



**Australian Government**  
**Civil Aviation Safety Authority**

## **POLICY PROPOSAL**

### **PP 1902OS**



# **Proposed changes to the dangerous goods rules – amendment to CASR Part 92**



<b>Date</b>	August 2019
<b>Project number</b>	OS 05/01
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## Policy overview

In 2005, CASA commenced the post implementation review (PIR) of Part 92— Consignment and carriage of dangerous goods by air of the *Civil Aviation Safety Regulations 1998 (CASR)*. Following on from the PIR, CASA is working to amend the dangerous goods (DG) regulations, incorporating the recommendations from the PIR and developing further policy, in the light of experience.

The policy amendments will seek to address:

- re-alignment with the International Civil Aviation Organization (ICAO) standards and recommended practises by adopting recent changes made to Annex 18, *The Safe Transport of Goods by Air* to the Convention on International Civil Aviation (the Chicago Convention)
- incorporation of the recommendations from the PIR
- amending elements of existing legislation where interpretation has caused difficulties, or which are difficult to implement or enforce
- issues identified and raised, after the PIR, by CASA Dangerous Goods Inspectorate and industry with any alternative approaches aimed at achieving equivalent safety outcomes and aligned with international standards
- the addition of appropriate offences and penalty units so that Aviation Infringement Notices (AINs) can be issued.

The amended regulations will seek to meet the overarching objectives of minimising the level of regulatory burden, reducing costs to industry and, at the same time, maintaining high aviation safety standards.

## Why are we consulting

CASA is working on the development of Part 92 with the aim of achieving a positive outcome for both the aviation industry and CASA.

We are inviting the aviation community to review the proposed policy changes in relation to their industry sector and to tell us about any concerns or challenges they have regarding these amendments. CASA also invites industry to highlight any opportunities during this consultation process which may be able to be incorporated in this amendment or considered for future development of Part 92.

We also encourage industry to consider the international standard and recommended practices contained within Annex 18 and ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air (Doc 9284), 2019-2020 Edition (ICAO-TI).

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# 1 Reference material

## 1.1 Acronyms

The acronyms and abbreviations used in this policy proposal are listed in the table below.

Acronym	Description
AC	Advisory Circular
ACS	Australian Customs Service
ADGATC	Australian Dangerous Goods Air Transport Council
AGM	Aviation Group Manager
AIN	Aviation Infringement Notice
AOC	Air Operator's Certificate
AMS	Aviation and Maritime Security Division (formerly known as the Office of Transport Security), Department of Home Affairs
Annex 18	Annex 18 to the Convention on International Civil Aviation - The Safe Transport of Dangerous Goods by Air
AQIS	Australian Quarantine and Inspection Service
ASA	Aviation Safety Adviser
ASAP	Aviation Safety Advisory Panel
ATSB	Australian Transport Safety Bureau
AvSEC	Aviation Security
BAU	business as usual
CAO	Civil Aviation Order
CAP	Corrective Action Plan
CAR	Civil Aviation Regulations 1988
CASR	Civil Aviation Safety Regulations 1998
CE	Critical Element
CMA	Continuous Monitoring Approach
CMT	Certificate Management Team
DAS	Director of Aviation Safety
DG	Dangerous Goods
DGI	Dangerous Goods Inspector
EXCO	Federal Executive Counsel
FMIS	Financial Management Information System

Acronym	Description
FOI	Flying Operations Inspector
GHA	Ground Handling Agent
HPE RM	Hewlett Packard Enterprise Records Manager
IATA	International Air Transport Association
ICAO	International Civil Aviation Organization
ICAO-TI-SU	Supplement to the Technical Instructions for the Safe Transport of Dangerous Goods by Air (Doc 9284SU)
ICAO-TI	ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air (Doc 9284)
ICVM	ICAO Coordinated Validation Mission
LARA	Legal and Regulatory Affairs
LEA	Law Enforcement Agency
MOS	Manual of Standards
OPC	Office of Parliamentary Counsel
PIR	Post Implementation Review
PQ	Protocol Question
RIB	Regulation Implementation Branch
RIS	Regulation Impact Statement
RIC	Risk and Investment Committee
SARPs	ICAO Standards and Recommended Practices
SDPM	Standards Development Procedures Manual
SRO	Senior Responsible Officer
TWG	Technical Working Group
USOAP	Universal Safety Oversight Audit Programme

## 1.2 Related Parts

The following is a list of related CASR parts:

- [Part 91](#) – General operating and flight rules
- [Part 101](#) – Unmanned aircraft and rockets
- [Part 103](#) – Sport & Recreational Aviation Operations (proposed)
- [Part 105](#) – Sport and Recreational Parachuting from Aircraft (proposed)
- [Part 119](#) – Australian air transport operators—certification and management
- [Part 121](#) – Australian air transport operations—larger aeroplanes
- [Part 131](#) – Manned free balloons (proposed)
- [Part 132](#) – Limited Category Aircraft (proposed)

- [Part 133](#) – Australian air transport operations—rotorcraft
- [Part 135](#) – Australian air transport operations—smaller aeroplanes
- [Part 138](#) – Aerial work operations

## 1.3 References

### Regulations

Regulations are available on the Federal Register of Legislation website <https://www.legislation.gov.au/>

Document	Title
Air Navigation Act 1920	
Aviation Transport Security Act 2004	
Defence Act 1903	
Civil Aviation Act 1988	
Civil Aviation Regulations 1988 - Volume 3	
Civil Aviation Safety Regulations 1998 - Volume 1	
Civil Aviation Safety Regulations 1998 - Volume 2 (Includes Part 92 - Consignment and carriage of dangerous goods by air)	
Civil Aviation Safety Regulations 1998 - Volume 3	
Civil Aviation Safety Regulations 1998 - Volume 4	
Civil Aviation Safety Regulations 1998 - Volume 5 (CASR Dictionary)	
Civil Aviation Order 29.6	Helicopter Sling Loads
Civil Aviation Safety Regulations 1998 - Part 91	General operating and flight rules
Civil Aviation Safety Regulations 1998 - Part 101	Unmanned aircraft and rockets
Civil Aviation Safety Regulations 1998 - Part 103	Sport & Recreational Aviation Operations (proposed)
Civil Aviation Safety Regulations 1998 - Part 105	Sport and recreational parachuting from aircraft (proposed)
Civil Aviation Safety Regulations 1998 - Part 119	Australian air transport operators—certification and management
Civil Aviation Safety Regulations 1998 - Part 121	Australian air transport operations—larger aeroplanes



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Document	Title
Civil Aviation Safety Regulations 1998 - Part 131	Manned free balloons (proposed)
Civil Aviation Safety Regulations 1998 - Part 132	Limited Category Aircraft (proposed)
Civil Aviation Safety Regulations 1998 - Part 133	Australian air transport operations—rotorcraft
Civil Aviation Safety Regulations 1998 - Part 135	Australian air transport operations—smaller aeroplanes
Civil Aviation Safety Regulations 1998 - Part 138	Aerial work operations
Transport Security Investigation Act 2003	
Transport Security Investigation Regulations 2003	

#### Other Technical References

Document	Title
Annex 13	Annex 13 to the Convention on International Civil Aviation - Aircraft Accident and Incident Investigation
Annex 18	Annex 18 to the Convention on International Civil Aviation - The Safe Transport of Dangerous Goods by Air
ICAO Technical Instructions	ICAO Technical Instructions on the Safe Transport of Dangerous Goods by Air (Doc 9284), 2019-2020 Edition
ICAO Supplement	Supplement to ICAO Technical Instructions on the Safe Transport of Dangerous Goods by Air, (Doc 9284SU) 2019-2020 Edition
ICAO ERG	Emergency Response Guidance for Aircraft Incidents Involving Dangerous Goods (Doc 9481), 2019-2020 Edition
IATA DGR	IATA Dangerous Goods Regulations (60th Edition)

## 2 Introduction

### 2.1 Background

Part 92 – Carriage and Consignment of Dangerous Goods, came into effect on 1 January 2004. CASA conducted a PIR after the introduction of this new legislation which concluded in early 2018.

The Part 92 project commenced in October 2018, utilising the work already identified by the PIR, and consolidating additional regulatory change requirements which were further identified.

In 2008, ICAO audited CASA as part of its obligations as a member State, and signatory to the Chicago Convention, under the ICAO Universal Safety Oversight Audit Programme (USOAP) and Continuous Monitoring Approach (CMA) safety oversight system. The DG component of the audit was based on the complete list of ICAO Standards and Recommended Practices (SARPs) contained within Annex 18.

The ICAO Standards and Recommended Practises (SARPs) contained within Annex 18 are incorporated into the ICAO-TI, which are empowered within Part 92. These SARPs, including definitions, are international standards, adopted from best practice and developed by a committee of subject matter experts in the field of DG transport.

In October 2017, CASA was subject of an ICAO Coordinated Validation Mission (ICVM), which audited a selection of open items from the previous full USOAP CMA. The items address each SARP contained within Annex 18 by way of Protocol Questions (PQ).

As part of the ICVM, CASA was required to revisit 12 open PQs in relation to DG, of which, 8 PQs were able to be adequately evidenced and closed out. Four PQs remain open today, two of which relate to ICAO Critical Element 2 - Specific Operating Regulations (CE-2). The two other open PQs relate to CASA's operational surveillance and are not related to the amendment of Part 92.

The two relevant open CE-2 PQs are:

PQ No.	Protocol Question	Guidance for Review of Evidence	ICAO References	CE
4.331	Has the State promulgated regulation on the transport of DG by air to transpose the provisions of Annex 18?	<ol style="list-style-type: none"><li>1. Verify DG regulations.</li><li>2. Verify if the State has incorporated the provisions of Annex 18 and the Technical Instructions (TI or Doc 9284) either directly or by reference.</li></ol>	<u>Annex 18 standard</u> 2.2.1 <u>Guidance material</u> Doc 9284 (TI) Doc 8335 Part I, 2.2 and 3.1 Doc 9734 Part A	CE-2
4.333	Has the State implemented procedures to amend its enabling regulations in the area of DG subsequent to an Annex 18 amendment?	<ol style="list-style-type: none"><li>1. Documented evidence of the effective implementation.</li><li>2. Verify that amendments of regulations are affected in a timely</li></ol>	<u>Convention</u> Art. 37 Art. 38 <u>Guidance material</u> Doc 9284 (TI) Doc 9734	CE-2

PQ No.	Protocol Question	Guidance for Review of Evidence	ICAO References	CE
		<p>manner whenever an Annex 18 amendment or Technical Instructions (TI or Doc 9284) amendment is received.</p> <p>3. Verify the action taken by the State after receipt of the last amendments to Annex 18.</p>	Part A, 3.3	

As the first step, CASA has submitted Corrective Action Plans (CAPs) to ICAO in response to the open PQs 4.331 and 4.333, which includes the amendment of Part 92.

This policy document relates to the amendment of existing legislation, i.e. Part 92. These amendments will address issues identified and raised as part of the PIR, issues identified and raised by Dangerous Goods Inspectorate and industry after the PIR, recent changes made to Annex 18 and fulfil the associated action required within the CAPs submitted for PQs 4.331 and 4.333.

## 2.2 Regulatory issues

The function of transporting DG by air involves a wide variety of participating stakeholders. This includes those who pack, ship or forward the DG, operators and agents involved in the loading and unloading of the DG and training organisations who are involved with the training of employees involved in the handling of passengers, DG and general cargo.

The fundamental principles in the safe transport of DG by air include:

- the classification and identification of those things which have the potential to be dangerous in the aviation environment
- limiting the internal quantities per package
- the further restriction of those volumes of DG per package for carriage on passenger aircraft
- the requirement for DG training of all persons involved in sending or handling declared DG
- the requirement for DG training to assist in the identification and removal of potential and hidden DGs from the airfreight system
- the development and use of emergency procedures
- the requirement to report DG accident, incident and occurrences to CASA.

The primary objective of amending Part 92 is to align the current regulations with the SARPs

contained within Annex 18<sup>1</sup>.

Any SARPs which are unable to be adopted or implemented, for operational or specific industry reasons, must be authorised by CASA Executive Management and the subsequent difference lodged with ICAO within CASA's Electronic Filing of Differences (EFOD).

## 2.3 Previous consultation

Consultation with the Aviation and Maritime Security Division of Department of Home Affairs has already taken place during the initial policy development stage. This included consultation pertaining to terminology used across the legislation and where security exemptions may apply or are required. There are no components of these proposed changes which require consequential amendments to the security legislation.

Significant consultations with other agencies are not required. However, the exposure draft will be circulated to the following departments for their opportunity to review and comment:

- Department of Home Affairs (Infrastructure, Transport Security and Customs Group)
- Australian Transport Safety Bureau (ATSB)
- Department of Agriculture and Water Resources (Biosecurity)
- Australian Federal Police (AFP)
- State Police Forces.

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<sup>1</sup> In addition to the alignment against the Annex 18 SARPs, these amendments seek to improve existing legislation, address broader industry issues and support government initiatives, such as the whole-of-government 'cutting red tape' initiative.

### 3 Proposed policy amendments

This section describes the individual policy items, the proposed changes and the need for the changes and/or amendments.

Each proposed policy item is divided into the following sub-sections:

- Background: detailing the historical background in relation to the policy or regulation.
- Issue: an explanatory statement of the issue(s) identified by both CASA and industry, including a reason for the change.
- Key Objectives: providing overarching information and recommended structure regarding the desired outcomes for each change within the proposed policy.

This policy proposal forms the basis for the drafting instructions to be provided to Commonwealth legislative drafters. The drafting instructions will provide further granularity related to the specific details required in the draft regulations (i.e. operational requirements, restrictions and other safety considerations).

#### 3.1 Preliminary information

##### 3.1.1 Dangerous goods legislation

The document *International Civil Aviation Organization (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air* (Doc 9284) is incorporated by direct reference into Section 23(3A) of the *Civil Aviation Act 1988* (the Act) and within Part 92.

Below is a summary of relevant legislation, including those that refer to the ICAO-TI and key legislative components such as definitions and applicability to the regulations, which may assist with reading this document.

##### 3.1.2 Section 23 of the Civil Aviation Act 1988

Section 23(3) provides for the definition of dangerous goods to be applied to the Act.

Section 23(3A) adopts and incorporates, by direct reference, the Dangerous Goods List as found within Table 4-1 of the ICAO-TI approved and published by ICAO and is in force from time-to-time.

##### 3.1.3 Part 92 of the Civil Aviation Safety Regulations 1998

Subpart 92.A - General:

- Regulation 92.005 states the applicability of the Part 92 and sets out the links to section 23 of the Act.
- Regulation 92.010 contains the definitions used within and applicable to Part 92.
- Regulation 92.015 provides for a detailed definition of DG.

Subpart 92.B - Conditions for carriage etc of dangerous goods:

- Regulation 92.020 states compliance with the Technical Instructions for the Safe Transport of Dangerous Goods by Air (Doc 9284) or ICAO-TI generally, by way of direct reference.
- Regulation 92.025 states compliance with the ICAO-TI by the operators, by way of direct reference.
- Regulation 92.030 states compliance with the ICAO-TI by passengers and crew, by way of direct reference.
- Regulation 92.035 states compliance with the ICAO-TI by persons who consign DG (i.e. Shippers of DG), by way of direct reference.

### 3.1.4 Definition of dangerous goods?

The definition of dangerous goods in s23(3) and (3A) of the Act:

- (3) In this section:
- dangerous goods* means:
- (a) explosive substances; and
  - (b) things:
    - (i) which by reason of their nature are liable to endanger the safety of an aircraft or persons on board an aircraft; or
    - (ii) which the regulations declare to be dangerous goods.
- (3A) Regulations made for the purposes of subparagraph (b)(ii) of the definition of dangerous goods in subsection (3) may apply, adopt or incorporate (with or without modification) the Dangerous Goods List contained in the Technical Instructions for the Safe Transport of Dangerous Goods by Air, approved and published by decision of the Council of the International Civil Aviation Organisation, as in force from time to time.

The definition of DG in the ICAO-TI Part 1; 3.1.1:

**Dangerous goods.** Articles or substances which are capable of posing a hazard to health, safety, property or the environment and which are shown in the list of DG in these Instructions, or which are classified according to these Instructions.

