



SUMMARY OF PROPOSED CHANGE



Australian air transport operations - certification and operating requirements

Draft Civil Aviation Legislation Amendment (Part 119) Regulation 2018

| | |
|-----------------------|------------|
| Date | July 2018 |
| Project number | OS 99/45 |
| File ref | D18/253809 |

Introduction

This summary of proposed change (SPC) is issued by the Civil Aviation Safety Authority (CASA) with a 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; and
- where appropriate, be aligned with international standards and drafted in outcome-based terms.

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

This public consultation is a combined consultation of Parts 119 and 133 of CASR.

It is requesting feedback on the proposed Part 119 of CASR, Part 133 of CASR and the Part 133 Manual of Standards (see the separate Part 133 of CASR SPC document for details of the proposed Part 133 of CASR and the Part 133 Manual of Standards).

Part 119 of CASR will apply to all operators who conduct Australian Air Transport Operations using aeroplanes or rotorcraft, the operator's key personnel and operational safety-critical personnel.

The proposed regulations are supported by a draft Part 119 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.
- At this early stage of guidance material development, few AMC are promulgated in the Part 119 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, 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 119 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).

The proposed changes to Part 119 of CASR consulted with industry in 2014 regarding scenic flight operations and small cargo operations have not yet been finalised and are not incorporated

into this public consultation draft of Part 119 of CASR. Noting the implementation timeline outlined later in this document, CASA is aiming to consult further on these matters in 2019.

Background

Part 119 of CASR has been in development for many years and has been consulted with industry on multiple occasions.

In April 2002, CASA released Notice of Proposed Rulemaking (NPRM) 0201OS that proposed a streamlining of the standards relating to the issue and retention of Air Operator Certificates (AOC). In April 2012, CASA released NPRM 0903OS that further refined the certification and management requirements for air transport operators. Currently, these standards are housed across a number of regulations, CAOs and the Air Operator's Certificate Handbook (AOCH) in a confusing patchwork of requirements.

The draft regulations being publicly consulted are modified based on feedback from the NPRM and more recent input from three separate Aviation Safety Advisory Panel technical working groups that met to provide feedback to CASA on the air transport operations regulatory suite (Parts 119/121/133/135 of the *Civil Aviation Safety Regulations 1988*).

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, 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 5 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.

Although a similar sector risk profile does not yet exist for helicopters, ATSB report AR-2017-104 revealed that over the ten-year period from 2007-2016, charter helicopters had a slightly higher accident rate compared to charter aeroplanes. Therefore, CASA considers that the Part 119 of CASR regulatory key proposals are equally appropriate for helicopters (rotorcraft in the new terminology used for Parts 119 and 133 of CASR) as they are for aeroplanes.

Objective of change

The key new proposals for Part 119 of CASR have been developed to reduce the size of the disparity in accident rates between low capacity charter and low capacity RPT.

Where an air transport operation is conducted for hire or reward, it is appropriate for the differences in accident likelihood to be minimised. Currently, if a passenger has paid to be transported (or a person has paid for cargo to be transported) between the same 2 locations, there is a significant difference between the likelihood of an accident occurring depending on whether that passenger has boarded an RPT service compared to a charter

service. People presently travelling between centres where RPT services are available are able to access aviation services that are of a regulated higher safety standard than those available to persons who presently travel on charter services.

It is proposed that this discrepancy would be addressed principally by introducing a common, yet scalable, standard for air transport operations in the future, thus minimising the current differences between charter and RPT. The purpose of these changes is not to require small, non-complex operators to possess sophisticated and detailed systems similar to major airlines but rather to introduce broadly similar conceptual frameworks across all air transport operators. Whilst smaller, non-complex air transport operators will be required to have the same headline “systems”, the implementation of these systems will be scaled to the size and complexity of the air transport operator’s operations.

Part 119 of CASR aims to improve the focus of Australian air transport operators on the potential for human and organisational failures to cause accidents, and in doing so for them to build defences that will enhance aviation safety.

Timeline for change

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

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 therefore provide for simultaneous changes to the regulatory suite and the AIP. This will provide industry approximately 2.5 years from the time of this consultation to conduct a gap analysis and prepare for the changes.

It is not proposed for there to be any transition period. On a single date, the relevant CAR 1988 regulations will be switched off and the new CASR parts will apply to industry. Whilst many regulatory 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.

