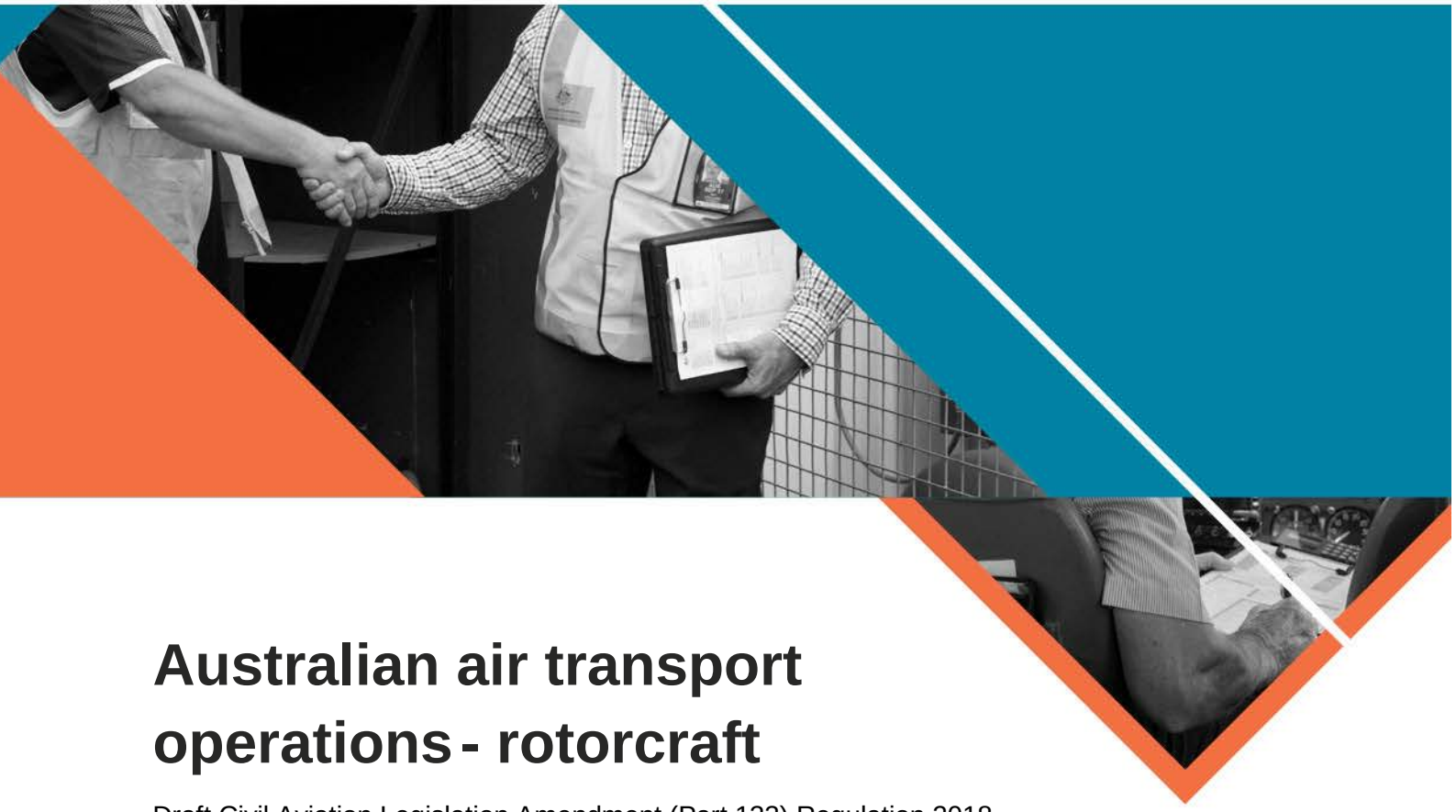
Australian Government
Civil Aviation Safety Authority

SUMMARY OF PROPOSED CHANGE



Australian air transport operations - rotorcraft

Draft Civil Aviation Legislation Amendment (Part 133) Regulation 2018

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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 resource
- 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 1988) to the *Civil Aviation Safety Regulations 1998* (CASR 1998). The CASA 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 121of 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 133 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 133 of CASR and the Part 133 Manual of Standards (MOS).

Part 133 of CASR will apply to all operators who conduct Australian Air Transport Operations using rotorcraft[1] , and the operator's flight crew, other crew members and ground support personnel.

The regulation of these operations under Part 133 of CASR is primarily for the purposes of protecting passengers on air transport operations in rotorcraft, persons and property on the ground and other airspace users. The draft legislation is consistent with contemporary technology, such as the introduction of powered lift aircraft which encompasses the future proposed tiltrotor technology.

In close consultation with the helicopter industry, Part 133 of CASR has been developed over several years.

Part 133 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.

[1] For the purposes of the CASRs, a rotorcraft is defined as an aircraft in any of the following categories:
a) helicopter
b) gyroplane
c) powered-lift aircraft.

Therefore Part 133 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 133 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 133 Subpart 133.N and 133.P and the Part 133.MOS outline the operational considerations for the use of that system to train and check an operator's flight 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 133 of CASR and its MOS in this case), will outline the operational standard for the requirement. Therefore, Part 119 of CASR and Part 133 of CASR must be read in conjunction with each other about a matter to gain a full understanding of the requirement.