## 3.2 The introduction of a Regulation requiring the reporting of dangerous goods occurrences (A1.1, B2.3 and C3.4)

### 3.2.1 Reference(s):

- Regulation 92.065 - Commercial operators - reporting of dangerous goods incidents.
- Regulation 92.010 and 92.015 - Definitions for Part 92.
- Annex 13, Aircraft Accident and Incident Investigation to the Convention on International Civil Aviation.

- Annex 18 Chapter 12; 12.1 - 12.4 - Dangerous Goods Accident and Incident Reporting.
- ICAO-TI Part 7; 4.4 - 4.6 - Requirements for reporting of dangerous goods incidents, DG accidents, hidden, undeclared or misdeclared DG and DG occurrences.
- ICAO-TI Part 1; 7 - Incident and Accident Reporting.
- Part 3 of Transport Safety Investigation Act (TSIA) 2003 - Reporting of accidents etc.
- Part 2 of Transport Safety Investigation Regulations (TSIR) 2003 - Aircraft Operations.

### 3.2.2 Background

Annex 13 Chapter 4 (Notification) outlines Australia's international responsibilities regarding actions in the event of an accident or serious incident involving aircraft within Australian territory, or involving aircraft that originates from, or are oversighted by, Australia.

The reporting requirements of the ATSB for aircraft operations is contained within Part 3 Sections 18 and 19 of the TSIA. The sections outline the differences between an 'immediately reportable matter' and a 'routine reportable matter'. Annex 18 requires DG accidents and incidents to be investigated and reported. Reports are to be made in accordance with the detailed requirements of the ICAO-TI. CASA is the Australian Government entity that has assigned responsibility for Annex 18.

The primary responsibility for oversight and powers to investigate any aviation related accidents or serious incidents (Annex 13) has been assigned under the portfolio of the ATSB.

The ICAO-TI Part 7, Chapter 4; Paragraph 4.6, details the requirements for reporting of DG occurrences by Operators.

Subparagraph 92.025(2)(b)(xv) includes reference to the reporting required by Part 7, Chapter 4 by using the title of the ICAO-TI Chapter in the regulation:

- (2) *It is a condition of the carriage of dangerous goods on an aircraft that the operator of the aircraft complies with:*
  - (b) *the requirements of those Instructions concerning the following matters:*
    - (xv) *providing notices and information.*

ICAO-TI Part 7, Chapter 4, Paragraph 4.5 details the requirements for reporting of undeclared or misdeclared DG by Operators.

The requirement to report undeclared or misdeclared DG and DG occurrences are requirements added to the ICAO-TI after the commencement of the existing Part 92.

Regulation 92.065 imposes the reporting requirements upon commercial operators in relation to DG incidents.

Subregulation 92.065(2) states:



- (2) *Subject to subregulation (3), the carriage of dangerous goods by an aircraft operated by a commercial operator is subject to the condition that, if a dangerous goods incident occurs, the operator must report the incident to CASA in writing within 2 working days after the incident occurs.*

### **What is a dangerous goods accident?**

The definition of DG accident in regulation 92.010:

*Dangerous goods accident means an event involving dangerous goods that occurs in the course of the goods being carried, or consigned for carriage, on an aircraft and results in:*

- (a) *a fatal or serious injury to a person; or*
- (b) *serious damage to the aircraft or any cargo carried on the aircraft.*

The definition of dangerous goods accident in the ICAO-TI Part 1; 3.1.1:

***Dangerous goods accident.*** *An occurrence associated with and related to the transport of dangerous goods by air which results in fatal or serious injury to a person or major property or environmental damage.*

### **What is a dangerous goods incident?**

The definition of dangerous goods incident in regulation 92.010:

*Dangerous goods incident means an event (other than a dangerous goods accident) involving dangerous goods that occurs in the course of the goods being carried, or consigned for carriage, on an aircraft and that:*

- (a) *results in:*
  - (i) *the escape of smoke or flames from the container or package in which the goods are contained; or*
  - (ii) *breakage of the container or package in which the goods are contained; or*
  - (iii) *any escape of the goods or part of them from the container or package in which they are contained; or*
  - (iv) *leakage of fluid or radiation from the container or package in which the goods are contained; or*
- (b) *seriously jeopardises, or is likely to seriously jeopardise, the aircraft or its occupants.*

The definition of dangerous goods incident in the ICAO-TI Part 1; 3.1.1:



***Dangerous goods incident.*** *An occurrence, other than a dangerous goods accident, associated with and related to the transport of dangerous goods by air, not necessarily occurring on board an aircraft, which results in injury to a person, property or environmental damage, fire, breakage, spillage, leakage of fluid or radiation or other evidence that the integrity of the packaging has not been maintained. Any occurrence relating to the transport of dangerous goods which seriously jeopardizes the aircraft or its occupants is also deemed to be a dangerous goods incident./*

Note.— A dangerous goods accident or incident may also constitute an aircraft accident or incident as specified in Annex 13 — Aircraft Accident and Incident Investigation.

### **What is a dangerous goods occurrence?**

The term 'dangerous goods occurrence' is not specifically defined within either the CASRs or within Part 1 of the ICAO-TI.

However, ICAO-TI Part 7;4.6 provides qualifying information as to what types of events fall under the category of a 'dangerous goods occurrence', stating the following:

*An operator must report to the State of the Operator and the State of Origin any occasion when:*

- a) dangerous goods are discovered to have been carried when not loaded, segregated, separated or secured in accordance with Part 7;2; or*
- b) dangerous goods are discovered to have been carried without information having been provided to the pilot-in-command in accordance with Part 7;4.1.*

ICAO-TI Part 7;2 is in relation to the storage and loading of DG on to an aircraft; and, Part 4;4.1 contains the details of information to the Pilot-in-Command (PIC) (i.e. the Notification to the Captain or NOTOC).

Reporting of undeclared and misdeclared DG is outlined as follows in the ICAO-TI 7;4.5:

*An operator must report any occasion when undeclared or misdeclared dangerous goods are discovered in cargo or mail. Such a report must be made to the appropriate authorities of the State of the Operator and the State in which this occurred. An operator must also report any occasion when dangerous goods not permitted under 8;1.1.1 are discovered by the operator, or the operator is advised by the entity that discovers the dangerous goods, either in the baggage or on the person, of passengers or crew members. Such a report must be made to the appropriate authority of the State in which this occurred.*

### **3.2.3 Issue**

#### **Responsibilities for reporting between Agencies - CASA and ATSB**

CASA and the ATSB share dual responsibilities for reporting of accidents and serious incidents involving the carriage or consignment for carriage of DG by air transport.

CASA does not differ in reporting requirements; all reports (irrespective of severity) are required to be reported in writing to CASA, within 2 working days of the incident occurring.

However, the ATSB has different reporting requirements depending on the nature and severity of the event. Immediately reportable matters are to be reported 'as soon as reasonably practical' and routinely reportable matters require a written report within 72 hours. The requirements for reporting are outlined within the regulations 2.3 and 2.4 of the TSIRs respectively.

### **Misalignment of reporting requirements between the CASRs and the ICAO-TI**

Currently, there is a misalignment between the level of reporting required under subregulation 92.065 (2) and the level of reporting required by Annex 18 (as amplified in the ICAO-TI).

Annex 18 Chapter 12 and subsequent recent incorporations into the ICAO-TI Part 7, Chapter 4 have extended the requirement from reporting DG accidents and incidents, to now include reporting of DG occurrences and undeclared or misdeclared DG.

The CASRs should reflect the requirements of Annex 18 and the ICAO-TI to meet CASA's Annex 18 requirements in the establishment of procedures for investigating and compiling information in relation to DG accidents, DG incidents, undeclared or misdeclared DG and DG occurrences

The reporting requirements within regulation 92.065 currently only applies to DG incidents. This needs to extend to cover DG accidents, undeclared or misdeclared DG and DG occurrences to align with the requirements of ICAO Part 7; 4.4-4.6.

### **Information sharing between CASA and the ATSB**

While there is a requirement for CASA to share information regarding DG accidents or serious incidents reported with the ATSB, this is normally dependent on the nature and severity of the event, and whether the accident or incident directly affected or endangered the aircraft or its crew, or if the event could have resulted in damage to the aircraft or its crew<sup>2</sup>. For example, the ATSB would not require information about DG spills occurring within the freight shed such as a consignment being damaged by a forklift in the process of building up an aircraft pallet.

Similarly, the ATSB share their immediate and routine reportable event reports with CASA. However, the information captured in relation to the DG component of the event is often limited and unhelpful to CASA for further investigation. In these instances, CASA uses the ATSB reports as a mechanism to cross-reference information which has been reported, or in some instances, not reported.

DG reports sent to CASA from industry contain more detailed information about the DG themselves and the way the incident took place.

### **Difference in reporting focus between CASA and the ATSB**

CASA's reporting requirement centres around the DG and compliance, whereas the ATSB reporting requirement focuses on the outcome of the event irrespective if the event resulted from DG as the source. For example, an immediate report could be received by the ATSB which

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<sup>2</sup> The event occurred in the near vicinity of the aircraft during loading or unloading, resulting in a "near miss".

details smoke in the cargo hold of an aircraft. Later investigations may establish that the smoke was as a result of DG. This information may not have been available at the time of the immediate report.

Regulation 2.3(3)(i) of the TSIRs states that an 'immediately reportable matter' is prescribed as 'a fire (even if subsequently extinguished), smoke, fumes or an explosion on or in any part of the aircraft' rather than resulting from DG (for example, a lithium ion battery entering in a thermal runaway may produce smoke, fire and fumes).

CASA's focus, in relation to the Part 92 regulations, should remain centred around the DG and compliance involved within the event. The reporting requirement of 'within 2 working days of an incident occurring' to remain unchanged to allow enough time for the operator to ascertain what DG were involved and to collect the level of information required for CASA to conduct a safety investigation and/or store for data analysis and safety trending. Any DG accident should also be immediately reportable to CASA.

### **TSIRs and the reporting of radiation resulting from a loss of containment**

There is a gap within the TSIRs that does not account for reporting radiation resulting from a loss of containment of a Class 7 radioactive package. A loss of containment of radiation within an aircraft could result in danger to the health of passengers, aircrew and ground crew, in addition to contamination of the aircraft and its components.

This situation, upon detection, would require immediate reporting to the ATSB and other applicable authorities, such as the Australian Radiation Protection and Nuclear Safety Authority (ARPANSA), to ensure that immediate action is taken in relation to the securing of the leaking/damaged package and treatment of persons and property affected.

This gap exists by the current definition of 'serious injury' within regulation 1.3 of the TSIRs (2003) and its application in the definition of an 'accident' within Section 3 of the TSIA:

***Serious injury means an injury that requires, or would usually require, admission to hospital within 7 days after the day when the injury is suffered.***

Accident within Section 3 of the TSIA:

***Accident means an investigable matter involving a transport vehicle where:***

- (a) a person dies or suffers serious injury as a result of an occurrence associated with the operation of the vehicle; or***
- (b) the vehicle is destroyed or seriously damaged as a result of an occurrence associated with the operation of the vehicle; or***
- (c) any property is destroyed or seriously damaged as a result of an occurrence associated with the operation of the vehicle.***

The ATSB recently consulted CASA on their proposed changes to the Aeronautical Information Publication (AIP) section '*Transport Safety Investigation Regulations 2018: Reporting accidents and incidents to the Australian Transport Safety Bureau*' which provides further guidance on the requirements for reporting and explains the sections of the TSIRs.

This draft AIP included the ICAO Annex 13 definition of 'serious injury':

***Serious injury.*** *An injury which is sustained by a person in an accident and which:*

- a) requires hospitalization for more than 48 hours, commencing within seven days from the date the injury was received; or*
- b) results in a fracture of any bone (except simple fractures of fingers, toes or nose); or*
- c) involves lacerations which cause severe haemorrhage, nerve, muscle or tendon damage; or*
- d) involves injury to any internal organ; or*
- e) involves second or third degree burns, or any burns affecting more than 5 per cent of the body surface; or*
- f) involves verified exposure to infectious substances or injurious radiation.*

If the ATSB has included the ICAO definition of 'serious injury' within the policy changes of their TSIRs, the loss of containment of radiation will be covered as an immediately reportable matter when applied to the definition of accident. If this does not occur, then the definition of 'serious injury' should be added to regulation 92.010.

### **Application of reporting regulations**

The regulatory onus of the operator to report to the ATSB (and CASA), is contained within their internal Safety Management System (SMS).

The parameters of the air transport system, regarding reporting requirements, is not concise or clearly defined and industry would benefit from further clarification when the amendment to Part 92 is drafted. This amendment to Part 92 would assist CASA to discharge Australia's assigned Annex 18 obligations and from a safety perspective, CASA and the industry would be beneficial for safety-trend monitoring and the subsequent opportunities to improve the safety-health of the aviation industry in carrying DGs.

In relation to entities other than air operators, there are recommendations within the ICAO-TI Part 1; 7 which state:

*Entities other than operators who are in possession of dangerous goods at the time a dangerous goods accident or incident occurs or at the time a dangerous goods incident is discovered to have occurred should follow the reporting requirements of Part 7;4.4. Entities other than operators who discover undeclared or misdeclared dangerous goods should follow the reporting requirements of Part 7;4.5. These entities may include, but are not limited to, freight forwarders, customs authorities and security screening providers.*

The recommendations as per ICAO-TI Part 1; 7 should also be incorporated within the reporting requirements of Part 92.

### **Harmonising definitions in Part 92 with those in the ICAO Technical Instructions**

The term 'dangerous goods occurrence' is not specifically defined within the CASRs or within the ICAO-TI and should be defined as part of the amendments to regulation 92.065 (or included within the creation of a new reporting subpart within Part 92).

The current definitions within regulation 92.010 for 'dangerous goods accident' and 'dangerous goods incident' require alignment with those contained in Annex 18 (the same definition appears in ICAO-TI Part 1).

The alignment of definitions between the CASRs and those within Annex 18 will assist Australia in achieving better compliance and reducing the number of variances lodged within its Electronic Filing of Differences (EFOD) and ultimately achieving a higher compliance with ICAO's Standards and Recommended Practices (SARPs).

Currently, in relation to the definitions of 'dangerous goods accident' and 'dangerous goods incident', Australia is less protective than the ICAO SARPs and as such, is not meeting the satisfactory level of implementation for these two definitions.

#### **3.2.4 Key objectives**

The key objectives of this policy amendment are to:

- Align the reporting requirements documented within the ICAO-TI Part 7, Chapter 4; 4.4-4.6 with regulation 92.065 or an equivalent regulation (if a new reporting subpart is made within Part 92)
- Ensure that provisions for reporting of DG accidents are included in Part 92
- Ensure that provisions for reporting of undeclared or misdeclared DG and DG occurrences are included in Part 92
- Ensure that any gaps between the CASRs and TSIRs in reporting requirements for DG related accidents and incidents are covered within Part 92
- Monitor proposed changes to the Transport Safety Investigation Regulations 2003 in relation to the definition of 'serious injury' and action consequential amendments if the definition is not aligned with ICAO Annex 13
- Amend current definitions within regulation 92.010 for 'dangerous goods accident' and 'dangerous goods incident' to reflect those contained in the ICAO-TI Part 1.

Where possible, the definitions within regulation 92.010 should be aligned to reflect the definitions within Annex 18 Chapter 1 and the ICAO-TI Part 1; 3.1.1. This policy amendment is specified further within the policy document for D5.3.

### **3.3 Regulations to provide for the issue of an Aviation Infringement Notice (AIN) for certain offences (A1.4)**

#### **3.3.1 Reference(s):**

- s.30DO of CAA - Protection for reporting a reportable contravention
- Regulation 92.020 – Compliance with the Technical Instructions generally

- Regulation 92.030 – Compliance with Technical Instructions – passengers and crew
- Regulation 92.035 – Compliance with Technical Instructions – persons who consign dangerous goods
- Regulation 92.045 – Dangerous goods manual - Australian aircraft operators
- Regulation 92.055 – Dangerous goods manual - requirements applicable to all operators
- Regulation 92.065 – Commercial operators - reporting of dangerous goods incidents
- Regulation 92.070 – Dangerous goods statement (Act s23A)
- Regulation 92.120 – Training - certain employees of shippers of dangerous goods
- Regulation 92.140 – Who may conduct training
- Regulation 92.200 – Information in passenger terminals; and
- Regulation 92.205 – Information with tickets.