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.

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 “switch off”. Once these regulatory provisions have been developed, they will be consulted with industry.

Scope of change – key proposals

Some of the requirements of the proposed CASR Part 119 are analogous to existing rules. However, as the new rules have compressed and merged requirements currently spread across

the CAR 1988, multiple CAOs and the AOC, CASA suggests that industry participants conduct a detailed review to identify the impact of the proposed rules on their operations.

Some of the changes or requirements required by CASR Part 119 are listed below:

- Change – a single definition of an “air transport operation” to replace charter and RPT operations.
- Change – the introduction of “medical transport operations” as part of air transport operations to align with common international standards for medical transport. CASR Part 138 will maintain standards for search and rescue operations and will introduce the concept of operational differentiation based on the tasking authority for an operation.
- Change – a requirement for every air transport operator to have an appropriately scaled training and checking system (currently not required for charter < 5700kg unless specifically required for an operator by CASA) either manned and provided by the operator or manned and provided by a Part 142 operator using the operator’s systems and standard operating procedures (SOPs).
 - Training and checking for all air transport operators is required by the FAA, EASA, Transport Canada and New Zealand.
- Change – all air transport operators to have a safety management system (currently limited to RPT) appropriately scaled to the operator's size and complexity of operations.
 - Safety management systems are required for all air transport operators by EASA, Transport Canada and New Zealand. The FAA requires a safety management system for Part 121 operators.
- Change – all air transport operators to have a Safety Manager although dependant on the size, scale and complexity of the operation this person does not have to be full-time and may be a contractor (see the 119 AMC/GM document for further explanation).
 - Other national aviation authorities also permit the assignment of management responsibilities for safety management to existing managers and guidance material explains potential conflicts of interest (similar to the Part 119 AMC/GM document).
- Change – all air transport operators (currently limited to RPT) to implement human factors and non-technical skills training, appropriately scaled to the size and complexity of the operation, for all operational safety-critical personnel (see the draft regulations and the 119 AMC/GM document for a definition of this term and further explanation).
 - Human factors and non-technical skills training are required for all air transport operators by the FAA (called crew resource management training [CRM]), EASA, Transport Canada (also called CRM) and New Zealand.
- Requirements – key personnel qualifications, experience and responsibilities (see the draft Part 119 AMC/GM document for further explanation of these matters) for:
 - the CEO
 - the Head of Flying Operations
 - the Head of Training and Checking, and
 - Safety manager.
- Requirements – all air transport operators to have an exposition (may consist of a single document or a collection of existing documents – see the 119 AMC/GM document for further explanation) which stipulates the way the operator manages their business, their operational procedures and satisfies their regulatory requirements.

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.

Presently paragraphs 206 (1) (b) and (c) of CAR 1988 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 119 of CASR will cover the following presently defined types of activities in aeroplanes and rotorcraft:

- passenger charter
- passenger RPT
- all cargo operations
- aerial work (ambulance function) operations.

Part 138 of CASR will detail operator certification requirements for aerial work except ambulance operations (presently covered by Regulation 206 (1) (a) of CAR 1988).

Part 119 of CASR as proposed is a set of generic administrative legislation applicable to all holders of an Australian AOC for passenger, cargo or medical transport operations, that will complement specific and detailed operational legislation proposed in Parts 121, 133 and 135 of CASR for aeroplanes and rotorcraft. These three sets of regulations would set the minimum acceptable standards applicable to aeroplanes or rotorcraft conducting air transport operations.

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 133.P of CASR outlines requirements for medical transport specialist crew members who are medical personnel with whom the operator has satisfied the Part 133 of CASR requirements for their crew member function on the rotorcraft. 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 therefore the operator may be constrained regarding whether the procedural alleviations for medical transport operations in Part 133 may be applied or the operation must be conducted to passenger transport operation standards.

