Consultation: Proposed amendment to protection and use of safety information - Civil Aviation Orders 82.3 and 82.5 - (CD 1914FS)

## Overview

CASA is seeking feedback on proposed changes to Civil Aviation Order (CAO) 82.3 and 82.5 which will:

* enhance the protection of safety data, safety information and their sources
* facilitate the continued availability of safety data and information to maintain or improve aviation safety
* clarify the definition of *safety information* in relation to the protective objectives reflected in the proposed amendments
* ensure application of ‘just culture’ principles consistent with [CASA’s regulatory philosophy](https://www.casa.gov.au/about-us/who-we-are/our-regulatory-philosophy)
* respond to feedback received via previous consultation on this matter.

The proposed changes to CAO 82.3 and 82.5 are intended to reflect the latest ICAO standards and recommended practices (SARPs) as set out in Amendment 1 to Annex 19 of the Convention on International Civil Aviation (Chicago Convention).

CASA intends for the amendments to CAO 82.3 and CAO 82.5 to come into effect on

7 November 2019, when Amendment 1 to Annex 19 to the Chicago Convention becomes applicable.

In the near term, CASA intends to incorporate these amendments into the corresponding provisions of Subpart 119.F of the *Civil Aviation Safety Regulations 1998* (CASR) of the new [flight operations regulations](https://www.casa.gov.au/rules-and-regulations/regulation-development/flight-operations-regulationshttps:/www.casa.gov.au/rules-and-regulations/regulation-development/flight-operations-regulations) which commence in March 2021. It is envisaged that these amendments will eventually be included in CASR Part 5 (Safety Management), when that Part is promulgated.

**Background**

Air operators collect safety data and safety information to support proactive and continuous safety improvement and to maintain the safety of current operations. The processes by which safety data and information is collected, stored and analysed are generally part of an operator’s safety management system (SMS). These systems may include a flight data analysis program (FDAP) and other kinds of safety data collection and processing systems. The data and information involved often include details from which the identity of the individual reporting, responsible for or otherwise identified in the data and/or information can be ascertained. Limitations on the use of such information is widely recognised as integral to the efficacy and objectives of safety reporting systems.

Many of the provisions in the proposed amendments are currently reflected in [CASA Directive 02-0053 - Limitations on the Use of Safety Information (July 2019)](https://www.casa.gov.au/publications-and-resources/publication/limitations-use-safety-information-directive), which has been in effect since 2017. The Directive applies rational ‘just culture’ principles to the processes and products of all safety reporting, irrespective of the means by which that information has been obtained by or the circumstances under which it became apparent to CASA.

**Previous consultation**

CASA previously consulted on this matter in 2018. The draft policy was set out in the exposure draft of Part 119 of CASR and subject to the review of a [Technical Working Group](https://www.casa.gov.au/about-us/working-industry/aviation-safety-advisory-panel/technical-working-groups/part-119-twg-air-operator-certification-commercial-air-transport) appointed by CASA’s [Aviation Safety Advisory Panel](https://www.casa.gov.au/about-us/working-industry/aviation-safety-advisory-panel). A copy of the exposure drafts previously consulted is included in the ‘related’ links below. Feedback from the previous consultation on this issue is in the fact bank below.

**Fact bank:** Extract from Part 119 summary of consultation

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| **Subpart 119.F – Safety management (119.220 and 119.225)**  **Comments**  CASA received a small number of comments on 119.220 and 199.225, most significantly in respect of the flight data analysis program (FDAP) requirements, protections from disclosure of the identity of a data source, the disclosure of the data source to CASA, and the circumstance under which the operator could take punitive action against the data source. Most of the comments received recommended further consultation on these provisions. These additional consultations were undertaken with respondents who asked to meet with CASA, and with the TWG meeting for Part 119 of CASR. At the TWG meeting it was also noted that the FDAP mandate extended to some helicopters that were not required under current or proposed new legislation to be fitted with an FDR.  **CASA response**  CASA notes the complexity of the SMS regulations and agrees with comments that it could be simplified.  Regarding the taking of punitive action against a data source, CASA agrees that the regulation could reflect a better balance between protecting the identity of the data source and when punitive action may be taken by the operator against the data source. CASA also agrees that the FDAP provisions must be consistent with the FDR fitment mandate for smaller rotorcraft.  **CASA action**  In response to comments received, CASA will make the following changes to Subpart F:   * Extract the FDAP requirements from regulation 119.200 and set them out in a separate regulation. * Modify the mandated components and elements of the safety management system in 119.220 to reflect the ICAO components and elements, without including sub- and/or related elements that could be or are addressed in guidance material. This involves the deletion of subregulation (2), paragraph (3)(a), subparagraphs (3)(b)(iii), (v), (vi) and (vii), subparagraph (3)(d)(ii) and paragraph (3)(d). * Remove subregulation 119.220(6) from the regulation, pending consideration in 2019 of how the regulation could better reflect the balance between protection principles and punitive action (or exception as per ICAO) principles, in accordance with ICAO guidance. * Revise the FDAP mandate for rotorcraft. Operators of rotorcraft configured to carry more than 9 passengers but having a maximum take-off weight less than 7,000 kg would only be required to provide an FDAP if the rotorcraft is fitted with an FDR. * Remove regulation 119.225. CASA has other legislative means to require the name of a data source. |

# Why we are consulting

CASA recognises the valuable contribution community and industry consultations make to the policy decision-making process and future regulatory change. Please take this opportunity to give your views on these proposed amendments.