### 3.3.2 Background

Section 23 of the *Civil Aviation Act 1988 (the Act)* prohibits the carriage of DG on aircraft unless the person carrying or consigning the goods complies with any conditions imposed by the regulations.

Several regulations impose various conditions. For example, regulation 92.065 stipulates that commercial operators must report DG incidents within two working days after the incident occurs. Failure to comply with the condition is a breach of section 23 of the Act and the offender is potentially subject to the penalties specified in section 23 of the Act.

When there has been an incident or a breach of the Act or Regulations (or suspected), there are several options a Dangerous Goods Inspector (DGI) may take. The options a DGI may take when investigating a DG incident may include:

- a. taking no further action (other than conducting a desktop review of the evidence provided and recording the event for safety analysis)
  - b. making phone calls and requesting further evidence from the operator
  - c. speaking with the parties involved about safety matters identified and providing education and informal counselling, record person in Dangerous Goods Occurrence Management System (DGOMS)
  - d. issuing a warning letter and record event and person in (DGOMS)
- or
- e. referring the matter to CASA's coordinated enforcement (which may result in the matter being rejected back for a formal warning letter issued (i.e. if not enough evidence), or if the matter progresses and is taken on by a CASA Investigator, a case will be prepared for the Department of Public Prosecutions (DPP) for further prosecution under s.23 of the Act).

Not all the options above directly translate to the DG environment. However, the AIN scheme allows for addressing persistent or particularly dangerous issues.

The PIR working group advocated for there to be consequences of general offences involving the breaching of regulations for:

- carrying and consigning DG
- operator's responsibilities in relation to the DG manual
- operator's responsibilities in relation to DG incident reporting
- making a false statement regarding describing or declaring the goods
- for employees who were not trained in respect of DG
- owner or operator of airport terminal in respect to DG information in passenger terminals
- operator's or handling agents in respect to DG information in cargo acceptance areas
- person's (other than operators) to provide DG information with tickets
- with appropriate Penalty Units, and an available exercise of the provision for AINs.

The making of these Regulations and the ability to use AINs would create a modern and flexible approach to compliance and enforcement. Persons served with an AIN would still have the ability to have the matter heard by a court.

### 3.3.3 Issue

The law, as written, leads to potential penalties that are either too strong and disproportionate to the offence, or are too weak and not useful. It is considered that prosecuting many of these types of offences through the courts is an inappropriate drain on the resources of the DPP and the judicial system as well as those in CASA.

The current option of a warning letter may not provide an adequate deterrent.

There is no medium-level mechanism between issuance of a warning letter and proceeding to prosecution in the courts.

An additional enforcement mechanism, via the AIN, would be appropriate and consistent with other regulatory provisions. There are currently regulations that impose conditions, and where non-compliance results in a reversion back to the penalties contained in section 23 of the Civil Aviation Act 1988. These regulations are:

- Regulation 92.020 – Compliance with the Technical Instructions generally
- Regulation 92.030 – Compliance with Technical Instructions – passengers and crew
- Regulation 92.035 – Compliance with Technical Instructions – persons who consign dangerous goods
- Subregulation 92.045(2) – DG manuals not up to date, not distributed etc.
- Subregulation 92.055(3) – DG manual not in a readily accessible place
- Subregulation 92.055(4) – Operator to take reasonable steps to ensure that handling and carriage of dangerous goods is in accordance with DG Manual
- Subregulation 92.055(5) – Employee to be made aware of contents of DG Manual
- Regulation 92.065 – Commercial operators — reporting of dangerous goods incidents
- Subregulation 92.070(1) – Dangerous goods statement
- Regulation 92.120 – Training — certain employees of shippers of dangerous goods
- Regulation 92.140 – Who may conduct training



- Regulation 92.200 – Information in passenger terminals
- Regulation 92.205 – Information with tickets.

Without the ability to impose an infringement notice<sup>3</sup> the persons are not adequately deterred from reoffending if they experience no consequence for their actions. Some DG spills in and around the aircraft are quite costly to the industry in lost time, repair/decontamination costs, diversion costs, etc. and are hazardous to persons and/or the environment.

The ability to issue fines to passengers will also assist in lifting the level of awareness of DG and the risks they present when carried on board an aircraft, or when hidden by passengers in checked-in baggage.

### **3.3.4 Key objectives**

The key objectives of this policy amendment are to:

- Create offence provisions for certain existing regulations
- Add penalty units and to clearly state strict liability provision for certain regulations
- Provide for the issue of an AIN for an offence of strict liability in relation to unlawfully carrying/consigning DG, making a false statement with regard to specified offences contained within Part 92.
- Allow for CASA to undertake a period of public education prior to the implementation of DG offences into the AIN scheme.

## **3.4 Removing 'red tape' by allowing additional provisions for small commercial aircraft operators to carry dangerous goods within Australian territory (A1.5)**

### **3.4.1 Reference(s):**

- Section 23 of the Civil Aviation Act 1988
- Subpart 92.D - Limitations
- Part 135 - Australian air transport operations—smaller aeroplanes
- Part 133 - Australian air transport operations—rotorcraft
- Part 138 - Aerial work operations

### **3.4.2 Background**

Part 92 was compiled to address the large air transport sector and the carriage of DG in full compliance with the ICAO-TI to meet CASA's international obligations.

As the DG needs of the 'large aeroplane' sector (which accounts for approx. 80% of DG in air transport) had been addressed during the initial Part 92 project, the decision was taken to defer the 'small aeroplane' sector until the PIR was complete.

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<sup>3</sup> Travelling passengers who pack DGs into their baggage, DG Shippers who have undeclared DG in consignments; etc.



The PIR therefore picks up the changes needed to complement the new flight operations Regulations, in particular Part 133 (Air transport rotorcraft), Part 135 (Smaller Aeroplanes) and Part 138 (Aerial work operations).

The regulations require compliance with the ICAO-TI unless otherwise provided for by relief in national regulations. Subpart 92.D provides some limitations specific to Australia's operating requirements, which includes some relief and relaxation from compliance with all the requirements of the ICAO-TI provided that an equivalent level of safety can be achieved.

The intent of this regulation is to allow additional provisions for smaller aircraft to carry DG into aerodromes in remote locations.

One area where CASA is already supporting industry is through 'round trip' permissions issued under Section 23 of the Act. The key concept is based upon a full acceptance check taking place at the point of departure with abbreviated procedures for re-packaging DGs, making the declaration and accepting the DG for the intermediate legs and return component of the trip. Currently this is being considered only for Cargo Aircraft and is in accordance with the definition of the ICAO-TI.

It is intended that the new regulation would be applied in a manner consistent with, and in support of, the newly created flight operations regulations and with the reduced burden in relation to the full application of the ICAO-TI and Part 92.

Regarding aircraft size limitations the following relevant limits are expressed within the new flight operations regulations:

- a. Part 121 (Large aeroplanes) sets a limitation of either or both, if the aircraft:
  - i. has a maximum operational passenger seat configuration of more than 9;
  - ii. has a maximum take-off weight of more than 8,618 kg.
- b. Part 133 (Rotorcraft - Air Transport):
  - i. CASR 133 does not have weight limits but does limit passengers set in relation to performance class criteria (within the MOS).
- c. Part 135 (Smaller aeroplanes) sets a limitation of:
  - i. a maximum operational passenger seat configuration of not more than 9; and
  - ii. a maximum take-off weight of not more than 8,618 kg.
- d. Part 138 (Aerial Work - Aeroplanes & Rotorcraft) sets a limitation of for the requirement for a Training and Checking system and to have an SMS:
  - i. multi-engine transport category rotorcraft with a maximum take-off weight of more than 3,175 kg; or
  - ii. multi-engine aeroplanes with a maximum take-off weight of more than 5,700 kg; or
  - iii. turbine-engine aeroplanes (other than turbine-engine propeller-driven aeroplanes).

The intent of this regulation is to provide relief for other DG, with exception of the carriage of fuel, which will remain as provided for under regulation 92.185. Therefore, this new regulation should point to the provisions of regulation 92.185 for the carriage of fuel.

### 3.4.3 Issue

Issuing a s.23 permission for the transport of DGs on a 'round trip' or to remote location destination is time and resource intensive for CASA, and not cost or time effective for industry having to apply for a permission to cover each individual operational circumstance.

Commonly, small operators approach CASA for permanent permission under s.23 of the CAA to permit the carriage of small quantities of DG on charter flights or for aerial work purposes.

CASA and industry should not be burdened with this and it can be adequately achieved through outcome-based legislation.

### 3.4.4 Key objectives

The key objectives of this policy amendment are to:

- Provide outcomes-based legislation for smaller commercial operators to conduct their own case-by-case safety risk assessments and accept the carriage of certain DG, commonly sought for carriage within the Australian industry, without the requirement to seek permission to do so from CASA
- Limit the type of DG permitted (i.e. no forbidden DGs)
- Limit the type of operation (i.e. cargo aircraft only)
- Specify loading and stowage conditions
- Specify documentation requirements (including a safety risk assessment)
- Provide relief by way of an abridged acceptance check complementing procedures for a round-trip to remote locations
- Mandate emergency response and information provided to persons accompanying the DG
- Mandate that the operator has an acceptance trained (Group A level) employee to conduct the initial acceptance.

This regulation should also consider:

- The types of aircraft used within this sector (i.e. size category or by number of passenger seating) and limit the application of this regulation to aircraft operated under Parts 133, 135 and 138.
- Regulation 92.170 for additional loading considerations regarding the loading of DG into an unrated main deck compartment of the aircraft. This will help to maintain consistency and provide clarity across the regulations.
- Regulation 92.185 for provisions around the carriage of fuel.
- Inclusion of training flights, positioning or re-positioning flights by which the DG are required for a particular segment of the round-trip.
- Appropriate offences and penalty units for this new regulation. This should be consistent with existing regulations and proposed penalty units contained within this amendment document.
- Transitional provisions may be required if the new Parts 133, 135 and 138 are detailed within the regulation. Alternatively, maximum take-off weight restrictions may be applied.

### **3.5 Providing authorised CASA Officers (normally would be CASA Dangerous Goods Inspectors), access to records held by DG training organisations for aviation safety compliance inspection and assurance activities (A1.6)**

#### **3.5.1 Reference(s):**

- Subpart 92.C - Training
- Regulation 92.145 - Records about training - Australian operators etc.
- Regulation 92.085 - Definitions for Subpart 92.C
- CAR 305 - Access of authorised persons

#### **3.5.2 Background**

Regulation 92.145 applies to the employees of operators within and outside of Australia, shippers of DG, ground handling agents (GHAs), freight forwarders and security screening authorities. It also details the requirement to keep DG training records.

Subregulation 92.145(2) outlines specific information to be kept for each employee (i.e. name, the DG instructor and DG training organisation, date which training was undertaken and CASA approval number for the DG training material used).

Subregulation 92.145(3) requires that a person or organisation to whom the regulation applies must keep a copy of any certificate issued and give a copy of any such certificate to CASA upon request.

Regulation 305 of the *Civil Aviation Regulations 1988 (CAR)* permits access to premises where records are required to be kept, stating:

*“Subject to any aviation security requirements, an authorised person shall, at all reasonable times, have access to any place to which access is necessary for the purpose of carrying out any powers and functions vested in him or her in pursuance of these regulations...”*

Regulation 305 of CAR can be reasonably exercised to gain access to premises for the purposes of inspecting:

- a. training records (required under regulation 92.145)
- b. transportation documents under regulation 92.070
- c. packaging, marking, labelling and documentary materials under regulation 92.035.

Subregulation 92.085(1) defines 'deemed employee' as:

**deemed employee** means a person who, although not employed by an aircraft operator, ground handling agent, freight forwarder, screening authority or shipper of dangerous goods, performs for the operator, ground handling agent, freight forwarder, screening authority or shipper any of the following services:

- (a) accepting cargo consigned for transport on an aircraft, or supervising someone whose duties include accepting such cargo at any time after it leaves the custody of the original consignor;
- (b) acting as a member of an aircraft's flight crew or as a load planner;
- (c) acting as a member of an aircraft's cabin crew;
- (d) handling cargo consigned for transport on an aircraft at any time after it leaves the custody of the original consignor, or supervising someone whose duties include handling such cargo;
- (e) handling passengers' checked or carry on baggage, or supervising someone whose duties include handling such baggage;
- (f) packing dangerous goods, or supervising someone whose duties include packing such goods, in the course of the goods' being consigned for carriage on an aircraft.

### 3.5.3 Issue

If a person or organisation decides to not issue a training certificate then there is no requirement to provide a copy of the certificate to CASA (subregulation 92.145(3)) This defaults back to the requirement of an operator to maintain up-to-date records under subregulation 92.145(2).

Training providers are not currently required to keep DG training records under regulation 92.175 and is being currently managed through the conditions of their training approval.

### 3.5.4 Key objectives

The key objectives of this policy amendment are to:

- Amend regulation 92.145 to apply to DG training persons or organisations requiring that they keep records of all persons who have undertaken DG training.
- Amend subregulation 92.145(2) to require that a person or organisation provide a copy of training records required by subregulation 92.145(2) to CASA upon request.

## 3.6 Requiring packages, which have been opened for inspection (e.g. by officers from CASA, Dept. of Home Affairs and other applicable authorities etc.) to be returned to a proper condition for transport after inspection (B2.1)

### 3.6.1 Reference(s):

- Regulation 92.010 - Definitions
- Regulation 92.085(1) - Definitions for Subpart 92.C (Training)

- Regulation 92.120 - Training - certain employees of shippers of dangerous goods
- ICAO-TI Part 1;1.4 - Dangerous goods packages opened by customs of other authorities

### 3.6.2 Background

There are requirements from time-to-time for Officers of Customs (and other authorities) and other persons authorised who are permitted to open and inspect DG packages.

Such packages require to then be returned to a condition that complies with the ICAO-TI before being forwarded to the consignee.

Any person packing DG must be trained to a 'group F employee' standard in accordance with regulation 92.120.

The definition of a 'group F employee' is contained within subregulation 92.085(1):

group F employee *means*:

- (a) *an employee of a shipper of goods whose duties include packing dangerous goods, or supervising someone else whose duties include packing dangerous goods, in the course of the goods being consigned for transport on an aircraft; or*
- (b) *a deemed employee whose function includes those duties.*

### 3.6.3 Issue

If a package is opened for inspection, it must be restored to a condition that complies with the ICAO-TI prior to re-entering the air transport system.

Often packages which have been opened for inspection by a person authorised to do so are then found to be 'in limbo' and unable to move on in the system until rectified.

The ICAO-TI Part 1;1.4 states:

*'Any package opened during an inspection must, before being forwarded to the consignee, be restored by qualified persons to a condition that complies with these Instructions.'*

The use of the word 'qualified' as distinct from 'trained' is a deliberate choice by ICAO to facilitate those persons within industry who possess competency from experience in handling DG packages daily. For example, a CASA DGI or a 'group A' trained Freight Forwarder who has intimate knowledge of the ICAO Technical (or industry equivalent IATA DGR) and has the information available on hand to restore the package to a condition that with the ICAO-TI.

### 3.6.4 Key objectives

The key objectives of this policy amendment are to:

- Develop provisions in the regulations that reflect Part 1;1.4 of the ICAO-TI and provide relief for appropriately qualified persons to restore an opened DG package (which have been cleared for return into the air transport system) back to a compliant state

- Draft in requirements ensuring that the authorised person (who restores the package) has provided personal certification information to ensure traceability if there were issues with the package after having been restored (i.e. an incident)
- Require packages, which have been opened for inspection (e.g. by officers from CASA, Department of Home Affairs and other applicable authorities etc.) to be returned to a proper condition for transport after inspection.

### **3.7 A clarification that the failure to successfully complete dangerous goods recurrent training must result in suspension from performing that employee function (B2.6)**

#### **3.7.1 Reference(s):**

- Regulation 92.090 - Extended meaning of every 2 years for this Subpart
- Regulation 92.135 - Requirements for training course

#### **3.7.2 Background**

Currently, DG training is undertaken every two years and retraining may be taken up to 3 months before expiry of the initial course.

