



SUMMARY OF PROPOSED CHANGE



Australian air transport - larger aeroplanes

Draft Civil Aviation Legislation Amendment (Part 121) 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 resources
- be clear and concise
- align with international standards and drafted along 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 of CASR and 121 of CASR.

It is requesting feedback on the proposed Part 119 of CASR (see the separate Part 119 of CASR SPC document for details) and Part 121 of CASR.

Part 121 of CASR will apply to all operators who conduct Australian air transport operations using larger aeroplanes¹, and the operator's flight crew, other crew members and ground support personnel.

The regulation of these operations under Part 121 of CASR is primarily for the purposes of protecting passengers on air transport operations in larger aeroplanes, persons and property on the ground and other airspace users.

Part 121 of CASR has been developed over many years in close consultation with industry.

The draft Part 121 of CASR was developed in conjunction with a technical draft of the Part 121 Manual of Standards (MOS), so that the more technical standards and details could be expanded upon outside of the regulations. Later in 2018, after this public consultation and once the Part 121 regulations are finalised, CASA will conduct further technical working group(s) under the auspices of CASA's industry advisory body, the Aviation Safety Advisory Panel

¹ Proposed regulation 121.005 of CASR states that the applicability of Part 121 of CASR is as follows:

- (1) This Part (other than Subpart 121.Z) applies to the operation of a multi-engine aeroplane for an Australian air transport operation if either or both of the following apply in relation to the aeroplane:
 - (a) it has a maximum operational passenger seat configuration of more than 9
 - (b) it has a maximum take-off weight of more than 8 618 kg.

Note: For the additional application of Subpart 121.N, see regulation 121.685.
- (2) Subpart 121.Z applies to the operation of a single-engine aeroplane for an Australian air transport operation if both of the following apply in relation to the aeroplane:
 - (a) it has a maximum operational passenger seat configuration of more than 9
 - (b) it has a maximum take-off weight of not more than 8 618 kg.

(ASAP), to elicit dedicated feedback on a legal draft of the Part 121 MOS. CASA will then publicly consult a proposed legal draft of the Part 121 MOS in 2019.

The proposed regulations are supported by a draft Part 121 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 121 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 121 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).

Both the technical draft of the Part 121 MOS and the draft AMC/GM should be read in conjunction with the proposed regulations to enable informed industry feedback on the draft regulations.

Part 121 of CASR interrelationship to Part 119 of CASR

Part 119 of CASR makes provision for applicants 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 under 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.

Unless an operator meets the requirements in Part 119 of CASR for the issue of an Australian air transport AOC Part 121 of CASR operations are not authorised.

In addition, Part 119 of CASR and Part 121 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 121 Subparts 121.N and 121.P outline the operational considerations for the use of the training and checking 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 121 of CASR), will outline the operational standard for the requirement. Given this, Part 119 of

CASR and Part 121 of CASR must be read in conjunction with each other in order to gain a complete understanding of the requirements.

Scope of change – key proposals

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

Some of the changes incorporated into Part 121 of CASR are:

- Enabling extant charter operators, by the 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).
- Alignment to the International Civil Aviation Organization's (ICAO) Standards and Recommended Practices (SARPs) to the maximum extent practicable. In accordance with the recommendations of the previous industry consultative body, the Standards Consultative Committee (SCC), CASA used the EASA regulations for Air Transport Operations as the basis for larger aeroplane operational requirements. During the 2015 industry working group meetings/workshops, the regulations were updated to incorporate more of the standards and terminology commonly used in Australia.
- Operations are to be flown only under instrument flight rules (IFR).
- The proposed regulations, where possible, allow for an outcomes-based approach to be adopted in the operator's exposition procedures.
- New terminology and rules are proposed to be introduced for Extended Diversion Time Operations (EDTO), including increased flexibility for certain aeroplanes.
- Fuel and alternate aerodromes requirements are adopted from Part I Annex 6, Operation of Aircraft to the Convention of International Civil Aviation (the Chicago Convention), with the Part 121 MOS or AMC to provide operators with various means of complying with the requirements by adopting risk mitigation strategies, in line with operator's current practices.
- Allowances for operators using advanced technologies—such as head-up display (HUD), synthetic vision systems (SVS) and enhanced vision systems (EVS)—to gain operational credits that will permit a lower aerodrome operating minima.
- The provision of clearer rules for operations conducted on narrow runways.
- New datalink recording requirements.
- New requirements for underwater locating devices to be carried on flights that require life rafts and on larger aeroplanes.

