Australian Government
Civil Aviation Safety Authority

SUMMARY OF PROPOSED CHANGE

Australian air transport operations - smaller aeroplanes

Draft Civil Aviation Legislation Amendment (Part 135) Regulation 2018

Date	August 2018
Project number	OS 01/11
File ref	D18/225540

Introduction

This summary of proposed change (SPC) is issued by the Civil Aviation Safety Authority (CASA) with view to ensuring that Australian aviation safety requirements are current and appropriately address safety risks. CASA's policies require that the aviation safety regulations must:

- be necessary to address known or likely safety risks
- provide for the most efficient allocation of industry and CASA resources
- be clear and concise
- be aligned with international standards and drafted in outcome-based terms (where appropriate).

CASA has been progressively transitioning the *Civil Aviation Regulations 1988* (CAR) to the *Civil Aviation Safety Regulations 1998* (CASR). The CASA CEO/Director of Aviation Safety (DAS) has stated the number one organisational priority for 2018 is to finalise the remaining CASR Parts which encompass the flight operations regulations (proposed Part 91 of CASR, Part 119 of CASR, Part 121 of CASR, Part 133 of CASR, Part 135 of CASR and Part 138 of CASR).

This public consultation is a combined consultation of Parts 119 and 135 of CASR.

It is requesting feedback on the proposed Part 119 of CASR (see the separate Part 119 of CASR SPC document for details), Part 135 of CASR and the Part 135 Manual of Standards (MOS).

Part 135 of CASR will apply to all operators who conduct Australian air transport operations using smaller aeroplanes[1], and the operator's flight crew, other crew members and ground support personnel.

The regulation of these operations under Part 135 of CASR is primarily for the purposes of protecting passengers on air transport operations in smaller aeroplanes, persons and property on the ground and other airspace users.

Part 135 of CASR has been developed over several years in close consultation with industry.

The proposed regulations are supported by a draft Part 135 AMC/GM document:

- AMC (acceptable means of compliance) present one or more methods of compliance for an operator related to an outcome based regulatory requirement or the issuance of an approval by CASA. AMC paths of compliance are not mandatory. Subject to CASA's approval and as outlined in their exposition, operators may pursue other means of compliance that meet the same or higher standards when compared to the AMC.
- GM (guidance material) provide further information regarding the proposed regulation.

[1] Proposed regulation 135.005 of CASR states that Part 135 of CASR applies to aeroplanes for an Australian air transport operation with a maximum take-off weight (MTOW) of not more than 8 618 kg and a maximum operational passenger seat configuration (MOPSC) of not more than 9.

- At this early stage of guidance material development, few AMC are promulgated in the Part 135 AMC/GM document accompanying this public consultation. It is not expected that all information required by an operator (or by CASA) is yet covered by this document suite. Once the regulations are made, CASA will focus resources on the development of comprehensive guidance material that will be available well in advance of the commencement date of the regulations.

As the CASR operational regulations suite (Parts 91, 119, 121, 133, 135 and 138 of CASR) is finalised, supporting material will be further developed to assist the reader to understand and comply with Part 135 of CASR and understand its relationship with other CASRs and legacy legislation such as the *Civil Aviation Regulations 1988* (*CAR*) and Civil Aviation Orders (CAO).

Part 135 of CASR interrelationship to Part 119 of CASR

Part 119 of CASR makes provision for applicants for, and holders of, Air Operators' Certificates (AOCs) that authorise the operation of aeroplanes or rotorcraft for Australian air transport operations. The flying or operation of an aeroplane or rotorcraft for an Australian air transport operation is a prescribed purpose for subsection 27(9) of the *Civil Aviation Act (the Act).* As such Part 119 of CASR requires a person to hold an Australian air transport AOC to conduct Australian air transport operations.

Therefore Part 135 of CASR operations are not authorised unless an operator meets the requirements in Part 119 of CASR for the issue of an Australian air transport AOC.

In addition to the above Part 119 of CASR and Part 135 of CASR interact to outline further requirements. For example:

- Part 119 of CASR outlines that an air transport operator must have a training and checking system and the requirements and characteristics of that system.
- Part 135 Subparts 135.N and 135.P, and the Part 135 MOS, outline the operational considerations for the use of that system to train and check an operator's flight crew and other crew members.

This interaction occurs throughout most aspects of air transport operations where Part 119 of CASR outlines the organisational aspect of a requirement and the specific operational Part (Part 135 of CASR and the Part 135 MOS in this case), will outline the operational standard for the requirement. Therefore, Part 119 of CASR and Part 135 of CASR must be read in conjunction with each other about a matter to gain complete understanding of the requirement.

Scope of change – key proposals

The proposed regulations would set the minimum acceptable standards applicable to smaller aeroplanes that are conducting air transport operations.