During audits and requests for exclusions from the training requirements of Part 92, it has been found that certain employees, having failed their recertification training course, have continued performing duties associated with DG, relying upon the expiry date from their previous training.

Within regulation 92.135 a training course must provide for a test. If the test is not passed, then the candidate is regarded as not being competent in their DG knowledge.

The reality is that if the employee is no longer competent to ship/accept/handle DG, then their current qualification should be regarded as being no longer valid.

Such tests are subject to approval by CASA as part of the training package for assessment of the overall DG training course approval.

DG training organisations may submit courses for approval which reflected a graduated scale (i.e. a score of between 70 - 80 percent) which might constitute grounds or process for remedial development, either by way of a knowledge deficiency review or a make-up test.

#### **3.7.3 Issue**

Clarification is required in the regulation 92.090 that the failure to successfully complete DG recurrent training must result in suspension from performing that employee function.

#### **3.7.4 Key objectives**

The key objectives of this policy amendment are to:

- Add a sub regulation within regulation 92.090 to cover that the failure to successfully complete DG recurrency training must result in a suspension from performing that employee DG function.

- Add in a requirement for the employee (if in the employment of an Australian AOC holder) to advise the operator if they fail to successfully complete DG training.
- Create an offence if the employee does not comply with the requirement to advise the operator of failure to successfully complete DG training.
- Revise the example in regulation 92.090 to include an example where the person results in being 'untrained'.

### **3.8 Provide an additional period of grace for DG training (B2.7)**

#### **3.8.1 Reference(s):**

- Regulation 92.090 - Extended meaning of every 2 years for this Subpart
- Regulation 92.135 - Requirements for training course
- ICAO-TI Part 1;4.2.3 - Recurrent Training
- IATA DGR 1.5.0.3 - Validity of recurrent training

#### **3.8.2 Background**

The ICAO DG Panel has recommended that from 1 January 2013, that the period in which DG training may be undertaken, without causing any change to the anniversary date of that training, will include the timeframe to the end of the month in which the training is due.

As an example, Mary Smith's DG training expires on 4 June 2012. Under the current regulations, Mary can undertake training between 4 April 2012 and 4 June 2012 without affecting her anniversary date of 4 June and a potential expiry date of 4 June 2014.

With the proposed change from ICAO, if Mary was in another country, Mary could undertake training between 4 April 2014 and 30 June 2014 and Mary would have a new expiry date of 30 June 2016.

If the Australian legislation is not amended, then Mary would have to undertake her training before 4 June 2014 and would still retain an anniversary expiry date of 4 June 2016.

Regulations 92.095, 92.100, 92.105, 92.115 and 92.120 have a sub regulation that ensures training is completed *'every 2 years while the employee continues to have those duties'*.

The 2-yearly requirement should not need to change as the initial period will align the first training period with an end of the month expiry date.

#### **3.8.3 Issue**

ICAO use a '24 month' period, with the expiry of the training being within the 24 months, from the end of the month in which initial training was received. This was confirmed by the ICAO Dangerous Goods Panel (DGP) in meeting in November 2010 and documented in ICAO report DGP-WG/10-WP/51 (copy provided upon request).

The 60th Edition of the IATA DGR (effective 1 January 2019) will have an additional explanatory note in section 1.5.0.3 which supports the ICAO position of the 24-monthly period.



Transitional provisions are required to ensure that there is no disadvantage to existing employee groups who hold current training to allow for them to align their training with an end of month expiry within a certain period.

Maintaining the existing regulation is resulting in additional unnecessary costs for industry with no added risk to safety.

### **3.8.4 Key objectives**

The key objectives of this policy amendment are to align with ICAO, it is recommended that the extended effect of two years, provided in regulation 92.090, be amended to include the end of the month in which the training was completed.

## **3.9 Broadening the list of pilot operations for which dangerous goods training is not required (B2.8)**

### **3.9.1 Reference(s):**

- Regulation 92.095 - Training—certain employees of Australian aircraft operators
- Regulation 92.025 - Compliance with Technical Instructions—operators
- ICAO-TI Part1:1.1.5 - General exceptions

### **3.9.2 Background**

There is provision in regulation 92.095 for operators, whose pilots are employed in a very limited range of activities, where these pilots are not required to undertake DG training. CASA considers that the list could be expanded with additional conceptual activities being appropriate for inclusion.

Within regulation 92.095, the pilot does not require DG training when undertaking the following list of aerial work activities:

- a. private operations
- b. agricultural (including horticultural), forestry, or pollution control operations
- c. search and rescue operations
- d. balloon operations
- e. scenic or joy flight operations
- f. flying training operations.

The concept is that operations which only involve pilots who do not carry, and which are very unlikely to carry DG, should not be compelled to undertake DG training.

### **3.9.3 Issue**

The list of activities within subregulation 92.095(1) requires alignment with ICAO-TI Part 1;1.1.5 where appropriate.

The list of activities within subregulation 92.095(1) should also be expanded to include any additional aerial functions specific to the Australian aviation environment identified as appropriate (i.e. trial instructional flights).



### 3.9.4 Key objectives

The key objectives of this policy amendment are to:

- Broaden the list of activities with regulation 92.095, for which the DG training of flight crew is not mandatory to include aerial work type activities that involve only the pilot and regular operating crew where there is little to no DG carried or the DG are in relation to the activity being conducted.
- Align the provisions within the regulations (where appropriate) with ICAO-TI Part 1:1.1.5 - General Exceptions.
- Add in key objective remove scenic or joy flight (now absorbed within Part 135 as a passenger carrying operation).

## 3.10 Requiring that all dangerous goods training courses will be subject to CASA approval (B2.9)

### 3.10.1 Reference(s):

- Regulation 92.135 - Requirements for training course
- Regulation 92.085 - Definitions for Subpart 92.C
- Regulation 92.110 - Required standard of training for regulations 92.095, 92.100 and 92.105
- Regulation 92.120 - Training—certain employees of shippers of dangerous goods
- Regulation 92.095 - Training—certain employees of Australian aircraft operators
- Regulation 92.100 - Training—certain employees of Australian ground handling agents
- Regulation 92.105 - Training—certain employees of Australian freight forwarders
- Regulation Table 92.135-2 - Syllabus for training courses not requiring approval
- Regulation 92.140 - Who may conduct training

### 3.10.2 Background

DG training courses are categorised into employee groupings applicable to the roles, responsibilities and functions undertaken by that employee within the operation.

DG employee groups are defined within Regulation 92.085.

Currently all DG training courses, with exception of courses for Group E employees, require CASA approval in accordance with the following regulations:

- Groups A, B, C and D within Regulation 92.110
- Group F within subregulation 92.120(4).

### 3.10.3 Issue

The current legislation requires operator's employees, who meet the criteria as a Group E employee, to undertake a training course but such course does not require CASA approval. These employees are typically involved within checking-in and screening passengers, and includes those involved in handling baggage or cargo.

Such personnel are required to undertake a training course which satisfies certain syllabus criteria for Group E (as per CASR Table 92.135-2).

The Group E training course is required to be delivered by an instructor who has completed a Group A or Group B training course (as per subregulation 92.140(5)).

### **3.10.4 Key objectives**

The key objectives of this policy amendment are to:

- Amend subregulation 92.115(4) to require Group E training to gain the approval of CASA by reflecting the existing wording from within Regulation 92.110 of 'approved by CASA as being appropriate for...'.  
– Remove the note under subregulation 92.115(4).  
– Amend the title of regulation 92.110.  
– Amend subregulation 92.110(e) to require training for a Group E employee to be approved by CASA and remove the note underneath.

## **3.11 Training organisations should be compelled to maintain records for a minimum of 36 months and to surrender those records to CASA in the event that they cease business (B2.10)**

### **3.11.1 Reference(s):**

- Regulation 92.145 - Records about training—Australian operators etc
- ICAO-TI Part 1:4.2.5 - Training records

### **3.11.2 Background**

Currently, there is no Australian requirement for how long DG training records should be kept, or if training organisations must keep records of the people that they have trained.

CASA has experienced situations where the provider of an approved training course refused to maintain any records of persons they had trained. When attempting to follow-up on a query in relation to a training certificate issued, it could not be established whether the training certificate was counterfeit or genuine.

CASA has also experienced situations where organisations have ended due to bankruptcy, death etc. This has resulted in difficulty in obtaining records by CASA or industry participants who received training.

Part 1:4.2.5 of the ICAO Technical Instructions states: '*Training records must be retained by the employer for a minimum period of 36 months from the most recent training completion month and must be made available upon request to the employee or appropriate national authority*'.

Regulation 92.145 contains the rules for the contents of a training record, who training records apply to and the requirement for maintaining up-to-date training records.

Subregulation 92.145(1) specifies who this regulation applies to being Australian operators, shippers of DG, ground handling agents, freight forwarders and screening authorities.

Regulation 92.145 is not currently applicable to provider of an approved training course or persons conducting training as a sole trader. This requirement has been addressed in the policy document for A1.6.

### **3.11.3 Issue**

Regulation 92.145 does not include a period of time for which the provider of an approved training course or person must keep training records.

The provisions of regulation 92.145 should align with the training standard and recommended practices contained with the ICAO-TI.

Providers of an approved training course and persons trading as a provider of an approved training course are often contacted by students who have undertaken training in the past and who are requesting a copy of their training certificate as proof of currency for a new employer. This has been problematic when a training organisation has ceased trading and training records have been discarded or are no longer available for past students or CASA to access.

### **3.11.4 Key objectives**

The key objectives of this policy amendment are to:

- Add in a requirement for training records to be retained by the applicable persons named in subregulation 92.145(1) for a minimum period of 36 months from the most recent training completion month. This will allow for a person to request a copy of their training record up to a period of 12 months beyond the expiry of their training.
- Add in a requirement that DG training records (including any certificates issued) are made available upon request by CASA (as the appropriate national authority).
- Add a requirement that training records (including any certificates issued) retained by a training organisation or persons trading as a training organisation must be surrendered to CASA in the event that they cease business.

## **3.12 Clarifying 'group F employee' and providing provisions for proposed 'group G employees' (B2.11, D5.7 and D5.8)**

### **3.12.1 Reference(s):**

- Regulation 92.085 - Definitions for Subpart 92.C
- Regulation 92.120 - Training—certain employees of shippers of dangerous goods
- ICAO-TI Part 5;1.1 - General Requirements for Shippers

### **3.12.2 Background**

A 'group F employee' (also known as a 'Shipper' of DG) is defined within subregulation 92.085(1):

***group F employee means:***

- (a) an employee of a shipper of goods whose duties include packing dangerous goods, or supervising someone else whose duties include packing dangerous goods, in the course of the goods being consigned for transport on an aircraft; or*
- (b) a deemed employee whose function includes those duties.*

The main functions of a DG Shipper are to correctly pack, mark and label DG for air transport in accordance with the ICAO-TI and prepare the DG transport document to accompany the shipment.

Part 5 of the ICAO-TI outlines the Shipper's responsibilities in the transport of DG by air. More specifically, Part 5;4.1.6.1 requires that a Shipper sign and date the certification statement to declare that all of the applicable air transport requirements have been met.

ICAO-TI Part 5;4.1.6.1 is as follows:

*"4.1.6.1 The dangerous goods transport document must include a certification or declaration that the consignment is acceptable for transport and that the goods are properly packaged, marked and labelled, and in proper condition for transport in accordance with the applicable regulations and including additional air transport requirements of these Instructions (examples of additional air transport requirements are indicated in 5;1.1).*

*The text for this certification is:*

*"I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked and labelled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations."*

*For air transport the following additional statement is required:*

*"I declare that all of the applicable air transport requirements have been met."*

*The certification must be signed and dated by the shipper. Facsimile signatures are acceptable where applicable laws and regulations recognize the legal validity of facsimile signatures."*

The PIR noted that employees who are stock pickers/packers etc receive very little value from the current DG courses that are comprehensive in covering all the DG classes.

Similarly, employees of a shipper of DG that are defined as 'not restricted' in the ICAO-TI or is required to receive 'adequate instruction' prior to preparing and sending certain goods being consigned for transport on an aircraft.

The requirement for shipper training began in 2004 and stemmed from an ICAO requirement whereby all shippers and not just 'regular' shippers were required to be trained. The opportunity exists under current legislative requirements for a tailored course, possibly based on a series of modules.

### 3.12.3 Issue

The current definition of a 'group F employee' outlines the duties in relation to packing the goods (which include marking and labelling in accordance with the ICAO-TI) but does not clearly state the Shipper's duties in relation to signing the DG transport document.

It has been observed from CASA DG incident investigations and audits, that large organisations would achieve more effective shipper training/safety results, if an ISO 9001 style quality-assured process was put in place for those employees involved in stock picking, packing, declaring and dispatching of DGs or those employees who were required to receive 'adequate instruction' prior to preparing and sending certain goods.

CASA seeks to encourage extended businesses who may interline with the air transport system further down the logistics chain to develop in-house training courses.

Currently, regulation 92.085 does not provide an employee group definition which covers the following two types of employees of a Shipper:

- a. An employee of a shipper of DG that are shelf stock-pickers and packers; and,
- b. An employee of a shipper of DG that handle, prepare, pack and transport goods defined as 'not restricted' in the ICAO-TI or an employee that includes a requirement for the provision of adequate instruction to a person who prepares those goods in the course of the goods being consigned for transport on an aircraft.

### 3.12.4 Key objectives

The key objectives of this policy amendment are to:

- Amend the definition of 'group F employee' in subregulation 92.085(1) to include words that clearly articulate the Shipper's duty to date and sign the certification/declaration on the DG transport document.
- Amend the definition of 'group F employee' to include a person who completes the closure procedures for the outer packagings or signs the certification and declaration on the DG transport document.
- Create a new employee group to include shipper of DG that handle, prepare, pack and transport goods defined as 'not restricted' in the ICAO-TI or DG which require training in the form of 'adequate instruction' commensurate of their duties.

## 3.13 Permit state/federal police, law enforcement agencies, close protection officers and valuable cargo escorts to carry ammunition in an aircraft (B2.12)

### 3.13.1 Reference(s):

- Subpart 92.D - Limitations
- Regulation 92.040 - Commercial Australian aircraft operators—conditions for carriage of dangerous goods—dangerous goods manual
- Aviation Security Transport Regulations 2005:
  - o Regulation 1.03 - Definitions

- o Regulation 4.55A - Persons authorised to carry weapons through screening points—security restricted areas at designated airports
- o Regulation 4.59A - Persons authorised to use firearms on prescribed aircraft
- o Regulation 4.61 - Aviation industry participants authorised to have prohibited items in possession in sterile areas
- o Regulation 4.62 - Persons authorised to have prohibited items that are tools of trade in possession in sterile areas
- CAR 143 – Carriage of a firearm
- CAR 144 – Discharge of firearms in or from an aircraft
- CASR Part 91 - Division 91.C.7 - Firearm on aircraft
- Crimes Act 1914
- Defence Act 1903.

### 3.13.2 Background

State and Federal police or other LEAs may be required to carry a firearm in the cabin of an aircraft. Most employees that this regulation will apply to are those who are principally air marshals, close protection officers escorting VIPs, and security personnel who are protecting valuable cargo.

There are two current approaches that have been adopted in respect of the carriage of ammunition by personnel with firearms and who have a requirement to have the firearm close to hand.

The first approach has two methods. The first method is in full compliance with the ICAO-TI using the provisions relating to ammunition in Part 8 and requires the firearm holder to unload their firearm and surrender the ammunition prior to engine start to a crew member, with ammunition being returned after engine shutdown.

The alternative method is via a regulation or CASA / AMS issued Permission for the firearm holder to retain either a loaded firearm, or to unload, but retain the ammunition.

However, considering the Workplace Health and Safety aspect there is an increased risk of an accidental discharge during the loading and unloading of firearms, than would be experienced with a holstered firearm.

As such, the PIR Working Group contemplated the procedures and safeguards that should be considered and noted that there were still security and AMS implications for Charter and RPT operations, including the respect and maintenance of a sterile area at an airport.

The second approach is to seek and obtain approval from CASA to carry a loaded firearm in flight in addition to a permission to carry ammunition in the cabin of the aircraft. The assessment is based on operational risk and the measures to maintain aviation safety.