Scope of change – key proposals

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

Part 133 of CASR will introduce the following specific operational changes:

- All Part 133 of CASR rotorcraft operated under the IFR domestically and on any flight rules for international operations will be required to be operated in accordance with a Minimum Equipment List (MEL).
- Additional flight preparation and planning requirements for night, instrument flight rules (IFR) and day visual flight rules (VFR) flight beyond 50 Nm for the departure helicopter landing site[2].
- Requirements for operators to ensure helicopter landing sites are safe for their intended operations.
- ICAO compliant fuel planning and fuel use rules have been incorporated (however the ICAO requirement for take-off alternate aerodromes standards have been omitted for rotorcraft operations)
- Specific rules for the conduct of passenger transport operations are set out, including the concept of maximum operational passenger seating configuration and how it applies to performance criteria for an operation.
- Rules requiring operators to outline procedures for IFR take-off minima and authorised instrument approach use, including requirements for instrument approaches to off-shore installations.
- The introduction of a set of performance regulations which outline a performance code of operation based on passenger numbers and type of operation.
- The introduction of performance classes to Australian helicopter operations, including performance class 2 with exposure operations for approved operators and rotorcraft.

[2] Similar to current requirements.

- The inclusion of a requirement for flights over populous areas to not create undue hazard to persons on the ground and the specification of additional pilot training and helicopter equipment requirements for such operations.
- Provisions specifying the minimum equipment, instrument and system standards for day VFR, night VFR and IFR operations. This includes a requirement for night VFR passenger transport operations to be equipped for IFR flight. Helicopter TAWS has been incorporated for IFR passenger transport and medical transport operations with a maximum operational passenger seat configuration of >9.
- The inclusion of additional criteria for flights over water including requirements for the wearing of life jackets and SAR response-based criteria for flight over water for rotorcraft with limited stay up capability following an engine failure.
- The outlining of an operator's and a flight crewmembers training and checking and recency requirements for air transport operations based on an operational complexity model.
- The introduction of rotorcraft specific simulator training requirements.
- The introduction of a transportable, between operators, underwater escape training (UET) qualification for pilots, as an element of emergency proficiency training for operators who operate over water.
- An outline of crew training and checking for aircrew and other crew members.
- The ability for operators to use certified Part 142 of CASR providers for their training and checking requirements provided they do so to the requirements of the Part 133 AOC holder's SOPs and exposition.

The proposed amendments are broadly (but not in all cases) based on the Standards and Recommended Practices (SARPs) of the International Civil Aviation Organization (ICAO) as set out in the annexes to the Convention on International Civil Aviation (the 'Chicago Convention').

Australia is a contracting state to the Chicago Convention and under Article 37 of the Chicago Convention has undertaken 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…"

Part 133 of CASR is designed to broadly align with international standards, particularly for international operations, whilst being cognisant of Australia's unique geography and the specific requirements, characteristics and range of our domestic operations.

This is achieved by CASA's regulatory development policies requiring that the aviation safety regulations must:

- Take 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.
- 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 the CASR 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 133 of CASR will cover the following presently defined types of activities in rotorcraft:

- passenger charter
- passenger RPT
- all cargo 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 1988).

Part 133 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 rotorcraft. It will complement the certification and management rules proposed in Part 119 of CASR and the specific and detailed operational legislation proposed in Parts 121 and 135 of CASR for aeroplanes.

Under these requirement 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.

Timeline for change

Part 133 of CASR is one piece of a complete regulatory suite that also encompasses Parts 91 (General operating and flight rules), 119 (Australian air transport operators – certification and management), 121 (Australian air transport operations – larger aeroplanes), 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.

Previous consultations

Part 133 of CASR has had many consultation events including:

- October 2000 to January 2001 - DP 0006OS - Commercial Air Transport Operations - Rotorcraft was published.
- 27 March 2003 - NPRM 0301OS - Air Transport and Aerial Work Operations - Rotorcraft was published.

- 11 December 2008 - NPRM 0807OS - Passenger Transport Services: terminology in and application of new CASR Parts 119, 121, 129, 131, 133 and 135 was published.
- 7 May 2012 - NPRM 0807OS - Updated briefing on CASR Part 133 - May 2012 was published.
- 26 June 2012 - NPRM 0807OS - Consultation Draft of CASR Part 133 - Australian Air Transport Operations - Rotorcraft was published.

Additionally, Part 133 of CASR policy has been developed, reviewed and constructed on the basis of the conduct of the following joint CASA / industry working groups:

- 28 to 30 November 2007 - Part 133 - Industry working group re-establishment and consultation meeting.
- 23 January 2008 - Part 133A and B - Industry working group consultation meeting.
- 3 and 4 March 2008 - Part 133A and B - Industry working group consultation meeting.
- 13 March 2008 – Part 133 update to the Operations Sub Committee.
- 27 to 29 May 2008 - Part 133 update to the industry at Heli – Pacific conference, Gold Coast QLD.
- 29 and 30 July 2008 – CASR 133 – Rotorcraft performance specific - Industry consultation meeting.
- 27 and 28 August 2008 – CASR 133 - Industry working group consultation meeting.
- 17 and 18 November 2008 - CASR 133 - Industry working group drafting instruction review and consultation meeting.
- 20 and 21 July 2011 Part 133 – Joint CASA/ industry working group meeting and review of updated drafting instructions.

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 133 regulations and the Part 133 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 133 of CASR and Part 133 MOS are analogous to existing rules. However, as the new rules have been specifically designed for rotorcraft 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 and a safety manager.

The other major impact will be for operators to educate themselves and their staff on the new performance code requirements and evaluate how the performance code will integrate with their operation.

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. Whilst 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 possess an SMS equivalent to major offshore helicopter operator.

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 (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 Part 61, 141 and 142, 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 purely 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 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 itself.

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

All dates proposed are subject to adjustment and is dependent on the date 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 133) Regulation 2018* should be submitted through the online response form by close of business 21 August 2018.