Some of the changes incorporated into Part 135 of CASR are:

- Enabling extant charter operators, by merging of the concepts of charter and regular public transport into air transport and providing a common level of safety, to conduct fixed scheduled flights that are available to persons generally (an ability currently requiring an RPT AOC).

- Where the aircraft type has a master minimum equipment list, require aeroplanes flown internationally, or domestically under the IFR, to be operated in accordance with a minimum equipment list.
- The proposed regulations, where possible, allow for an outcomes-based approach to be adopted in the operator's exposition procedures.
- Relaxation of aerodrome requirements and require operators to ensure that aerodromes are suitable for the take-off and landing of the aeroplane, subject to the applicable performance requirements in Subpart 135.F and the Part 135 MOS.
- Relaxation of simulator requirements for aeroplanes certificated with greater than nine passenger seats but operated with a MOPSC of nine or less.
- Align with ICAO standards and alleviate existing requirements for the carriage and use of oxygen by non-pressurised aeroplanes when operating for no longer than 30 minutes between 10 000 ft and FL130.
- Modified performance provisions based on CAOs 20.7.2, 20.7.1B and 20.7.4.
- Require take-off alternate aerodromes under certain conditions.
- Require sterile cockpit operations during certain flight phases.
- Require operators to specify certain procedures for flights of prescribed single-engine aeroplanes (formerly known as ASETPA).
- Define suitable forced landing areas[2] and modify overwater flight rules for prescribed single-engine aeroplanes.
- Require operators to specify procedures for determining how, and by whom, operational control for a flight is to be exercised.
- Require journey logs for each flight (although the journey log could be combined with other documentation).
- Enable operators to flexibly define procedures for providing updated information in relation to a multi-journey flight in cases where keeping copies of updated information on the ground is impractical.
- Require at least one member of the aeroplane’s flight crew when operating at night under the visual flight rules to be authorised under Part 61 of CASR to conduct an instrument flight rules (IFR) flight.
- Require information about search and rescue (SAR) services to be readily accessible to flight crew members, and for information about emergency and survival equipment carried on an aeroplane to be available for on-forwarding by the operator to a rescue coordination centre (RCC).
- Require aeroplanes over 5 700 kg MTOW when flown under night VFR or IFR rules in the conduct of passenger or medical transport operations to be fitted with terrain awareness warning system (TAWS)[3] equipment.
- Modified requirements for the fitment of airborne weather radar equipment.
- Training and checking requirements for all crew.

[2] The proposed definition of suitable forced landing area encompasses areas of ground and, for prescribed single-engine aeroplanes, certain areas of water (subject to specific conditions).
[3] Turbine-engine aeroplanes over 5 700kg are to be fitted with TAWS-Class A equipment. Piston-engine aeroplanes over 5 700kg are to be fitted with TAWS-Class B equipment.

- Provisions for the Part 135 MOS to prescribe updated distance limitations similar to those currently required by CAO 82.0.
  - Note that these provisions are preliminary and may be changed once the Part 121 MOS is finalised in late 2018 or early 2019. If the applicable Part 135 MOS provisions are changed they will be publicly consulted, ideally at the same time as the Part 121 MOS.

The proposed amendments comply with CASA's regulatory development policies that require the aviation safety regulations must:

- take into account the priority CASA gives to passenger carrying activities
- be necessary to address known or likely safety risks
- provide for the most efficient allocation of Industry and CASA resources
- where appropriate, be aligned with the standards of leading aviation countries, unless differences are justified on safety risk grounds
  - Australia has undertaken, as a contracting state to the Convention on International Civil Aviation (the Chicago Convention), to collaborate with the other contracting states "in securing the highest practicable degree of uniformity in regulations, standards, procedures and organization in relation to aircraft, personnel, airways and auxiliary services…" (Article 37 of the Convention).
  - The proposed regulations remain cognisant of Australia's unique geography and the specific requirements, characteristics and range of our domestic operations.
- wherever possible, be drafted to specify the safety outcome, unless in the interests of safety more prescriptive requirements need to be specified
- be as clear and concise as possible.

Legislative background and terminology

Section 27 of the *Civil Aviation Act 1988* (the Act) states that CASA may issue an AOC to operators for prescribed aviation operations. Under present regulations AOCs are issued for the conduct of:

- aerial work operations
- transport of persons or cargo for hire or reward being regular public transport (RPT) and charter operations
- Part 142 of CASR operations.

Presently paragraphs 206 (1) (b) and (c) of CAR prescribes the requirement for an AOC for RPT and charter operations. Part 119 of CASR merges RPT and charter passenger requirements into one classification known as air transport operations (ATO).

It is proposed that Part 135 of CASR will cover the following presently defined types of activities in smaller aeroplanes:

- passenger charter
- passenger RPT
- cargo only operations
- aerial work (ambulance functions) operations.