It is important to note that as of the 25 March 2021, Part 91 of CASR comes into effect replacing the requirement for an approval to be granted under CAR 143 and CAR 144 (regulations 91.160 and 91.165 respectively).

### 3.13.3 Issue

Air Security Officers are the only LEA that have a standing exemption written into section 4.59A of the ATSRs but do not have authorisation to carry the DG (being the ammunition) as part of their duties.

State and Federal police and other LEAs are required to obtain an exemption from AMS with respect to the security considerations of maintaining sterile areas and the security within the aircraft.

State and Federal police and other LEAs may be required to have a firearm close to hand in the cabin of an aircraft and currently are required to obtain a permission to carry the ammunition from CASA, on a case-by-case situation.

### 3.13.4 Key objectives

The key objectives of this policy amendment are to:

- Add a provision in Subpart 92.D allowing carriage of ammunition by State/federal police, other LEAs, close protection officers and certain applicable security personnel on charter and RPT flights. Although 'air security officers' are already provided some relief under regulation 92.195 this only applies to RPT and not charter flights.
- Develop conditions to ensure that detailed requirements for the carriage of ammunition are contained within the operator's DG/operations manual.
- Provide for an exclusion from compliance with certain regulations within Subpart 92.B and all of Subpart 92.C, providing that passenger provisions and aviation safety considerations are taken into account and operational practices are documented.
- Ensure that the addition of these regulations complements the existing AMS regulations and shall not hinder or change the current requirements in relation to maintaining the current legal security requirements.

## 3.14 Provide automatic State approval for certain dangerous goods of the operator (B2.13)

### 3.14.1 Reference(s):

- CASR Subpart 92.D - Limitations
- ICAO-TI Part 1: 2.2 - Exceptions for dangerous goods of the operator

### 3.14.2 Background

As an outcome from the PIR, industry sought to simplify the requirements for carriage of 'Dangerous Goods of the Operator', also often known as 'operator's property', particularly in remote locations and with small aircraft. This included scenarios around aircraft retrieval and the movement of company equipment and parts (i.e. life jackets, life-rafts, batteries, fuel control units, etc).

The ICAO-TI Part 1: 2.2.1(a) - Exceptions for dangerous goods of the operator states:



*"The provisions of these Instructions do not apply to the following:*

*a) articles and substances which would otherwise be classified as dangerous goods but which are required to be aboard the aircraft in accordance with the pertinent airworthiness requirements and operating regulations or that are authorized by the State of the Operator to meet special requirements;..."*

Examples of such items are fire extinguishers fitted to the inside of the aircraft, oxygen cylinders plumbed into the aircraft providing oxygen to the crew in an emergency, defibrillators containing lithium metal batteries attached to the cabin wall, portable electronic devices certified by the operator for use by flight crew in Electronic Flight Bags (EFBs) or for use by passengers as part of the In-Flight Entertainment system (IFE) etc.

ICAO-TI Part 1:2.2.2 states:

*"Unless otherwise authorized by the State of the Operator, articles and substances intended as replacements for those referred to in 2.2.1 a), or articles and substances referred to in 2.2.1 a) which have been removed for replacement, must be transported in accordance with the provisions of these Instructions, except that when consigned by operators, they may be carried in containers specially designed for their transport, provided such containers are capable of meeting at least the requirements for the packagings specified in these Instructions for the items packed in the containers."*

To enable the relaxed provisions contained within ICAO-TI 1:2.2.2, CASA needs to either issue a State Approval for each operator, or write a regulation acting in the capacity as a 'State Approval', applicable only to Australian operators operating within Australian territory using Australian registered aircraft.

### **3.14.3 Issue**

Aircraft sometimes breakdown and require replacement parts to be ferried to its location with priority; these items are commonly termed 'AOG' or 'aircraft on the ground spares' and their transport can result in passengers, cargo and crew members stranded along with the associated flow on of costs.

The bigger operators (i.e. airlines) are often approved to carry DG cargo, have trained personnel and processes in place to lodge, accept and carry DG of the operator to a location at a moment's notice.

Smaller operators often do not have the same infrastructure or set up by which to consign DG onto their own aircraft, let alone operational approval on their AOC Operations Specification (OPS SPEC).

Often these smaller operators service regional towns or remote areas of Australia where access via road is limited (i.e. couriers, road transport cargos services) let alone transporting DG cargo in by air.

As a result, AOG situations often result in emergency ad hoc applications to CASA for permission to consign and carry the DG of the operator under the specific conditions of the instrument.



This leads to rushed applications, an increase of pressure and workload on CASA Inspectors and concern from the operators as to whether they can gain a permission within a short time frame.

#### 3.14.4 Key objectives

The key objectives of this policy amendment are to:

- Provide relaxation to operators by way of 'State Approval' in a new regulation and permit the carriage of certain DG of the operator under specific conditions.
- Include this new regulation into CASR Subpart 92.D - Limitations.

### 3.15 Introduce a mandatory challenge of passengers about whether they have any dangerous goods in their baggage (B2.14)

#### 3.15.1 Reference(s):

- Subpart 92.E - Information to passengers

#### 3.15.2 Background

The ICAO-TI Part 7; 5.2.2 states:

*With the aim of preventing dangerous goods, which passengers are not permitted to have, from being taken aboard an aircraft in passengers' baggage or on their person, check-in staff **should seek confirmation from a passenger that they are not carrying dangerous goods that are not permitted, and seek further confirmation about the contents of any item where there are suspicions that it may contain dangerous goods that are not permitted.** Many innocuous-looking items may contain dangerous goods, and a list of general descriptions which, experience has shown, often apply to such items is shown in 7;6.*

ICAO has taken the position that seeking confirmation from a passenger is a recommended practice that 'should' be done as opposed to being a mandatory requirement that 'must' be done. However, CASA and the industry see value in this recommended practice being a mandatory challenge.

#### 3.15.3 Issue

Part 92 does not have this requirement in its regulations. Instead, seeking confirmation and asking passengers whether or not they are carrying DG in their baggage falls to the procedures documented within the operator's operations manual in which procedures the check-in agent is trained.

A breach for failure to ask or question passengers about DG would be determined based on whether or not this was contained within the operations manual and would be attributed as a finding under regulation CAR 215(9) - failure to comply with the operations manual (includes DG manual), as applicable.

It would a safer and better practice to align with the intent of the ICAO requirements for this confirmation from passengers (sought by the operator or operator's representative) to be made a requirement directly within Part 92.

#### 3.15.4 Key objectives

The key objectives of this policy amendment are to:

- Amend Subpart 92.E so that the operator must seek confirmation from a passenger that they are not carrying dangerous goods that are not permitted.
- Mandate this requirement for international check-in at an Australian port in addition to all domestic flight check-in.

### 3.16 Providing for the carriage of large quantities of fuel in other single packaging (e.g. jerricans and aluminium, or steel drums) on cargo aircraft and amend regulation 92.185 (B2.16)

#### 3.16.1 Reference(s):

- Regulation 92.185 - Carriage of fuel in large containers
- ICAO-TI Part 2;0.2.4 - Introductory Chapter
- ICAO-TI Table 6-2 - Index of packages other than inner packages

#### 3.16.2 Background

Acceptable packaging for air transport of DG consists of packaging which has been tested to, and met, the international standard (being UN Specification Testing) and has been verified and approved by the appropriate competent authority designated by the State.

UN Specification (UN Spec) testing is the only form of package testing that is accepted by ICAO for use in the transport of fully regulated DG.

'Packing Groups' (PG) are used to demonstrate the degree of danger of a substance and in turn, reflect a higher overall packaging standard and/or restricting permitted quantities.

In the Introductory Chapter of the ICAO-TI Part 2;0.2.4, the Packing Groups are defined as follows:

- Packing Group I: Substances presenting high danger
- Packing Group II: Substances presenting medium danger
- Packing Group III: Substances presenting low danger.

Regulation 92.185 currently permits the carriage of fuel, being petrol (UN1203) of packing group (PG) II or aviation turbine fuel (UN 1863) of PG II, in quantities of up to 220 litres in a single package UN Spec containers being 1A1 non-removable-head steel drums or 1B1 non-removable-head aluminium drums only on an aircraft operating as 'cargo aircraft only'.

**Note:** 1A1 is the UN code for a non-removable-head steel drum; a full index of packagings can be found in ICAO-TI Table 6-2, with an extract shown below in the Other Information section.

Since Part 92 came into effect in 2004, new UN Specification packaging have been added to the

Packing Instructions for both UN1203 and UN1863, many of which are commonly found in local hardware stores.

### 3.16.3 Issue

1A1 non-removable-head steel drums or 1B1 non-removable-head aluminium drums are not readily available to all areas of industry (location and supply within Australia).

Aviation Turbine fuel (or Jet A1) is classified as UN1863 with a proper shipping name (PSN): 'Fuel, aviation, turbine engine', and in most (if not all) instances, with a degree of danger consistent with PGIII, not PGII. See below sampled Safety Data Sheets supporting PGIII from main major fuel distributors.

Regulation 92.185 is currently only applicable to the carriage of petrol (UN1203) of packing group II or aviation turbine fuel (UN 1863) of Packing Group II and requires aviation turbine fuel (UN 1863) of Packing Group III to be added, which is of a lesser degree of danger than the existing PGII.

Additionally diesel fuel, whether it be Alpine grade diesel fuel classified as 'diesel fuel' (UN1202) or regular diesel fuel classified as 'Environmentally hazardous substance, liquid' (UN3082), should be added into this provision as this would benefit industry to have the ability to carry diesel under this regulation (i.e. to run generators in remote locations for contract workers). From a risk perspective, the carriage of diesel is a lesser risk than what the existing provisions permit, for example the carriage of petrol in PGII.

Additionally, the use of the word 'documented' contained within subregulation 92.185(c) has created some ambiguity as to whether it meant that the consignment only required 'transport documentation' such as a Shippers Declaration, or, whether it meant that the consignment required both the 'transport documentation' (Shippers Declaration) and a full acceptance check conducted with an Acceptance Checklist. As such, this requires further clarification.

### 3.16.4 Key objectives

The key objectives of this policy amendment are to:

- Amend regulation 92.185, building on and refining the existing provisions.
- Increase the scope of the existing provisions of CASR 92.185 for cargo aircraft only to:
  - o include additional UN Specification packaging
  - o add aviation turbine fuel (UN 1863) of Packing Group III, Diesel fuel (UN 1202) of Packing Group III and Environmentally hazardous substance, Liquid, n.o.s. (diesel fuel) (UN 3082) only
  - o clarify the term 'documented' by way of defining or by addition of a note
  - o limit the quantity per package for new UN Specification packagings to comply with maximum capacity (L) as per ICAO-TI Table 6-2
  - o restrictions on the period of use permitted for plastic drums and plastic jerricans of not more than five years from the date of manufacture
  - o restrictions on loading to ensure that if the operator loads any single packaging with end closures are loaded in an upright (upwards) position

- o add a requirement that the operator conducts a risk assessment in order to exercise the provisions of this regulation.

### **3.17 Create an offence for tampering with labels, markings or packages (B2.18)**

#### **3.17.1 Reference(s):**

- Subpart 92.B - Conditions for carriage etc of dangerous goods

#### **3.17.2 Background**

There have been occasions, discovered through an investigation of a DG occurrence, that persons have tampered with, or attempted to remove or obliterate markings or labelling on the consignment or on the internal packaging.

Often the reason for the tampering has been in an attempt to ship a previously declared DG, which has been rejected either at point of acceptance, or during transit, and then re-lodged portrayed in the manner that the goods are now no longer containing DG (despite the contents of the package remaining unchanged).

Such instances are a deliberate attempt at circumventing the system.

There have also been instances where persons have interfered with DG packages by opening them without lawful excuse or without the power to open them. There should be a deterrent by way of an offence.

There are existing provisions within the ICAO-TI Part 5;2.7 for the replacement of labels, being:

*'When an operator discovers that labels for packages of dangerous goods have become lost, detached or illegible the operator must replace them with appropriate labels in accordance with the information provided on the dangerous goods transport document.'*

#### **3.17.3 Issue**

Part 92 does not have a specific offence for tampering or interfering with a package of DG.

#### **3.17.4 Key objectives**

The key objective of this policy amendment is to create an offence for tampering or interfering with a package containing DG.

### **3.18 Providing for law enforcement officers to carry capsicum (OC) spray and electro-muscular incapacitating devices in checked-in baggage (B2.20)**

#### **3.18.1 Reference(s):**

- Section 23 of the Civil Aviation Act 1988

- CASR Subpart 92.D - Limitations
- Regulation 92.065 - Commercial operators—reporting of dangerous goods incidents
- Subregulation 92.055(1) - Dangerous goods manual - requirements applicable to all operators
- ICAO-TI Part 8;1 - Provisions for Dangerous Goods Carried by Passengers or Crew

### 3.18.2 Background

LEA Officers often require to possess items in the course of their official duties which are classified as DG and not otherwise permitted under Part 8 of the ICAO- TI.

Such items include Oleo Capsicum (OC) Spray and electro-muscular incapacitating devices (i.e. Tasers, Disabling Devices, Conducted Energy Devices etc) both of which are forbidden under the Provision for Passengers and Crew in Part 8 of the ICAO-Ti.

Currently LEA officers are permitted to carry ammunition in accordance with the normal passenger provisions for Part 8, Chapter 1 of the ICAO-TI. However, officers who are on deployment are not able to carry their other tools, such as Oleoresin Capsicum (OC) Spray and electroshock weapons, which are preferred for their non-lethal results.

When travelling, the LEA Officers are often required to take such items with them as part of their baggage allowance on a commercial airline. Transport Security Act and Regulations require that the goods must be stored in an inaccessible hold (i.e. checked baggage).

Transporting such items as cargo, where the Officer would be required to release custody of such items into the cargo stream, would not be appropriate for operational reasons.

Currently, CASA manages this situation by issuing individual 'State Exemptions' by way of a section 23 permission to each operator (AOC Holder) exempting the LEA Officer who 'consigns' the DG not otherwise permitted and providing approval to the operator to carry the items under certain conditions.

### 3.18.3 Issue

Issuance for individual section 23 permissions is time consuming for CASA and costly to industry (permissions are renewed every 2 years) for DGs which are heavily controlled by LEAs and carried under agreed documented processes by both the LEA and the operator.

There is no safety benefit gained by requiring that a section 23 permission be issued for each individual instance; this would be better managed through a regulation which provides standardised conditions for the LEAs and operator to safely transport these controlled DG.

### 3.18.4 Key objectives

The key objective of this policy amendment is to create a regulation within Subpart 92.D to provide a permanent State Exemption for LEA Officers to consign certain DG for operational purposes as part of their checked baggage and to provide provisions for the operator to accept and carry the DG on their aircraft within Australian Territory.

### **3.19 Considering it an offence to consign an item that has dangerous goods labelling and/or marking on it when it does not contain dangerous goods (B2.23)**

#### **3.19.1 Reference(s):**

- Subpart 92.B - Conditions for carriage etc. of dangerous goods
- ICAO-TI Part 5;1.1 h) - General requirements under the Shipper's responsibilities.
- ICAO-TI Part 5; 3.4 - Prohibited Labelling
- regulation 92.035 - Compliance with Technical Instructions - persons who consign dangerous goods

#### **3.19.2 Background**

Industry representatives involved in the PIR suggested that there should be an offence for the act of consigning something as a DG; when it did not contain DG.

At the time, there were conceptual arguments against the proposal including the examples of people who re-used DG packaging and inadvertently did not remove all prior markings and labels.

Another situation that would result in persons being penalised were those who suspected that the contents may meet the criteria as a DG and who sent them in that manner to be safe; pending confirmation or refutation that the goods did meet the DG classification criteria.

Industry representatives further clarified that the concerns were in relation to persons who deliberately consigned non-DG items as a declared DG. Examples were the shipping of non-hazardous consignments as a radioactive, to 'test' the transport chain; and, the Shipper sending valuable non-DG cargo as a DG to ensure that a 'more gentle' handling and safe-hand transfer process would be applied as the goods were less likely to be interfered with during the transportation process.

#### **3.19.3 Issue**

In the instance where a person consigns cargo as DG, in a packaged marked as DG, however the contents are not DG, the offence is covered under regulation 92.070 and section 23A of the Act.