Previous consultations

Part 119 of CASR has had many consultation events including:

- 29 May 2000 to 11 August 2000 - DP 0003OS - Air Operator Certification - Commercial Air Transport
- 8 April 2002 to 31 July 2002 - NPRM 0201OS - Air Operator Certification - Air Transport
- 11 December 2008 to 2 June 2009 - NPRM 0807OS - Passenger Transport Services: terminology in and application of new CASR Parts 119, 121, 129, 131, 133 and 135
- 11 July 2012 to 5 September 2012 - NPRM 0903OS - Australian Air Transport Operators - Certification and Management, Proposed CASR Part 119 of the Civil Aviation Safety Regulations 1998
- 3 October 2012 to 28 November 2012 - DP 1212OS - AOC requirements for domestic cargo transport services in small aeroplanes and rotorcraft
- 27 September 2012 to 23 November 2012 - DP 1210OS - AOC requirements for local scenic flights
- 30 September 2014 to 28 November 2014 - NPRM 1319OS - Regulatory requirements for domestic cargo-only operations in small aircraft
- 22 January 2015 to 16 April 2015 - NPRM 1306OS - Regulatory requirements for scenic flights in small aircraft

Additionally, in 2017 CASA established an Aviation Safety Advisory Panel (ASAP) made up of industry representatives. In late June, the panel convened technical working groups (TWG) to separately evaluate drafts of Parts 121, 133 and 135 of CASR. At each of these TWG, the draft of Part 119 of CASR was also evaluated.

Each of the TWGs made several suggestions and highlighted multiple 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.

As a result of the TWG feedback, CASA made changes to the draft Part 119 of CASR and the Part 119 AMC/GM document to provide for alternate CEO experience to be approved by CASA, clearly outline the scalable nature of safety management systems in the regulations, clarify the regulation on the maximum period of use of foreign registered aircraft for air transport operations and, amongst other matters, outline multiple methods of fulfilling the requirement for a person to be the Safety Manager.

CASA will further refine the draft regulations based on feedback from this consultation.

Impact on industry

Key additive provisions will mainly affect existing charter operators. As noted earlier in this document, CASA has focussed these new provisions to address the key safety factors underpinning the disparity in accident rates between charter and low capacity RPT.

CASA intends to ameliorate industry 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. Whilst every operator will be required to meet the same fundamental 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 possess an SMS equivalent to a major airline or offshore helicopter operator.

Notable Part 119 of CASR provisions that will require additional industry investment include:

- Small aircraft charter (< 5700kg) will be required to have an appropriately scaled training and checking system. This system may be provided by a contracted Part 142 however the air transport operator will still be required to provide oversight and ensure the Part 142 provider complies with the operator training and checking system.
- All existing charter operators will be required to have a safety management system scaled to the operator's size and complexity of operations. Fundamental elements of safety management systems are the same across all sizes of operators however the implementation of the safety management system would markedly vary dependant on the size and scale of the operator.
- All existing charter operators will be required to have a Safety Manager although dependant on the size, scale and complexity of the operation this person does not have to be full-time and may be a contractor (see the 119 AMC/GM document for further explanation).
- All existing charter operators will be required to implement human factors and non-technical skills training, appropriately scaled to the size and complexity of the operation, for all operational safety-critical personnel (see the draft regulations and the 119 AMC/GM document for a definition of this term and further explanation).

However, charter operators will notably gain the ability to operate scheduled services with the elimination of any regulatory difference between the provision of scheduled and unscheduled services. This change may enable significant additional economic opportunities for smaller, regional operators.

Future continuing airworthiness requirements

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

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

Regulation impact statement (RIS)

In line with normal practice, CASA will submit a 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 to be expressed in regulations.

Implementation and transition

CASA is proposing a single date cut-over from the old regulations to the new regulations. This means that unlike CASR Parts 61, 141 and 142, there will be no transition period. Where identified as necessary by CASA and informed by industry feedback, a limited number of specific regulatory requirements may have a commencement date beyond the general commencement date of March 2021. This would normally be where the regulatory requirement necessitates further time for elements of industry to comply.

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

CASA recognises that the finalisation of appropriate guidance material is necessary for industry well in advance of the proposed commencement date in early 2021. CASA is intending to have the essential elements of guidance material in place for industry no later than early 2020.

All dates proposed are subject to refinement and adjustment based on the date that the final version of the regulations is registered on the Federal Register of Legislation.

Closing date for comment

CASA will consider all comments received as part of this consultation process and incorporate changes as appropriate. Comments on the exposure draft for *Civil Aviation Legislation Amendment (Part 119) Regulation 2018* should be submitted through the online response form by close of business 21 August 2018.