Informed by the input received in response to CASA’s 2018 consultation in connection, which focused on the FDAP provisions in then-draft Part 119 of CASR, this consultation exercise considers the broader implementation of the ICAO Annex 19 SARPs governing the use and protection of safety data and information which are applicable from 7 November 2019.

**Documents for review**

On this page under the heading, "Related Documents” you will find the Summary of proposed change on CD 1914FS and the draft CAOs containing the proposed amendments. You will also find a downloadable Word copy of this consultation for ease of distribution and feedback within your organisation.

Further reading for additional information is also available:

* Exposure Draft 119.220 – Compliance with exposition by personnel
* Exposure Draft 119.225 - Personnel training and checking records-making records
* Fourth edition of Safety Management Manual (SMM), Doc 9859, published by the International Civil Aviation Organization (ICAO)

**Providing your response**

Comments on CD 1914FS should be submitted through the online response form. The survey has been designed to give you the option to provide feedback on the survey in its entirety or to provide feedback on the policy topics applicable to you.

*Note: The word document and PDF are not to be used as an emailed submission, unless there are extenuating circumstances and this form of submission has been agreed to by the consultation project lead.*

**General comments and file upload option**

There is a general comments box at the end of the consultation, into which you can place your comments on matters related to the regulatory amendment, which have not already been addressed in the consultation.

*Note: CASA can no longer offer the option to upload files because of the potential risk of malware.*

## Using an iPad

If you are using an iPad to complete the survey you will be asked to 'download the relevant PDF'. Depending on the software you have on your iPad you may need to download the free viewer to review the single document PDF files. Where a file is a 'multi-file or portfolio PDF you will need to source the Adobe free view - available from iTunes.

# What happens next

All comments on the drafts of CAO 82.3 and 82.5 consultation will be considered. Relevant feedback that improves upon the proposed regulations and is consistent with the regulations and other CASA policy, will be incorporated into the final ruling.

Once the consultation has closed, we will make all submissions publicly available on the Consultation Hub, unless you request your submission remain confidential. We will also publish a Summary of Consultation which summarises the feedback received, outlines any intended changes and details our plans for the CAO’s.

CASA has set a date of 7 November 2019 to make the proposed rules, which will come into effect on the day of registration. The feedback we receive from this consultation will also assist CASA in developing additional implementation strategies.

Information about how we consult and how to make a confidential submission is available on the [CASA website](https://www.casa.gov.au/rules-and-regulations/landing-page/consultation-process).

To be notified of any future consultations, you can subscribe to our [consultation and rulemaking mailing list](https://mailinglist.casa.gov.au/?p=subscribe&id=3).

Give Us Your Views

[Online Survey](https://consultation.casa.gov.au/)

**Related**

List of links to the consultation

* Exposure draft - CASR Part 119 - Australian air transport operators - certification and management - 2018

List of documents to attach to the consultation

* Summary of proposed change on CD 1914FS
* Consultation Draft - Civil Aviation Order 82.3 Amendment Instrument 2019 (No. 1)
* Consultation Draft - Civil Aviation Order 82.5 Amendment Instrument 2019 (No. 1)
* Word Doc - Consultation - Proposal to amend CAOs 82.3 and 82.5 to implement ICAO Annex 19 SARPs - (CD 1914FS)

## **Audiences & Interest groups**

## Audiences

CASA Staff

Air operators

## Interests

Safety management systems

Operational standards

**Page: About this consultation**

This consultation asks for your feedback on the Proposed amendment to protection and use of safety information in CAOs 82.3 and 82.5, to implement ICAO Annex 19 SARPs.

We will ask you for:

* **personal information**, such as your name, any organisation you represent, and your email address
* **your consent** to publish your submission
* **your responses** to the proposed changes in the regulations
* **any comments** you may want to provide
* **demographic information** to help us understand your interest in the regulations

Our [website](https://www.casa.gov.au/rules-and-regulations/changing-rules/consultation-and-project-history/consultation-industry-and-public) contains more information on making a submission and what we do with your feedback.

# **Page 1: Personal information**

## First name

*(Required)*

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## Last name

*(Required)*

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## Email address

If you enter your email address you will automatically receive an acknowledgement email when you submit your response.

## Email

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## Do your views officially represent those of an organisation?

*(Required)*

*Please select only one item*

Yes, I am authorised to submit feedback on behalf of an organisation

No, these are my personal views.

## If yes, please specify the name of your organisation.

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Demographic question

Which of the following best describes the group you represent?