In the instance where a person consigns general cargo, in a packaged marked up as DG, however the package does not contain DG there is no offence in the regulations by which to take enforcement action against the shipper.

In the latter situation, the presence of the package marked as DG may have created a perceived DG incident, resulting in disruptions in the transport network and unnecessary emergency response (i.e. decontamination of an aircraft hold, deployment of hazmat teams etc.).

Additionally, there are significant impacts on CASA taking up resources in investigating incidents caused by such as situation with no offence by which to prosecute against.



There are significant impacts on operators, emergency responders and other Regulators from a financial perspective in addition to impacts upon resources in investigating incidents caused by such as situation.

There are significant impacts on operators regarding any aircraft downtime incurred while the DG occurrence was managed (such as aircraft inspections, decontamination and then the return to service process).

#### **3.19.4 Key objectives**

The key objective of this policy amendment is to introduce a regulation that prohibits the consignment of a package marked and labelled as DG when the package does not contain DG.

### **3.20 Providing for CASA to approve dangerous goods packaging for transport by aircraft (B2.24)**

#### **3.20.1 Reference(s):**

- Subpart 92.B - Conditions for carriage etc of dangerous goods
- ICAO-TI Part 6;7.23.2 - Multilateral approval for Class 7 packages
- ICAO-TI-SU - Chapter 12 Portable Tanks and Chapter 13 Large Packagings

#### **3.20.2 Background**

UN Specification (UN Spec) packaging standards are set by the UN's Economic and Social Council's Committee of Experts on the Transport of Dangerous Goods (UNECE) and are set out in the Model Regulations on the Transport of Dangerous Goods (UNMR) and in the UN Manual of Tests and Criteria (UNMTC). This latter document provides for the testing standards of UN specification packaging.

The UNMR and MTC are maintained and updated at regular intervals, and the recommendations form the basis for the transportation of DG across all modes within Australia by way of:

- a. road and rail in Australia through the Australian Dangerous Goods Code (ADG) (managed by the Department of Infrastructure, National Transport Commission (NTC) and respective State Government agencies)
- b. by sea through the International Maritime Dangerous Goods Code (IMDG) (managed by International Maritime Organisation (IMO) and the Australian Maritime Safety Authority (AMSA)) and
- c. by air through the ICAO-TI's (managed by ICAO and CASA).

In Australia, testing of UN Spec packages is carried out by laboratories that have been accredited by the National Association of Testing Authorities (NATA). If the packaging meets the criteria specified by the UN, then the test results are sent through to an appropriate Government Authority to issue an approval for the packaging.

Predominantly, packaging approvals in Australia are managed and granted by the State Government Authorities, however AMSA also issue some packaging approvals (where IMDG requirements are more stringent than the ADG) and CASA (as the appropriate competent

authority) issues on occasion package design approvals for the carriage of certain radioactive material (Type B packaging).

### **3.20.3 Issue**

CASA currently issues package design approvals for radioactive materials in air transport, and the authority and delegation are held by the Director of Aviation Safety (DAS).

While CASA is considered the competent authority for the approval of packages in air transport, currently, CASA does not issue approvals for UN specification packaging as provided for in the ICAO-TI Part 6; 6.5.1.1. CASA should have this capability formally enabled in legislation.

For example, Portable Tanks and Large Packagings (which are specific to air transport) require the approval of the appropriate authority as per the provisions within Chapter 12 and 13 respectively of the ICAO-TI-SU.

There are other packagings (transport containers) which are used in the transportation of DG under a Special Provision, such as the transport of oxygen in support of live aquatic animals under SP A302.

There are other considerations related to packagings contained in the ICAO-TI which require a mechanism for CASA to authorise or issue an approval (e.g. authorising marks for UN specification packaging (ICAO-TI Part 6; 6.4.2 f)) or authorising the use of an Intermediate Bulk Container (IBC) in excess of 6 months beyond the expiry of its last periodic test (UNMR 4.1.2.2).

### **3.20.4 Key objectives**

The key objectives of this policy amendment are to:

- Create a Regulation by which CASA may approve DG packaging.
- Allow for other 'authorisations' by CASA, in its capacity as the competent authority as stated throughout the ICAO-TI in relation to packagings.
- Create the ability for CASA to recognise authorised test facilities and the provision of test certificates from those authorised facilities.

## **3.21 Subregulation 92.170(1) - Remove the date '1 Jan 2004' and replace with 'time-to-time' in the definition of Class B cargo compartments (C3.1)**

### **3.21.1 Reference(s):**

- Regulation 92.170 - Cargo carried in main deck cargo compartments
- Section 23 (3A) of Civil Aviation Act 1988
- ICAO Emergency Response Guidance for Aircraft Incidents Involving Dangerous Goods (Doc 9481)



### 3.21.2 Background

Subregulation 92.170(1) makes reference to cargo compartment definitions within ICAO Emergency Response Guidance for Aircraft Incidents Involving Dangerous Goods (Doc 9481) (ICAO ERG).

More specifically it states:

*'Class B cargo compartment and Class C cargo compartment have the same respective meanings as in ICAO Document 9481, Emergency Response Guidance for Aircraft Incidents Involving Dangerous Goods, as in force on 1 January 2004.'*

### 3.21.3 Issue

The ICAO ERG is updated every 2 years.

The wording 'as in force on 1 January 2004' places the regulation out of alignment within the current version of the ICAO ERG.

### 3.21.4 Key objectives

The key objective of this policy amendment is to replace the wording 'as in force on 1 January 2004' with a more generic term which facilitates updates and changes without the need to amend the regulation.

## 3.22 Broaden regulation 92.180 to include additional pyrotechnics (i.e. silver fountain flares) (C3.2)

### 3.22.1 Reference(s):

- Regulation 92.180 - Goods carried for parachute operations
- Section 23 of the Civil Aviation Act 1998
- Australian Parachute Federation Incorporated - Display Manual (18 March 2015)
- Part 149 - Approved self-administering aviation organisations

### 3.22.2 Background

Regulation 92.180 was developed to exempt persons involved in parachute operations from the requirements of the ICAO-TI and permit an operator to carry certain pyrotechnics for use in parachute displays, subject to the conditions imposed with the regulation.

In conjunction with this regulation, the Australian Parachute Federation publishes a Display Manual for their members to follow, including information in relation to the carriage and handling of DG (pyrotechnics) during parachute displays.

The Display Manual incorporates the provisions of the regulation 92.180 and places further operational restrictions for safety consideration for the display.

Traditionally, DG (or pyrotechnics) within Class 1 Explosives classification used in parachute displays are of two hazard divisions, being:

- a. Division 1.4 - Substances and articles which present no significant hazard; and,

- b. Division 1.3 - Substances and articles which have a fire hazard and either a minor blast hazard or a minor projection hazard or both, but not a mass explosion hazard.

Division 1.4 is the least hazardous division within Class 1 and is the only division permitted to be carried on a passenger carrying aircraft in the ICAO-TI, and subsequently has already been provided for within regulation 92.180 already.

### 3.22.3 Issue

Silver fountain flares, in Division 1.3, are often requested for use in parachute displays for their aesthetic appeal during descent while attached to the parachutist.

Division 1.3 pyrotechnics are not permitted for transport on a passenger aircraft and currently requires a permission from CASA under section 23 of the Act.

An application for a s.23 permission to consign and carry silver fountain flares is time consuming for both CASA and the industry for little safety benefit gained for this type of display event.

Silver fountain flares may be classified under two separate UN numbers, being UN 0335 'Fireworks' and UN 0430 'Articles, pyrotechnic in Division 1.3 and compatibility group 'G' for its pyrotechnic substance.

In accordance with ICAO-TI Table 2-2 Classification Codes, compatibility group 'G' is defined as:

*'Pyrotechnic substance, or article containing a pyrotechnic substance, or article containing both an explosive substance and an illuminating, incendiary, tear- or smoke-producing substance (other than a water activated article or one containing white phosphorus, phosphides, a pyrophoric substance, a flammable liquid or gel, or hypergolic liquids).'*

### 3.22.4 Key objectives

The key objectives of this policy amendment are to:

- Broaden regulation 92.180 to include UN0335 'Fireworks' and UN0430 'Articles, pyrotechnic' in Division 1.3G only (i.e. Silver Fountain Flares).
- Add a condition to that incorporates a requirement to operate in accordance with the parachuting peak body rules.

## 3.23 Exclude professional 'DG instructors of approved courses' as being required to have undertaken a Group A or B course before instructing on a Group E course (C3.3)

### 3.23.1 Reference(s):

- Regulation 92.085 - Definitions for Subpart 92.C
- Regulation 92.140 - Who may conduct training

### 3.23.2 Background

A 'group E employee' is defined under subregulation 92.085 (1) as:

***group E employee means:***

- (a) any employee of an operator, ground handling agent, freight forwarder or screening authority who is not a group A, B, C or D employee and whose duties involve handling:*
  - (i) cargo consigned for transport on an aircraft at any time after it leaves the custody of the original consignor; or*
  - (ii) passengers' checked or carry on baggage; or*
- (b) a deemed employee whose function includes those duties.*

Subregulation 92.140 (5) requires that the instructor of a Group E training course must have undertaken an approved training course for Group A or Group B employees within the previous two years, stating:

- (5) A person must not:*
    - (a) give instruction that is part of a training course for group E employees, or employees of a screening authority, required under this Part; or*
    - (b) prepare material for such a training course that is, or is to be, given by a distance education method (including by correspondence, video or computer network); or*
    - (c) supervise such a training course that is, or is to be, given by such a method;*
- if the person has not, within the previous 2 years, undertaken an approved training course for group A or B employees.*

The rationale behind this requirement was that instructors of Group E courses should maintain an awareness of recent developments and would be enabled to continue to deliver up-to-date material.

### **3.23.3 Issue**

An unintended consequence of this regulation has had an impact on mainstream DG instructors. Where an instructor of an operator or a DG training organisation conducts DG training, they are issued an approval from CASA to do so. However, where that instructor delivers a Group E course, they must either have undertaken a Group A/B training course or obtained an exclusion from CASA.

This was an oversight during the development of Part 92 which was subsequently managed through the issuing of a class exclusion under regulation 92.155, prior to regulation 92.155 being removed from Part 92.

Additionally, the policy within B2.9 proposed for all DG courses to become 'CASA Approved' courses, which then removes the applicability and validity of subregulations 92.140 (5) and (6).

### **3.23.4 Key objectives**

The key objective of this policy amendment is to remove subregulations 92.140(5) and (6) if B2.9 and the proposal for all DG courses to become 'CASA Approved' courses proceeds.

### 3.24 Regulation 92.040 – Dangerous Goods Manuals – Restructure the regulation into a plain-English format (C3.5 and D5.5)

#### 3.24.1 Reference(s):

- Regulation 92.040 - Commercial Australian aircraft operators—conditions for carriage of dangerous goods—dangerous goods manual
- ICAO-TI Part 1;1.1.5 - General exceptions

#### 3.24.2 Background

Regulation 92.040 - Commercial Australian aircraft operators—conditions for carriage of dangerous goods—dangerous goods manual, states:

*(1) This regulation sets out, for the purposes of subsections 23(1), (2) and (2A) of the Act, a condition of the carriage of dangerous goods on an aircraft.*

*Note: Under subsections 23(1), (2) and (2A) of the Act, dangerous goods must not be carried on an aircraft except in accordance with these Regulations.*

*(2) A commercial Australian aircraft operator may carry dangerous goods (other than dangerous goods to which subregulation (3) applies) on an Australian aircraft operated by the operator, or permit such goods to be carried on such an aircraft, only if the operator:*

- (a) has a dangerous goods manual in accordance with regulation 92.045; and*
- (b) complies with regulation 92.055.*

*Note: This regulation creates a defence to the offences created by subsections 23(2) and (2A) of the Act. A defendant charged with either of those offences bears an evidential burden in relation to the matters set out in this regulation—see subsection 13.3(3) of the Criminal Code.*

*(3) This subregulation applies to:*

- (a) dangerous goods required to be carried on board the aircraft by a law in force in Australia (including the Civil Aviation Orders); and*
- (b) dangerous goods carried on board the aircraft for use or sale on the aircraft during a flight;*

*but does not apply to any of the following kinds of dangerous goods:*

*(c) goods of the operator intended as replacements for dangerous goods referred to in paragraph (a) or (b); or*

*(d) the operator's goods, of a kind referred to in paragraph (a) or (b), that have been removed for replacement;*

*(e) dangerous goods permitted, under these Regulations, to be carried in passengers' checked baggage or carry on baggage;*

*(f) goods intended to be used to provide, during flight:*

*(i) medical aid to a patient; or*

*(ii) veterinary aid or a humane killer for an animal; or*

*(iii) aid in connection with search and rescue operations;*

*(g) goods for dropping in connection with forestry, horticultural, or pollution control activities.*

Regulation 92.040 (3) has been extrapolated from the international standard extracted from the ICAO-TI Part 1;1.1.5.1 - General exceptions and Part 1; 2.2 - Exceptions for dangerous goods of the operator.

Regulation 92.040 provides for the specific conditions that apply to the carriage of DG by a commercial Australian operator, but more specifically, regulation 92.040 outlines which DG are required to be documented within the DGM.

There are some DG carried by air which are not required to be documented and included in controlled procedures within a DG manual; some examples include:

- a. DG required to be carried on board the aircraft by a law in force in Australia (including the Civil Aviation Orders), for example:
  - i. oxygen cylinders plumbed into an aircraft's system for use by the pilots in an emergency and approved as part of the airworthiness of the aircraft and its design; or,
  - ii. defibrillators attached to the wall of the aircraft under an engineering order; or,
  - iii. electronic flight bags (EFBs) (i.e. hand-held iPads etc) approved by CASA under CAR 233.
- b. DG carried on board the aircraft for use or sale on the aircraft during a flight, for example:
  - i. perfumes, watches etc. sold within duty free; or,
  - ii. iPads used during flight as handheld inflight entertainment systems; or,
  - iii. dry ice used in catering.

In simplistic terms, the other activities listed in paragraphs 92.040(3)(c)-(g) are required to be mentioned in the operators DGM (or DG section of their operations manual) but are not required to comply with all the provisions of the ICAO-TI, except for those that apply in ICAO-TI Part 1;1.1.5.2-1.1.5.5.

### 3.24.3 Issue

Regulation 92.040 has been a source of frequent confusion amongst readers of the regulations. The wording is convoluted, particularly in respect of sub regulations (2) and (3) where the 'double-negatives' leads to confusion amongst the industry.

Since 2004, additional activities that include the carriage of excepted DG have been added to ICAO-TI Part 1;1.1.5.1.

Subregulation 92.040 (3) requires alignment with all the activities listed within ICAO-TI Part 1;1.1.5.1 (with exception of ICAO-TI Part 1; 1.1.5.1.h) - Excess baggage).

Additionally, in 2017 there was extra provisions added into the General Exceptions section of the ICAO-TI, being ICAO-TI Part 1;1.1.5.5:

*Dangerous goods transported under 1.1.5.1 a), b), c) and d) may be carried on flights made by the same aircraft for other purposes (e.g. training flights and positioning flights prior to or after maintenance), subject to the conditions in 1.1.5.4 a) to i).*

The addition of the extra provision means that the activities listed within paragraph 92.040 (3) (f) may also be transported by the same aircraft for positioning, training or carriage in relation to the activity being undertaken, planned on being undertaken or having just been undertaken in addition to their use 'during flight'.

### 3.24.4 Key objectives

The key objectives of this policy amendment are to:

- Reword or restructure the regulation to achieve that same legal outcome, removing the 'double-negative' wording where possible.
- Add in missing activities from ICAO-TI Part 1;1.1.5.1 such as 'agricultural, avalanche control, ice jam control and landslide clearance and excess baggage'.
- Add wording to cover carriage for planned use or carriage of goods post activity for the specified activities listed within paragraph 92.040 (3) (f).

## 3.25 Introduce definitions for 'Consignment', 'Cargo aircraft' and 'Passenger aircraft' to have the same meaning as the Annex 18 (C3.6)

### 3.25.1 Reference(s):

- Regulation 92.010 - Definitions for Part 92
- Annex 18 - Chapter 1 - Definitions
- ICAO-TI Part 1;3.1.1 - Definitions

### 3.25.2 Background

The definitions for consignment, cargo aircraft and passenger aircraft are not contained within the definitions which apply for Part 92.



