



# SUMMARY OF CONSULTATION



## Balloons and hot air airships

Civil Aviation Legislation Amendment (Part 131) Regulation 2019



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## Overview

CASA published the Summary of Proposed Change (SPC) on Part 131 - Manned free balloons and hot airships of the *Civil Aviation Safety Regulations 1998 (CASR)* on the Consultation Hub from 10 - 30 September 2019. The consultation invited industry and the public to provide feedback and comment.

Part 131 of the *Civil Aviation Safety Regulations 1998 (CASR)* is proposed to apply to:

- manned free balloons and hot air airships (both being lighter than air aircraft capable of controlled free flight)
- tethered gas balloons (lighter than air gas filled balloons intended for tethered flight only).

Part 131 would consolidate the present rules related to the:

- entry control, operations, and personnel training for balloon commercial operations
- operational rules for balloon sport and recreational activities.

This consolidation will replace, in relation to these matters, the existing *Civil Aviation Regulation 1998 (CAR)* and Civil Aviation Order (CAO) requirements.

Together with the existing general operating and flight rules in Part 91 of the *Civil Aviation Safety Regulations 1998 (CASR)* (as amended by the proposal) and the proposed Part 131 Manual of Standards (MOS), Part 131 prescribes a rule set that facilitates the operational activities of Part 131 aircraft. It specifies the requirements for air operators' certificates (AOC) for commercial passenger transport operations in balloons and except for balloon flying training, would replace the existing AOC requirements for non-passenger carrying commercial operations (aerial work) with a simpler and lower cost CASA approval mechanism.

Part 131 would integrate recreational ballooning activities within the Part 149 self-administration framework and would apply to any organisation that administers such recreational ballooning activities.

CASA worked with the industry from 2007-2015 to develop the basic policies of Part 131. This included the licensing and maintenance provisions that are excluded from the current Part 131 proposal.

These provisions were excluded primarily to enable further discussions with industry regarding whether any changes to previously discussed policies are necessary noting the lessons learned from the transition of the licensing and flight training rules for the non-balloon sectors. CASA also proposes to develop appropriate rules for continuing airworthiness and maintenance of Part 131 aircraft in discussions with industry. CASA is proposing to discuss these matters with industry immediately following the conclusion of development on the Part 131 MOS for Part 131 as currently proposed.

This Summary of Consultation (SOC) summarises the key themes of the feedback received during the September 2019 period of public consultation and CASA's response to these matters.

## Respondents

Sixty-one (61) responses to the consultation were received. One respondent was a CASA officer and one was not a member of the aviation industry. Eleven (11) respondents identified as a

balloon owner/operator, twenty-seven (27) as a balloon pilot, and two (2) from a sport and recreational organisation. Twelve (12) people identified as "other" including chief pilots, an operations manager for an AOC holder and a maintenance authority holder. Thirty-eight (38) respondents provided permission for their response to be published.

CASA appreciates the time taken by industry to respond during the consultation period and the contributions made by all respondents. Where permission has been granted, individual consultation responses are available on [CASA Consultation Hub website](#).

## Key feedback

Thirty-eight (38) respondents stated that they rejected the proposed draft regulation and disagreed with making the proposed regulations. Thirty-three (33) respondents said that they needed to review the accompanying Manual of Standards (MOS) prior to making any decision on the proposed regulations. Thirty-four (34) respondents stated that there should be more consultation with the industry on process and policy formation.

One person who did not identify as being a balloon owner, operator or pilot agreed with the regulations and suggested all balloons should carry life jackets and oxygen for all on board. Another person who did not identify as a balloon owner, operator or pilot stated that balloons should not be flown over populous areas and that the rules that apply to remotely piloted aircraft should also apply to balloons.

CASA considered the comments received in this consultation process along with those expressed during an audio and video conference "webinar" with industry that was conducted on 25 September 2019. Many comments were received and discussed during the webinar, so it is not always possible to provide an accurate quantity for the number of respondents to each theme.

### Theme 1 - Time available for comment

Some respondents stated that a three-week consultation period was insufficient to provide comment on a complex set of regulations.

#### CASA response

CASA disagrees that a longer consultation period was necessary noting the limited scope of the changes between proposed draft regulations and the current rules. Substantial portions of the detailed regulatory requirements will be contained within the Part 131 MOS that will be discussed extensively with industry during planned working group sessions and this document will be publicly consulted for at least 28 days in accordance with subpart 11.J of CASR.