Part 138 of CASR will detail operator certification requirements for all other aerial work except ambulance operations (presently covered by Regulation 206 (1) (a) of CAR).

Part 135 of CASR as proposed is a complete, dedicated set of regulations specific to holders of an Australian AOC for passenger, cargo or medical transport operations in smaller aeroplanes. It will complement the certification and management rules proposed in Part 119 of CASR and the specific operational legislation proposed in Part 121 of CASR for larger aeroplanes and Part 133 of CASR for rotorcraft.

Under these requirements, an air transport operation means a passenger transport operation, cargo transport operation or medical transport operation that is conducted for hire or reward.

A passenger transport operation involves the carriage of passengers in an aircraft, whether or not cargo is carried on the aircraft. This type of operation does not include:

- cost sharing operations
- medical transport operations

  or
- an operation in an aircraft with a special certificate of airworthiness.

A cargo transport operation is an operation in an aircraft for the carriage of cargo and crew only but does not include:

- an operation conducted for the carriage of the possessions of the operator or the pilot in command for the purpose of business or trade

  or
- a medical transport operation.

A medical transport operation is an operation the primary purpose of which is to transport one or more of the following:

- medical patients
- medical personnel
- blood, tissue or organs for transfusion, grafting or transplantation
- other medical supplies (including medical equipment and medicines).

Note: Subpart 135.P of CASR outlines requirements for medical transport specialist crew members who are medical personnel with whom the operator has satisfied the Part 135 of CASR requirements for their crew member function on the aeroplane. If the medical personnel being carried to attend to the needs of a patient (or to be transported to a patient) have not undergone appropriate operator training for medical transport specialists, then they would not be able to be classified as a crew member and the operator may be constrained regarding whether the procedural alleviations for medical transport operations in Part 135 of CASR may be applied, or whether the operation must be conducted to passenger transport operation standards.

Reason for change

Accident rates analysis for Australian air transport operations (consisting of charter and regular passenger transport (RPT) operations) over the last two decades has outlined significant accident rate disparities between low capacity charter and low capacity RPT and high capacity RPT. The 2017 CASA Sector Risk Profile for the small aeroplane transport sector revealed small aeroplane unscheduled operations (charter) had an accident rate 11 times greater than small aeroplane scheduled operations (RPT).

This risk profile identified that the top five safety factors contributing to occurrences in the small aeroplane sector were monitoring and checking, assessing and planning, communicating / coordinating, pre-flight inspection and aircraft handling. Pilot training, supervision and mentoring play critical roles in developing pilot skills for managing high frequency occurrence types.

Objective of change

The key new proposals for Part 135 of CASR have been developed to reduce the size of the disparity in accident rates between small aeroplane charter and small aeroplane RPT. As outlined earlier, the merging of charter and RPT to form air transport operations provides new opportunities for existing charter operators in relation to the types of services they can offer the community. The provision of this opportunity requires the reduction, but not necessarily the complete elimination, of the disparity in accident rates.

Part 135 of CASR mainly focuses on controlling risk through additional administrative (procedural) defences however it does also require additional equipment, notably TAWS for some aircraft. The TAWS fitment requirement (outlined earlier for aeroplanes over 5 700kg) is based on Part I of Annex 6 to the Chicago Convention and EASA standards. CASA had originally proposed the fitment of a minimum of TAWS-Class B for aeroplanes with a MOPSC greater than 5 which aligned with the Federal Aviation Administration of the USA (FAA) and Transport Canada rules however this was changed after discussion with the Aviation Safety Advisory Panel Technical Working Group. The FAA mandated TAWS for new AOC holders from 2001 and for existing AOC holders from 2005.

Timeline for change

Part 135 of CASR is one piece of a complete regulatory suite that also encompasses Part 91 of CASR - General operating and flight rules, Part 119 of CASR - Australian air transport operators – certification and management, Part 121 of CASR - Australian air transport operations – larger aeroplanes, Part 133 of CASR - Australian air transport operations – rotorcraft and Part 138 of CASR - Aerial work operations.

Many current AOC holders conduct operations across multiple future CASR parts. Therefore, CASA proposes to commence all these regulations on a single date in March 2021 (the commencement date). An exact date will be chosen to align with the AIRAC cycle and will provide for simultaneous changes to the regulatory suite and the AIP. This will provide industry approximately two years and six months from the time of this consultation to conduct a gap analysis and prepare for the changes.

No transition period is proposed. On a single date, the relevant CAR regulations will cease and the new CASR parts will apply.

Feedback from this consultation will be considered in determining which requirements, for which sectors of industry, may have new requirements delayed for a time beyond the commencement date.

While many of the new requirements are similar to current requirements, to minimise the scale of the changes required on the commencement date CASA is broadly proposing that it may be appropriate for certain new requirements for some sectors of industry to apply from a date later than March 2021.