The application of definitions 'cargo aircraft' and 'passenger aircraft' are not in relation to the type of aircraft but rather the manner of operation in which the aircraft is flying and who/what is on board. For example, an aircraft may be in a passenger configuration however flying as 'cargo aircraft only' with no passengers, only essential flight crew with DG cargo loaded in seat packs within the cabin of the aircraft.

As such, the definitions for 'cargo aircraft' and 'passenger aircraft' may adopt a slightly different meaning to those contained within the CASR dictionary.

### 3.25.3 Issue

One outcome from the PIR was the suggestion that by not defining the terms 'consignment', 'cargo aircraft' and 'passenger aircraft' within Part 92, then normal dictionary definitions and other interpretations would apply to these terms.

ICAO-TI Part 1;3.1.1 contains the definitions for 'consignment', 'cargo aircraft' and 'passenger aircraft'.

### 3.25.4 Key objectives

The key objective of this policy amendment is to add in the three definitions for 'consignment', 'cargo aircraft' and 'passenger aircraft' found within ICAO-TI Part 1;3.1.1 to regulation 92.010, making these definitions applicable across all of the subparts of Part 92.

## 3.26 Screening Authorities – alignment of definitions and the amendment of 92.085 (C3.7)

### 3.26.1 Reference(s):

- Subpart 92.C - Training
- Regulation 92.085 - Definitions for Subpart 92.C
- Regulation 92.115 - Training—certain employees of screening authorities
- Regulation 92.140 - Who may conduct training
- Regulation 92.145 - Records about training—Australian operators etc
- Regulation 1.03 of Aviation Transport Security Regulations 2005 - Definitions
- ICAO Annex 17 - Security
- ICAO-TI Part 1;4 - Training

### 3.26.2 Background

Regulation 92.085 refers to the definition of 'screening authority' within the *Air Navigation Act 1920*.

The definition of 'screening authority' has been removed from the *Air Navigation Act 1920*.

The term 'screening authority' is now defined under Regulation 1.03 of the Aviation Transport Security Regulations 2005 (ATSRs) as:

***screening authority means a person specified by notice under regulation 4.03.***

ICAO Annex 17 Chapter 1 provides for a definition of 'screening' being:

**Screening.** *The application of technical or other means which are intended to identify and/or detect weapons, explosives or other dangerous devices, articles or substances which may be used to commit an act of unlawful interference.*

### 3.26.3 Issue

Subregulation 92.085 (1) refers to the definition of 'screening authority' within the Air Navigation Act 1920 however this definition has since been removed from this Act and no longer exists.

There isn't a definition in the ICAO Annexes nor within the ICAO-TI for 'screening authority'.

Regarding training, the ICAO-TI (Part 1, Chapter 4) uses the following descriptors and nomenclature for persons engaged in the act of screening (as defined in Annex 17) or working for a screening authority:

- 'agencies engaged in security screening'
- 'security staff' and
- 'security screeners'.

An outcome of the PIR suggested that it would be preferable to amend the term 'screening authority' in the regulation 92.085 definition to 'screening agency'. This is in an attempt to retain common definitions between the security and safety regulations and also due to recent changes to security legislation and its continual evolution.

### 3.26.4 Key objectives

The key objectives of this policy amendment are to:

- replace the definition of 'screening authority' within regulation 92.085 with a new definition for 'screening agency'
- define the term 'screening agency' in regulation 92.085 to become an agency or persons undertaking authorised activities involved in the safety and security related activities in the screening or examination of passengers, baggage or cargo; any of which: is to be carried, is likely to be carried, or has been carried or consigned by air
- make various consequential amendments throughout Subpart 92.C to replace the words 'screening authority' with the words 'screening agency' as per the proposed solution below.

## 3.27 Additional defence for passengers if they have been given wrong information (C3.8, C3.12 and D5.4)

### 3.27.1 Reference(s):

- Regulation 92.030 - Compliance with Technical Instructions—passengers and crew
- ICAO-TI Part 8 - Provisions for dangerous goods carried by passengers or crew



### 3.27.2 Background

It is an offence for passengers to carry DG on an aircraft unless those DG fall within the items permitted under ICAO-TI Part 8, the passenger provisions.

Paragraph 92.030(3)(a) provides a defence for passengers if inaccurate information was given to the passenger by the operator or an employee of the operator, and it was reasonable to rely upon that statement.

Subregulation 92.030(3) states:

*(3) A person who is a passenger is taken not to contravene the condition in sub regulation (2) if the person carries dangerous goods in contravention of that condition, or carries such goods in a way that would, but for this sub regulation, contravene that condition, if:*

- (a) the person carries the goods, or carries the goods in that way, in reliance on a statement, made by the operator or an employee of the operator, to the effect that the carriage of the goods, or the carriage of goods in that way, is permissible or does not contravene the Technical Instructions; and*
- (b) it is reasonable for the person to rely on that statement.*

*Note 1: This regulation creates a defence to the offences created by subsections 23(2) and (2A) of the Act. A defendant charged with either of those offences bears an evidential burden in relation to the matters set out in this regulation—see subsection 13.3(3) of the Criminal Code.*

*Note 2: Section 1.1 of the Technical Instructions, regarding dangerous goods carried by passengers or crew, is as follows:*

**1.1 DANGEROUS GOODS CARRIED BY PASSENGERS OR CREW**

**1.1.1 Except....**

### 3.27.3 Issue

Subpart 92.E outlines the information required to be given to passengers, by way of regulations mandating the type of information provided for the passenger terminals and information provided with the issuance of tickets and, who is to provide such information.

The PIR working group suggested that additional wording should be added to the existing paragraph 92.030 (3)(a) to clarify, beyond any doubt, that such defence is also covered by the information provided to the passenger in Subpart 92.E.

This is to ensure that passengers, who may have no interaction with an employee of an operator (i.e. checks in for their flight electronically and/or uses automatic bag check system) are covered with a defence if the information provided to them by way of posters and/or signage with their ticketing (i.e. terms and conditions of a ticket) is inaccurate, then it should be deemed reasonable to rely upon such statements and/or information.

Note 2 under paragraph 92.030 (3)(b) is a duplication of the provisions of ICAO-TI Part 8 in 2004. This note is not legally enforceable, and it contains out-of-date information which should

be removed and replaced with a link to the appropriate page on the CASA website which provides access to updated passenger provisions extracted from Part 8.

### **3.27.4 Key objectives**

The key objectives of this policy amendment are to:

- Amend paragraph 92.030 (3) (a) to include the information provided to passengers contained within Subpart 92.E.
- Remove Note 2 under paragraph 92.030 (3) (b) and replace with a new 'Note 2' linking to the CASA Dangerous Goods landing page and refer the reader off to Part 8 of the ICAO-TI.

## **3.28 Permit carriage of ammunition in the cabin for a firearm in certain circumstances (C3.9)**

### **3.28.1 Reference(s):**

- CAR 143 - Persons who are authorised to carry weapons in an aircraft
- CAR 144 - Persons who are authorised to discharge those weapons under CAR 144
- Regulation 92.040 - Commercial Australian aircraft operators—conditions for carriage of dangerous goods—dangerous goods manual
- Subpart 92.B - Conditions for carriage etc for dangerous goods
- Subpart 92.C - Training
- ICAO-TI Part 1;1.1.5.1 - General Exceptions
- Aviation Security Transport Regulations 2005:
  - o Regulation 1.03 - Definitions
  - o Regulation 4.55A - Persons authorised to carry weapons through screening points—security restricted areas at designated airports
  - o Regulation 4.59A - Persons authorised to use firearms on prescribed aircraft
  - o Regulation 4.61 - Aviation industry participants authorised to have prohibited items in possession in sterile areas
  - o Regulation 4.62 - Persons authorised to have prohibited items that are tools of trade in possession in sterile areas
  - o Regulation 4.41M - Applying for approval as a known consignor

### **3.28.2 Background**

An issue was raised by industry through the PIR that there is a disconnect between the carriage of firearms and the carriage of ammunition in relation to the firearm.

CASA currently can issue a person an approval for carriage of a firearm under CAR 143 and/or an approval to discharge a firearm under CAR 144.

As of 25 March 2021, Part 91 (Division 91.C.7 - Firearms on aircraft) will provide for a standing approval within the regulation, subject to conditions specified. Such approvals could be relation

to LEAs (refer B2.12 instructions) or in relation to aerial work operations (e.g. for the culling of feral animals from a helicopter).

There are also similar approvals required from the AMS to permit the carriage of a firearm in the cabin of an aircraft from a security perspective and in relation to the maintenance of sterile areas within airports and aerodromes (if required). This can be found under regulation 4.59A of the Aviation Security Transport Regulations 2005 - Persons authorised to use firearms on a prescribed aircraft and regulation 4.61 of the Aviation Security Transport Regulations 2005 - Aviation industry participants authorised to have prohibited items in possession in sterile areas.

Currently, persons who are authorised to carry firearms in an aircraft under CAR 143, and to discharge those firearms under CAR 144, are considered to be carrying DG (the ammunition) in a form that does not comply with the ICAO-TI, and which does not necessarily fit within the concept of a 'DG of the operator'.

The types of activities undertaken by the operator, where a carriage and/or discharge of a firearm approval is required are provided for under General Exceptions in the ICAO-TI Part 1;1.1.5.1 (for example (b) humane killer for an animal; and (c) dropping in connection with agricultural, horticultural and forestry activities).

The intent of this regulation is to provide for the carriage of DG (i.e. ammunition), without affecting any exemptions required under the Aviation Security Transport Regulations.

### **3.28.3 Issue**

There is a gap in the regulations between CAR 143, CAR 144 and Part 92, where a person is permitted to carry a firearm into the cabin of an aircraft, the ammunition (dangerous good component) required for the operation is not adequately provided for or addressed.

There is no clear guidance in the regulations as to the conditions by which an operator may conduct such activities (i.e. documenting of operational practices).

### **3.28.4 Key objectives**

The key objectives of this policy amendment are to:

- Add a provision in Subpart 92.D allowing the carriage of ammunition (for use in a firearm by an approved person), providing that passenger and aviation safety considerations are taken into account and operational practices are documented.
- Consider any interrelating requirements between persons/operator authorised by CASA under CAR 143 and/or CAR 144 (or Part 91 Division 91.C.7) and persons otherwise authorised by AMS to carry a firearm into the cabin of an aircraft and/or through a sterile area.
- Provide for an exclusion from compliance with Subparts 92.B and 92.C, for the carriage and use of ammunition providing that the operator ensures that the DG are in a proper condition for carriage; establishes effective communication methods, safety precautions, pre-flight checks and briefing and emergency procedures for certain situations.

- Complement the existing AMS regulations and shall not hinder or change the current requirements in relation to maintaining the current legal security requirements.

### **3.29 Training Records – retention of training certificate (C3.10)**

#### **3.29.1 Reference(s):**

- Regulation 92.145 - Records about training—Australian operators etc

#### **3.29.2 Background**

Where an entity's employees are required to have undertaken approved DG training, the entity (whether it be a person or organisation) is required to maintain up-to-date training records in accordance with subregulation 92.145 (2).

In accordance with subregulation 92.145 (3), the person or organisation must also keep a copy of any certificate issued and provide a copy of that certificate to CASA, if CASA so requests.

Subregulation 92.145 (3) is also taken to mean that if a training system does not provide for a copy of a certificate (i.e. a policy decision made by the company not to issue a certificate) then compliance with sub regulation is no longer required.

#### **3.29.3 Issue**

Most of the large AOC holders have their own in-house training department and have developed and maintained their own CASA approved DG training courses which are fit for their own employee's purpose and are customised to focus on their own company specific DG operations.

Some of these courses are tailored in a way which makes them appropriate for only those employees while performing specific duties in the employment of that operator. For example, the training contains company specific DG policies, customised to consider limitations specific to company aircraft types in which the DG are loaded and carried.

For some of these larger AOC Holders retaining both a record and the certificate was an additional burden, especially in storing these certificates.

As such, it was appropriate to introduce additional flexibility for employers by removing the obligation to hold and provide a certificate, where a certificate had been issued.

#### **3.29.4 Key objectives**

The key objective of this policy amendment is to remove the requirement for employers to retain a copy of the certificate from paragraph 92.145 (3) (a). This would allow the organisation keeping the records to decide what type of record system they choose to employ, provided that the requirements of subregulation 92.145 (2) are met.

### 3.30 Provide relief from Group A DG training for sling load helicopter operations (C3.11)

#### 3.30.1 Reference(s):

- Regulation 92.165 - Helicopter-slung loads
- Civil Aviation Orders 29.6 - Air service operations — helicopter external sling load operations
- Regulation 92.020 - Compliance with Technical Instructions generally
- Regulation 92.025 - Compliance with Technical Instructions — operators
- Regulation 92.030 - Compliance with Technical Instructions — passengers and crew
- Regulation 92.035 - Compliance with Technical Instructions — persons who consign dangerous goods
- Regulation 92.085 - Definitions for Subpart 92.C
- Subpart 92.C - Training
- ICAO-TI Part 7;1 - Acceptance Procedures

#### 3.30.2 Background

Regulation 92.165 provides regulations for the carriage of DG under a slung load by a helicopter:

*Regulations 92.020, 92.025, 92.030 and 92.035 do not apply to the carriage of dangerous goods by an Australian aircraft that is a helicopter if:*

- (a) the helicopter is operating in Australian territory; and*
- (b) the goods:*
  - (i) are carried as a slung load; and*
  - (ii) are in a proper condition for carriage by air; and*
  - (iii) are segregated in accordance with the Technical Instructions, or, if they are likely to react dangerously with one another, are not carried in the same load; and*
  - (iv) are not of a kind that the Technical Instructions forbid the transport of by air under any circumstances; and*
  - (v) are packed and stowed to prevent leakage or damage during the flight; and*
  - (vi) are not fireworks, pyrotechnics or other explosives intended to be activated during the flight; and*
- (c) only operating crew and persons associated with the goods are carried on board the helicopter; and*
- (d) the helicopter's pilot-in-command is told before the load is carried what the goods are and the quantity of them in the load; and*
- (e) the helicopter is operated in accordance with section 29.6 of the Civil Aviation Orders.*

*Note: This regulation creates a defence to the offences created by subsections 23(2) and (2A) of the Act. A defendant charged with either of those offences bears an evidential burden in relation to the matters set out in this regulation—see subsection 13.3(3) of the Criminal Code.*

During the PIR, an operator (who exercises the provisions of regulation 92.165), raised whether Group A training was required when accepting DG for carriage in the sling, and if so, whether they could be exempted from the training requirement.

Subregulation 92.085 (1) defines a 'group A employee' as:

***group A employee means:***

*(a) an employee whose duties include accepting, or supervising someone whose duties include accepting, cargo known or believed to contain dangerous goods consigned for transport on an aircraft at any time after it leaves the custody of the original consignor; or*

*(b) a deemed employee whose function includes those duties.*

This was off the basis that regulation 92.165 currently provides exemption from the requirements to comply with regulation 92.020, regulation 92.025, regulation 92.030 and regulation 92.035 and in turn, compliance with the requirements of the ICAO-TI.

The PIR working group considered that the current regulations do require the operator to have an employee which is Group A trained, but that was an onerous requirement when considering the nature of the risks presents and the hazards faced when carrying DG.

The PIR working group considered that Group C training was an appropriate level of training for persons involved in accepting the goods for carriage, and subsequent loading, in an under-slung load.

Subregulation 92.085 (1) defines a 'group C employee' as:

***group C employee means:***

*(a) an employee who is a member of an aircraft's flight crew or a load planner; or*

*(b) a deemed employee whose function includes performing the duties of a member of an aircraft's flight crew or a load planner*

The person loading a helicopter sling may be either the pilot (flight crew) or a load planner, or often the same person will perform both roles.

Subregulation 92.085 (1) further defines a 'load planner' as:



**load planner**, in relation to dangerous goods, means a person nominated by an operator to be responsible for any 1 or more of the following:

- (a) specifying where dangerous goods may be stowed on an aircraft;
- (b) specifying the necessary segregation of the goods from other dangerous goods, other cargo, or passengers on the aircraft;
- (c) preparing information for the use of the pilot in command;
- (d) providing dangerous goods emergency response information for the pilot in command.