### Theme 2 - Additional consultation with the sector

Thirty-four (34) respondents stated that CASA must consult more with commercial operators and the recreational balloon organisation.

#### CASA response

CASA will form a CASA Technical Working Group comprised of CASA and industry SMEs to consult on the Part 131 MOS with the aim of completion of the MOS in the first half of 2020. Placing detailed requirements in the MOS, instead of the regulations, affords greater technical

detail and regulatory flexibility in rulemaking. CASA's intent is to have a mix of representation on a Technical Working Group from large commercial operators, smaller operators and the recreational sector.

### **Theme 3 - Part 131 was envisaged as a dedicated standalone part**

Fifty-five (55) respondents contributed answers to the question " Please provide feedback on the proposed modifications to Part 91 of CASR to accommodate Part 131". Many stated that their expectation was that Part 131 would be a 'one-stop-shop' for the rules governing lighter-than-air aircraft, however, the proposed regulations instead now relied on some rules from Part 91 applying to Part 131 aircraft. They stated that without the MOS it was impossible to make a reasoned comment.

Further comment was also received that the regulations are complex and confusing.

#### **CASA response**

Multiple operational flight rules have always applied to all aircraft (including balloons). For example, the rules concerning a person being authorised to pilot the aircraft, obeying the aircraft flight manual instructions or not creating a hazard to persons or property are common to all aircraft. These rules are described in Part 91 and repeating them in Part 131 would be unnecessarily repetitive and would not reflect government policy related to minimising the overall regulatory suite. The Office of Parliamentary Counsel provided CASA the advice on this policy in relation to this matter.

The Part 131 legislative package will amend Part 91 to clearly state which rules are disapplied or 'turned off' for Part 131 aircraft. Where a Part 91 rule is slightly different for a Part 131 aircraft the Part 91 rule will be amended. For example, regulation 91.475 will require only one fire extinguisher to be available during the refuelling of Part 131 aircraft instead of two for other aircraft.

The amendments to Part 91, contained within this proposed amendment and the future Part 131 consequential amendment instrument, will result in the Part 91 MOS containing NO requirements applicable to a Part 131 aircraft.

CASA intends to publish a Part 131 plain English guide (similar to that currently published for Part 91) that will assist readers with understanding the complexity and inter-relationship of the regulations. It will collate all the operating and flight rules from both Part 91, Part 131 and the Part 131 MOS in one location. It is not proposed that this guide will include the certification rules for balloon transport operations.

### **Theme 4 - Requirements for new key personnel**

Several respondents stated that requirements for new key personnel such as a safety manager and training and checking manager are not practical for balloon AOC holders, especially smaller operators.

#### **CASA response**

To provide additional time to consult with industry on the requirements related to safety management systems and training and checking systems, CASA has removed the proposed regulations related to safety management systems (SMS) and training and checking systems for

balloon transport operators (including the requirements for the two associated key personnel - the head of training and checking and the safety manager).

CASA will discuss these matters with industry via the working group process once the Part 131 MOS elements related to the proposed regulations have been developed.

### **Theme 5 - Operations over water**

Fifty four (54) respondents stated that the proposed regulation for balloon transport operations to not operate more than 200 m from the shore of a body of water without satisfying the requirements of the MOS was too restrictive because it took no account of the nature of the body of water or the circumstances of the flight.

#### **CASA response**

CASA has removed any reference to distances from the shore of a body of water for both balloon transport and recreational activities over water. The proposed regulation will now require that operations over water will be in accordance with the requirements in the MOS. The safety risk for operations over water will be drafted in consultation with the technical working group. The risk for different types of operation will be assessed and the appropriate safety measures proposed.

### **Theme 6 - Operations over populous areas or public gatherings**

Some respondents thought that the proposed regulations would prohibit balloon operations over populous areas or public gatherings.

#### **CASA response**

This is not the case as the proposed regulation requires that these operations must be conducted in accordance with the requirements in the MOS. The requirements in the MOS will be developed in consultation with the technical working group.

### **Theme 7 - Specialised balloon operations**

Fifty-five respondents were confused about what constituted a specialised balloon operation and whether certain recreational activities that can currently be conducted by a pilot holding a private pilot certificate would require a commercial licence in the future.

#### **CASA response**

CASA clarified the definition of what would constitute a specialised balloon operation and who could grant the specialised balloon operation approval to ensure that there was no crossover between specialised balloon operations and Part 131 recreational activities.