CASA will be conducting detailed transitional analysis in the first half of 2019 to develop the transitional regulations and determine exactly which current regulations and orders to cease. Once these regulatory provisions have been developed, they will be consulted with industry.

Previous consultations

Part 135 of CASR has undergone significant previous consultation, including:

- November 1998 to January 1999 - NPRM 9809RP - Proposed Regulations Relating to Passenger and Crew Member Safety was published.
- March 2002 to June 2002 - DP 0207OS - Air Transport Operations – Small Aeroplanes
- July 2003 to September 2003 - NPRM 030OS - Air Transport Operations – Small Aeroplanes was published.
- December 2008 to June 2009 - NPRM 0807OS - Passenger Transport Services: terminology in and application of new CASR Parts 119, 121, 129, 131, 133 and 135 was published.
- February 2009 to October 2009 - NPRM 0808OS - Passenger Transport Services and International Cargo Operations - Small Aeroplanes was published.
- July 2012 to August 2012 - Consultation Draft (CD) for CASR Part 135 - Australian Air Transport Operations - Small Aeroplanes was published.
- 7July 2013 to November 2013 - NPRM 1304OS - Regulations of aeroplane and helicopter 'ambulance function' flights as Air Transport operations was published.

Last year CASA established an Aviation Safety Advisory Panel (ASAP) made up of industry representatives. In late June 2018, the panel convened a technical working group (TWG) to evaluate drafts of the Part 119 regulations, the Part 135 regulations and the Part 135 MOS.

The TWG made several suggestions and highlighted issues, the majority of which CASA has sought to address in this consultation draft. A small number of recommendations are still under active consideration by CASA. CASA will further refine the draft regulations based on feedback from this consultation.

Impact on industry

Some of the requirements of the proposed Part 135 of CASR and Part 135 MOS are analogous to existing rules. However, as some new rules for smaller aeroplanes have been specifically applied for the first time, CASA suggests that industry participants conduct a detailed review to identify the impact of the proposed rules on their operations.

CASA anticipates that many of the significant industry impacts will occur due to the proposed Part 119 of CASR requirements for all air transport operators to have a training and checking system, a safety management system (SMS) and a safety manager.

In relation to the Part 119 of CASR requirements, CASA intends to ameliorate these impacts through the provision of comprehensive guidance material and sample manuals for smaller operators that provide clarity regarding the ability for these systems to be scaled to the operator's size and complexity. While every operator will be required to meet the same "headline" regulatory requirements, exactly how these requirements are met and outlined in an operators' exposition is scalable to the operation. A small, non-complex operator is not expected to implement an SMS equivalent to that of a major operator managing significant complexity.

Future continuing airworthiness requirements

CASA has not yet determined the future continuing airworthiness requirements for air transport operators, as opposed to the existing delineation between charter and RPT operators.

CASA will be commencing industry engagement on this matter in late 2018 or early 2019.

Regulation impact statement

In line with normal practice, CASA will submit a regulation impact statement (RIS) to the Office of Best Practice Regulation (OBPR) for their assessment once the feedback from this consultation has been assessed, any necessary policy changes have been determined, and the Aviation Safety Advisory Panel has been briefed on CASA's proposed final regulatory policy.

Implementation and transition

CASA is proposing a single date cut-over from the old regulations to the new regulations. This means that unlike Part 61 of CASR, Part 141 of CASR and Part 142 of CASR, there will be no transition period. Where identified as necessary by CASA, a limited number of specific regulatory requirements may have an effective date beyond the commencement date of the Part in early 2021.

CASA is not proposing to require new AOCs to be issued to operators solely for moving from the old regulations to the new regulations. In early 2019, a detailed analysis of existing conditions on AOCs, permissions and approvals etc will be carried out to determine which current regulatory requirements can be deemed to be equivalent to future requirements. For example, an existing training and checking organisation established under regulation 217 of CAR may be deemed to be equivalent to the training and checking system required under proposed regulation 119.180 of CASR. CASA proposes to utilise such deeming provisions to the maximum possible extent to minimise the regulatory change burden for both industry and itself.

CASA recognises that the finalisation of appropriate guidance material is necessary for industry prior to the proposed commencement date in early 2021. CASA will aim to have the essential elements of guidance material in place for industry by no later than mid-2020.

All proposed dates are subject to adjustment and are dependent on the date on which the final version of the regulations is signed and registered.

Closing date for comment

As part of this consultation process CASA will consider all comments received and incorporate changes as appropriate. Comments on the exposure draft for *Civil Aviation Legislation Amendment (Part 135) Regulation 2018* and the *Civil Aviation (Part 135) Manual of Standards 2018* should be submitted through the online response form by close of business 2 September 2018.