Note: This introduction of this requirement is currently proposed in the draft regulations to commence when the regulations commence, i.e.) March 2021. CASA requests specific feedback from industry regarding whether additional time will be necessary to enable industry compliance with this rule.

- New requirements for carriage of additional medical equipment.
- 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.
- New restrictions on rostering of inexperienced flight crew.

- Provision for recurrent training and checking requirements to be met by alternative means acceptable to CASA, to allow for future training and checking programs (e.g. evidence-based training).
- Simplified recency requirements.
- Cabin crew to passenger seat ratio of 1:50 to align with the manufacturer's certification standards.
- New training and checking requirements for cabin crew to align with the new ICAO training and checking manual.
- Changed life raft training requirements (for all crew) so that wet drills only need to be completed during initial training.
- Training for cabin crew in the use of slides would only be required at initial training or when converting to a significantly different aeroplane type (e.g. B737 to B747).
- New requirements for cabin crew to maintain recency on an aeroplane type within 6 months.
- Clearer articulation of the different training and checking requirements for cabin crew who are carried but not required for a flight.

The proposed amendments comply with 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
 - Australia has undertaken, as a contracting state to 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 121 of CASR will cover the following presently defined types of activities in larger aeroplanes:

- 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).

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

Note: 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).

Timeline for change

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

rotorcraft, Part 135 of CASR - Australian air transport operations – smaller aeroplanes 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 therefore 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.

A transition period is not proposed. On a single date, the relevant CAR 1988 regulations will cease and the new CASR parts will apply to industry.

Feedback from this July 2018 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 regulatory requirements are like 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 industry sectors 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. They will be consulted on with industry once the regulatory provisions have been developed.

Regulatory wording matter raised by the Part 121 of CASR Technical Working Group

Part 121 of CASR requires operators, in numerous regulatory provisions, to include certain procedures in their exposition. In a significant majority of these cases, there is an additional regulatory provision like the following:

The operator of an aeroplane for a flight contravenes this subregulation if a procedure mentioned in subregulation (1) is not complied with for the flight.

The intended purpose of these regulatory provisions is to require operators to include the specified matters in their expositions. CASA received feedback from the Part 121 TWG that a more likely industry interpretation was that these provisions instead specified that an operator committed an offence if a member of the operator's personnel did not comply with the procedure in the exposition. This is not CASA's intent. The requirement for operator personnel to comply with the requirements specified in an exposition is contained at draft regulation 121.035 of CASR.

CASA intends to modify the wording of these regulatory provisions post public consultation to provide greater clarity for industry.

Previous consultations

Part 121 of CASR has had many consultation events including:

- November 1998 to January 1999 – NPRM 9809RP – Proposed Regulations relating to Passenger and Crew Member Safety was published.
- April to August 2000 – DP 0001OS – Commercial Air Transport – Large Aeroplanes (Civil Aviation Safety Regulation Part 121A) was published.

- April to July 2002 – NPRM 0211OS – Air Transport Operations – Large Aeroplanes (Proposed Part 121A of the Civil Aviation Safety Regulations) was published.
- 16 February 2009 – NPRM 0809OS - Passenger Transport Services – Single-Engine Aeroplanes configured to carry more than 9 passengers was published.
- October to November 2015 – Consultation Draft – Part 121 of CASR – large aeroplane operations was published.

Additionally, Part 121 of CASR policy has been developed, reviewed and constructed with input from eight working groups during 2014-15 and an ASAP technical working group (TWG) during June 2018. The June 2018 TWG also evaluated a draft of Part 119 of CASR.

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 121 of CASR are analogous to existing rules. However, as the new rules have merged the existing charter and RPT classifications into the singular air transport classification and increased international alignment compared to the current rules, CASA suggests that industry participants conduct a detailed review to identify the impact of the proposed rules on their operations.

CASA's previously consulted extensively with industry via the Part 121 working group in 2015 and received feedback that many of the proposed regulations would have minimal impact, as they formalised current industry practice. CASA envisages potential operational savings to be achieved through the systems-based approach to training and checking of flight crew members. For example, this approach would allow for simplified compliance with recency requirements.

CASA anticipates that, for operations conducted under Part 121 of CASR by existing charter operators, the more noticeable 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.

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 airline.

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

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 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 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 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 121) Regulation 2018* should be submitted through the online response form by close of business 2 September 2018.