CASA changed the regulations relating to what type of pilot authorisation or licence would be required for specialised balloon operations to have these requirements in the Part 131 MOS. This means that these requirements will be subject to discussion with the technical working group.

CASA also amended the definition of specialised balloon operations to clarify that hang glider drops would not be specialised balloon operations and that they would be Part 131 recreational activities administered by a Part 131 ASAO.

## Theme 8 - Cabin crew and air crew

Many respondents stated that including rules in Part 131 for cabin or air crew was irrelevant and confusing for balloon transport operators.

### CASA response

Currently balloon charter operators are not required to carry a cabin attendant (old terminology for cabin crew member) provided they comply with the requirements of subsection 6A of CAO 20.16.3. A key requirement is that no more than 24 passengers are allowed to be carried.

The reasoning for these regulations can be usefully informed by the definition of cabin crew member and air crew member. The relevant excerpts of these definitions are shown below.

#### *air crew member:*

- (a) for a flight not involving an aerial work operation—means a crew member for the flight (other than a flight crew member) who carries out a function during the flight relating to the safety of the operation of the aircraft, or the safety of the use of the aircraft; or

*cabin crew member* means a crew member who performs, in the interests of the safety of an aircraft's passengers, duties assigned by the operator or the pilot in command of the aircraft, but is not a flight crew member.

CASA does not intend to change the existing requirements related to balloons and when they must carry cabin attendants that are currently embedded within the CAO and in the future will be in the Part 131 MOS.

Currently, balloons are not limited to carrying 24 passengers or less — they are simply required to have a cabin attendant if they carry more than 24 passengers. However, if a balloon did ever carry more than 24 passengers there are currently no requirements about the training and checking standards for these cabin attendants.

Therefore, CASA's intent with the proposed subpart 131.P regulations was to provide an ability for the Part 131 MOS to outline any such requirements if it became necessary in the future due to increasing balloon size. It was not intended that these provisions would be currently utilised. If such operations did ever occur, then any such proposals for provisions within the Part 131 MOS would be discussed with industry and would also be the subject of a mandatory 28 day public consultation.

However, noting that industry was confused by these provisions, CASA removed the proposed regulations in Part 131 that referred to cabin crew members and air crew members.

CAO 20.16.3 will be repealed at the commencement of new regulations in March 2021. CASA intends to transfer the balloon related elements of this CAO into the Part 131 MOS using the head of power provided by the 'carriage of passengers' regulation.

The transfer of these provisions into the MOS will be discussed with the CASA technical working group.

## Theme 9 - Towing

Several respondents noted that references to balloons conducting towing were meaningless because balloons moved with the air and could not tow an object.

### **CASA response**

CASA agreed and therefore removed all references to towing from the Part 131 regulations.

### **Theme 10 - Cargo**

Two (2) respondents thought references to cargo were inappropriate for balloon operations because balloons did not carry freight.

### **CASA response**

Cargo is defined in the CASR Part 1 Dictionary as 'things other than persons carried in an aircraft'. It is not the same as the common interpretation of "freight". Therefore, a regulation requiring cargo to be secured for landing in a Part 131 aircraft is appropriate.

### **Future direction**

CASA has incorporated the changes outlined in this document to the proposed Part 131 regulations and will now progress them to making via the standard government regulatory decision-making process. The Part 131 rules have been consolidated into the proposed *Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019*. Schedule 1 (Part 103), Schedule 2 (Part 105) and Schedule 3 (Part 131) is proposed to be made in December 2019 and would commence on 25 March 2021. Schedule 4 (Part 91 amendments) would commence the day after the instrument is registered as this amends the earlier Part 91 legislative instrument that also does not commence until 25 March 2021.

CASA will form a technical working group and aim to hold an initial meeting during December 2019. CASA will discuss with the technical working group the policies to be articulated in the Part 131 MOS as per the proposed regulations. Following the finalisation of the Part 131 MOS, CASA will continue to engage with the technical working group regarding other regulatory matters to be included in the CASR.

In parallel with the technical working group discussions, CASA will develop the transitional regulations that will move existing charter AOC holders into the new Part 131 and discuss these with the technical working group. CASA will also develop a Part 131 plain English guide that incorporates the applicable requirements from Part 91, Part 131 and the Part 131 MOS.

The necessity for the development of any further guidance material or amendments to existing guidance material will initially be discussed with the technical working group.