  
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Mobile +27 (0) 83 231 5896  
[www.aviation4sa.co.za](http://www.aviation4sa.co.za)



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**From:** Civil Aviation <civilaviation@parliament.gov.za>  
**Sent:** Wednesday, January 22, 2020 12:40 PM  
**To:** craig@aviation4SA.co.za  
**Subject:** RE: Civil Aviation Amendment Bill-b44-2018\_0

Dear Craig,

As discussed, please find the attached advertisement on the above-mentioned Bill.

Regards,  
V Carelse

---

**From:** [craig@aviation4SA.co.za](mailto:craig@aviation4SA.co.za) [mailto:[craig@aviation4SA.co.za](mailto:craig@aviation4SA.co.za)]  
**Sent:** Friday, 17 January 2020 10:15 AM  
**To:** Civil Aviation <[civilaviation@parliament.gov.za](mailto:civilaviation@parliament.gov.za)>  
**Subject:** FW: Civil Aviation Amendment Bill-b44-2018\_0  
**Importance:** High

Dear Valerie

I hope you are keeping well.

I received this document from CARCOM and CAASA and am busy working through it.

I'd like to really apply my mind and have my team work on it.  
What is your deadline so that we have something to work to.

Regards  
Craig



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Chief Executive Officer  
Aviation4SA (Pty) Ltd

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Mobile +27 (0) 83 231 5896  
[www.aviation4sa.co.za](http://www.aviation4sa.co.za)



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**From:** Office <[office@caasa.co.za](mailto:office@caasa.co.za)>  
**Sent:** Wednesday, January 15, 2020 12:05 PM  
**Subject:** Civil Aviation Amendment Bill-b44-2018\_0  
**Importance:** High

Dear Members,

Compliments of the New Season and wishing all members a prosperous New Year.

Kindly receive attached hereto copy of the Civil Aviation Amendment Bill that is currently on publication for public comments.

Comments can be emailed to Valerie Carelse at [civilaviation@parliament.gov.za](mailto:civilaviation@parliament.gov.za) ASAP.

Enquiries can be directed to Valerie Carelse on (021) 403 3272 or cellphone 083 709 8445.

With regards,

**Josephine Freese**

Administrator: Regulation Development

**Legal and Aviation Compliance**

Tel: 011 545 1549 | Fax: 011 545 0000 | Cell: 083 451 2631 | Email: [freesej@caa.co.za](mailto:freesej@caa.co.za) | follow us

on    



*Kind Regards*

Sam Keddle  
Office Manager  
063 717 3460

Twitter: @CAASA4  
Instagram: @CAASA1  
FaceBook: @CAASA2  
[www.caasa.co.za](http://www.caasa.co.za)

## The Commercial Aviation Association of Southern Africa NPC



**Sam Keddle**

*Office Manager*

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