*Please select only one item*

Aircraft owner/operator

Pilot

AOC holder

Other

Please specify “Other” if selected.

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# **Page 2: Consent to publish submission**

In order to provide transparency and promote debate, we intend to publish all responses to this consultation. This may include both detailed responses/submissions in full and aggregated data drawn from the responses received.

Where you consent to publication, we will include:

* **your last name**, if the submission is made by you as an individual
* **the name of the organisation** on whose behalf the submission has been made
* **your responses and comments**

We **will not** include any other personal or demographic information in a published response.

Information about how we consult and how to make a confidential submission is available on the **CASA website** [*<https://www.casa.gov.au/rules-and-regulations/landing-*](http://www.casa.gov.au/rules-and-regulations/landing-) *page/consultation-process>* .

## Do you give permission for your response to be published?

(Required)

*Please select only one item*

Yes - I give permission for my response/submission to be published.

No - I would like my response/submission to remain confidential but understand that de-identified aggregate data may be published.

I am a CASA officer.

# Page 3: Feedback on Proposed amendment to protection and use of safety information - Civil Aviation Orders 82.3 and 82.5 - (CD 1914FS).

The proposed changes to CAO 82.3 and 82.5 are intended to reflect the latest ICAO standards and recommended practices set out in Amendment 1 of Annex 19.

**The aims:**

* enhance protections to safety data, safety information and their sources
* facilitate the continued availability of safety data and information to maintain or improve aviation safety
* clarify definitions for safety data and safety information to support consistency
* ensure application of 'just culture' principles consistent with [CASA’s regulatory philosophy](https://www.casa.gov.au/about-us/who-we-are/our-regulatory-philosophy)
* respond to feedback received via previous consultation on this issue (see fact bank above).

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**Fact bank:** Feedback from previous consultation

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| Extract from [Part 119 Summary of consultation](https://consultation.casa.gov.au/regulatory-program/cd1806os/results/summaryofconsultationonpart119.pdf) (pp. 16-17)  **Subpart 119.F – Safety management (119.220 and 119.225)**  **Comments**  CASA received a small number of comments on 119.220 and 199.225 which comprise Subpart 119.F, most significantly in respect of the flight data analysis program (FDAP) requirements, protections from disclosure of the identity of a data source, the disclosure of the data source to CASA, and the circumstance under which the operator could take punitive action against the data source. Most of the comments received recommended further consultation on these provisions. These additional consultations were undertaken with respondents who asked to meet with CASA, and with the TWG meeting for Part 119 of CASR. At the TWG meeting it was also noted that the FDAP mandate extended to some helicopters that were not required under current or proposed new legislation to be fitted with an FDR.  **CASA response**  CASA notes the complexity of the SMS regulations and agrees with comments that it could be simplified.  Regarding the taking of punitive action against a data source, CASA agrees that the regulation could reflect a better balance between protecting the identity of the data source and when punitive action may be taken by the operator against the data source. CASA also agrees that the FDAP provisions must be consistent with the FDR fitment mandate for smaller rotorcraft.  **CASA action**  In response to comments received, CASA will make the following changes to Subpart F:   * Extract the FDAP requirements will be extracted from regulation 119.200 and set out in a separate regulation. * Modification of the mandated components and elements of the safety management system in 119.220 to reflect the ICAO components and elements, without including sub- and/or related elements that could be or are addressed in guidance material. This involves the deletion of subregulation (2), paragraph (3)(a), subparagraphs (3)(b)(iii), (v), (vi) and (vii), subparagraph (3)(d)(ii) and paragraph (3)(d). * Remove subregulation 119.220(6) from the regulation, pending consideration in 2019 of how the regulation could better reflect the balance between protection principles and punitive action (or exception as per ICAO) principles, in accordance with ICAO guidance. * Revise the FDAP mandate for rotorcraft. Operators of rotorcraft configured to carry more than 9 passengers but having a maximum take-off weight less than 7,000 kg would only be required to provide an FDAP if the rotorcraft is fitted with an FDR. * Remove regulation 119.225. CASA has other legislative means to require the name of a data source. |

**Do you agree the proposed governance arrangements, in relation to the use and protections applicable to safety information collected and stored in an operator’s FDAP, are fair?**

Yes

Yes, with changes (please specify suggested changes below)

No (please set out your reasoning and alternative suggestions below)

Undecided / Not my area of expertise

Comments

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**Do you agree the proposed governance arrangements, in relation to the use and protections applicable to safety information collected and stored in an operator’s FDAP, are operable?**

Yes

Yes, with changes (please specify suggested changes below)

No (please set out your reasoning and alternative suggestions below)

Undecided / Not my area of expertise

Comments

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**Do you see any risks in the proposed governance arrangements for the use and protections applicable to safety information data collected and stored in an operator’s FDAP?**

Comments

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# Page 4: General Comments

Do you have any additional comments about the proposed amendment?

*(Please note, this should not include points you have already raised)*

Comments

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