*Note: A person who performs those functions is known by many different titles: for example, load controller. Not all the functions are necessarily performed by the same person. Some or all of the functions may be the responsibility of the pilot in command or another crew member.*

### 3.30.3 Issue

Regulation 92.165 currently exempts industry from complying with the ICAO-TI regarding the consignment of DG for carriage under a slung load.

Within regulation 92.165 there is no requirement for the operator to undertake 'acceptance' of the DG prior to loading into a sling (as per the requirements of ICAO-TI Part 7;1), the operators' employees should then be exempted from the requirement to have Group A employee training (the highest level of operator acceptance training).

A training requirement should be established to clarify the minimum required standard of training for persons undertaking a sling load operation.

### 3.30.4 Key objectives

The key objectives of this policy amendment are to:

- Provide relief from the requirement for an operator's employees to be trained to a Group A employee' standard (DG acceptance) and clarify a minimum standard of training.
- Ensure that all other DG training requirements of Subpart 92.C apply, with the exception of mandating a specific level of training appropriate for the duties, roles and responsibilities of the person handling and loading the sling.

## 3.31 Repeal CAR 304 - Directions and instructions—section 23 of the Act (C3.13)

### 3.31.1 Reference(s):

- CAR 304 - Directions and instructions—section 23 of the Act
- Subpart 11.G - Directions
- Regulation 11.245 - CASA may issue directions

### 3.31.2 Background

Regulation 304 of the Civil Aviation Regulations 1988 was written to provide CASA the ability to issue directions or instructions to any persons holding a section 23 permission.

#### **304 Directions and instructions—section 23 of the Act**

- (1) CASA may give or issue directions or instructions to all or any of the persons holding permissions under section 23 of the Act, being directions or instructions with respect to matters affecting the safe navigation and operation, or the maintenance, of aircraft.
- (2) A person must not contravene a direction or instruction.  
Penalty: 50 penalty units.
- (3) An offence against subregulation (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

The introduction of the CASR Subpart 11.G - Directions, saw the implementation of generic provisions that allowed for the issuance of directions against any approving part of the Act, irrespective of section. More specifically in regulation 11.245:

#### **11.245 CASA may issue directions**

- (1) For subsection 98(5A) of the Act, CASA may, by instrument, issue a direction about any matter affecting:
  - (a) the safe navigation and operation of aircraft; or
  - (b) the maintenance of aircraft; or
  - (c) the airworthiness of, or design standards for, aircraft.
- (2) However, CASA may issue such a direction:
  - (a) only if CASA is satisfied that it is necessary to do so in the interests of the safety of air navigation; and
  - (b) only if the direction is not inconsistent with the Act; and
  - (c) only for the purposes of CASA's functions.

Note 1: For the application of the *Legislation Act 2003* to an instrument containing a direction under this regulation, see subsections 98(5AA), (5AB), (5B) and (5BA) of the Act.

Note 2: See also Part 39 in relation to CASA's powers to issue airworthiness directives.

Note: CASA's functions are set out in section 9 of the Act.

### 3.31.3 Issue

CAR 304 remains in effect in parallel with regulation 11.245 and should have been repealed when regulation 11.245 came into effective.

### 3.31.4 Key objectives

The key objective of this policy amendment is to review and amend the legislation and repeal CAR 304.



### **3.32 Add subsection 23(2AA) to regulations 92.020, 92.025, 92.030 and 92.035 (C3.14)**

#### **3.32.1 Reference(s):**

- Section 23 of the Act - Dangerous Goods
- Regulation 92.020 - Compliance with Technical Instructions generally
- Regulation 92.025 - Compliance with Technical Instructions — operators
- Regulation 92.030 - Compliance with Technical Instructions — passengers and crew
- Regulation 92.035 - Compliance with Technical Instructions — persons who consign dangerous goods

#### **3.32.2 Background**

Subsequent to the making of Part 92, Section 23 of the Act was amended with the addition of subsection s.23(2AA) which provided for being negligent when carrying or consigning DG.

Section 23(2AA) of the Act states:

*(2AA) A person must not carry or consign for carriage any goods on board an aircraft and be negligent as to whether the goods are dangerous goods, except:*

*(a) in accordance with the regulations, including any conditions subject to which the regulations permit the carriage or consignment of those goods; or*

*(b) in accordance with the Aviation Transport Security Regulations 2005, including any conditions subject to which those regulations permit the carriage or consignment of those goods; or*

*(c) with the written permission of CASA and in accordance with any conditions specified in the permission.*

*Penalty: Imprisonment for 2 years.*

#### **3.32.3 Issue**

When subsection s.23(2AA) was created, the applicable subordinate regulations were not updated at the time, being regulations 92.020, 92.025, 92.030 and 92.035.

#### **3.32.4 Key objectives**

The key objectives of this policy amendment are to amend regulations 92.020, 92.025, 92.030 and 92.035 to provide for subsection 23(2AA) of the Civil Aviation Act.

### 3.33 Amend Note 2 to Definition of Technical Instructions to reflect compliance with the current edition of the IATA Dangerous Goods Regulations (C3.15)

#### 3.33.1 Reference(s):

- Subregulation 92.010(1) - Definitions for Part 92
- IATA Dangerous Goods Regulations (60th Edition) - Preface

#### 3.33.2 Background

Subregulation 92.010(1) provide for a definition of Technical Instructions:

**Technical Instructions** means, at a particular time, the edition that is valid at that time of the document entitled *Technical Instructions for the Safe Transport of Dangerous Goods by Air*, issued by the International Civil Aviation Organization.

*Note 1: Each edition of the Technical Instructions states in its Introduction the dates between which it is valid. The edition for 2003–2004 of the Technical Instructions is valid from 1 March 2003 to 31 December 2004 or until the next edition becomes valid. The Technical Instructions are available (as a printed document only) from the ICAO's Document Sales Unit at:*

*ICAO, Document Sales Unit  
999 University Street, Montreal, Quebec H3C 5H7  
Canada  
Telephone: (514) 954 8022  
Fax: (514) 954 6769  
E mail: sales\_unit@icao.int*

*Note 2: General industry practice is to follow the IATA Dangerous Goods Regulations, which are issued more frequently than the Technical Instructions. The requirements of the IATA Regulations are either the same as, or more stringent than, the requirements of the Technical Instructions. If that is so, compliance with the IATA Regulations will automatically result in compliance with the Technical Instructions.*

Annex 18 Chapter 1 provides for a definition of 'Technical Instructions', being:

**Technical Instructions.** *The Technical Instructions for the Safe Transport of Dangerous Goods by Air (Doc 9284), approved and issued periodically in accordance with the procedure established by the ICAO Council.*

Note 2 to the definition of 'Technical Instructions' in subregulation 92.010 reflects the general industry practice of using and relying upon the IATA Dangerous Goods Regulations (IATA DGRs).

The IATA DGRs contain the same requirements and provisions of the ICAO-TIs with exception that in certain areas, the IATA DGR is more restrictive than the ICAO-TI. This is acknowledged within the Preface of the IATA DGRs (60th Edition).

The note in subregulation 92.010(1) was originally included at the request of the aviation DG industry in order to provide a degree of comfort in continuing to use the IATA DGRs as the manual for industry standard instructions.

### **3.33.3 Issue**

CASA is required to adopt the definition of 'Technical Instructions' as provided for in Annex 18, Chapter 1. Though regulation 92.010 already provides for a similar definition, some components require further alignment.

'Note 1' under the definition of 'Technical Instructions' with subregulation 92.010(1) contains out-of-date contact information for ICAO headquarters.

It was raised during the PIR Working Group that the wording of 'Note 2' did not stipulate that the current, amended version of the IATA DGRs should be used.

### **3.33.4 Key objectives**

The key objectives of this policy amendment are to:

- Fully align the definition of 'Technical Instructions' contained in regulation 92.010 with the definition in Chapter 1 of Annex 18.
- Amend 'Note 1' within the definition of 'Technical Instructions' within subregulation 92.010 (1) to update the wording within the preamble, change the contact details of the ICAO Document Sales Unit to reflect current information and remove reference to 'as a printed document only'.
- Amend 'Note 2' under the definition of Technical Instructions to ensure that the current version of the IATA Dangerous Goods Regulations is used, which includes any addendum issued for that edition.

## **3.34 Minor amendments to regulation 92.170 - Cargo carried in main deck cargo compartments (D5.1)**

### **3.34.1 Reference(s):**

- Regulation 92.170 - Cargo carried in main deck cargo compartments
- ICAO Emergency Response Guidance for Aircraft Incidents Involving Dangerous Goods (Doc 9481 AN/928) (ICAO ERG) Section 1; 1.1 - Cargo Compartment Classification
- ICAO-TI Part 7;2.1 - Loading Restrictions on the Flight Deck and for Passenger Aircraft
- ICAO-TI Part 1; 3.1 - Definitions
- ICAO-TI-SU, S-7;2.2 - Loading on Passenger Aircraft

### 3.34.2 Background

ICAO-TI Part 7;2.1 states that dangerous goods must not be loaded on the flight deck or in the cabin of a passenger aircraft unless the goods are considered dangerous goods of the operator (as per Part 1:2.2.1).

ICAO-TI Part 7;2.1 also states that dangerous goods may be carried in a main deck compartment of a passenger aircraft provided that compartment meets all the certification requirements for a Class B or Class C aircraft cargo compartment.

Aircraft cargo compartment classifications are contained within the ICAO Emergency Response Guidance for Aircraft Incidents Involving Dangerous Goods (Doc 9481 AN/928) (ICAO ERG) Section 1; 1.1 - Cargo Compartment Classification.

For example, Bombardier DHC-8 Q400 and Saab 340B are types of aircraft that have a Class C compartment located on the main deck, being:

***Class C.*** A Class C cargo or baggage compartment is one not meeting the requirements for either a Class A or B compartment but in which:

- a) there is a separate approved smoke detector or fire detector system to give warning at the pilot or flight engineer station;*
- b) there is an approved built-in fire-extinguishing system controllable from the pilot or flight engineer station;*
- c) there are means of excluding hazardous quantities of smoke, flames, or extinguishing agent from any compartment occupied by the crew or passengers;*  
*and*
- d) there are means of controlling ventilation and draughts within the compartment so that the extinguishing agent used can control any fire that may start within the compartment.*

In Australia, there are many other aircraft types that have main deck compartments and which do not meet the requirements of a Class B or C compartment, or that have an unrated cargo compartment (e.g. Beechcraft B1900, Beechcraft King Air 200B/350, most rear compartments of helicopters) that are often used to service rural or remote areas with passenger transfers and/or providing interlining air cargo services.

There may be occasions when there is a need to carry DG on passenger aircraft that do not have these cargo compartments. For such cases, there are extra provisions written within ICAO-TI-SU, S-7;2.2 where the State of the Origin and the State of the Operator (in both cases being CASA) may approve the transport of certain DG in accordance with the provisions of S-7;2.2 of the ICAO-TI-SU.

Regulation 92.170 was written to enable the provisions of ICAO-TI-SU S-7.2.2 for carriage of DG under certain situations within Australian Territory.

In addition to the above, the note contained within subregulation 92.170(1) requires updating and the DG listed in paragraph 92.170(2)(g) require alignment with the list of DG permitted for carriage on a main deck compartment within the ICAO-TI-SU S-7;2.2.2.

Regulation 92.170 (1) is the only section within Part 92 that provides for a definition of 'UN number' and provides for a customised definition of 'UN Classification'.

### 3.34.3 Issue

Regulation 92.170 is difficult to read as it applies two standards, one for cargo aircraft and the other for passenger aircraft all which are written within the same paragraph. When read in isolation (i.e. without the ICAO-TI and ICAO-TI-SU), this regulation has been interpreted within industry in two different ways. Note: Industry would not normally have access to the ICAO-TI and ICAO-TI-SU as these are documents primarily used by the regulator.

The two different aircraft configurations (CAO vs. passenger carrying aircraft) must be separated for clarity and ease of use by industry.

The DG listed in paragraph 92.170 (2) (g) are not currently aligned with the list of DG permitted for carriage on a main deck compartment within the ICAO-TI-SU S-7;2.2.2, missing the following dangerous goods: UN 2026 - Phenylmercuric compound, n.o.s., UN 3283 - Selenium compound, solid, n.o.s.

The list within paragraph 92.170 (2) (g) also contains an incorrect UN number, being UN 3286 Flammable liquid, toxic, corrosive, n.o.s. which needs to be deleted as this UN number is not available in PG III and has a subsidiary of Class 8, both of which naturally exclude it from the provisions of this regulation. This was added in error; most likely a typographical error, with the correct UN number supposed to be UN 3283.

Subregulation 92.170 (1) is the only section within Part 92 that provides for a definition of 'UN number'. This should be removed and moved into the definitions for the whole Part in regulation 92.010.

Subregulation 92.170 (1) also provides for a definition of 'UN Classification' which is incorrectly applied further in sections subparagraph 92.170 (2) (f) (i) and (ii).

The note contained within subregulation 92.170 (1) contains out-of-date references and information which requires updating.

Paragraph 92.170 (2) (e) uses the wording 'subsidiary risk' which should be aligned with the correct ICAO-TI terminology of 'subsidiary hazard'.

### 3.34.4 Key objectives

The key objectives of this policy amendment are to:

- Separate or clearly define the requirements for carriage of DG in a main deck compartment on a 'cargo aircraft' and a 'passenger aircraft'. Refer to Annex 18 Chapter 1 (or ICAO-TI Part 1; 3.1) for the definitions of 'cargo aircraft' and a 'passenger aircraft' if required.
- Align the DG listed in paragraph 92.170 (2) (g) with those contained within the ICAO-TI-SU, Part S-7, Chapter 2: 2.2.2.
- Update the information and/or web page link within the 'note' under regulation 92.170 (1).
- Delete the definition of 'UN number' from subregulation 92.070 (1), with the view of transferring over into regulation 92.010 and applied to the whole Part 92.
- Delete the definition of 'UN Classification' which is incorrectly applied in subparagraph 92.070(1).

- Replace 'risk' with 'hazard' in paragraph 92.170 (2) (e) to align with the ICAO-TI terminology.

### **3.35 Reinstatement regulation 92.155 – Exclusions from training requirements (D5.2)**

#### **3.35.1 Reference(s):**

- Regulation 92.155 - Exclusions from training requirements (repealed)

#### **3.35.2 Background**

On 27 June 2011, regulation 92.155 – Exclusions from training requirements was removed and repealed when CASA conducted a regulatory sweep for all provisions in the CASRs which enabled an exemption to be issued and brought the powers of exempting under the CASRs into Part 11F.

Originally, regulation 92.155 was purposefully made to allow for a low-level exclusion (not an exemption).

This was done to cut red tape, reduce processing costs and time, and streamline urgent applications providing an administrative mechanism with minimal to no safety implications to CASA or industry.

#### **3.35.3 Issue**

The issuing of an exemption against the requirements of the CASRs is a lengthy process requiring the instrument to be drafted by CASA legal for signature by only the DAS.

This has resulted in increased processing times and additional costs to the industry, for the outcome being to rectify very minor training overruns.

#### **3.35.4 Key objectives**

The key objectives of this policy amendment are to:

- Reinstatement the repealed regulation 92.155.
- Add references to regulation 92.155 back into the various associated regulations within Part 92.

### **3.36 Minor Amendments to regulation 92.010 - Definitions for Part 92 (D5.3)**

#### **3.36.1 Reference(s):**

- Regulation 92.010 - Definitions for Part 92
- Annex 18 to the Convention on International Civil Aviation: The Safe Transport of Dangerous Goods by Air - Chapter 1. Definitions
- ICAO-TI Part 1:3.1 - Definitions



### **3.36.2 Background**

The definitions within regulation 92.010 apply to the whole of Part 92.

There are also definitions with ICAO-TI Part 1;3.1 which apply to the Technical Instructions and transport of DG by air. These definitions, in most instances, are passed down from the UN Model Regulations and the ICAO Annexes (i.e. Annex 18) and adopted into the ICAO-TI by the ICAO Dangerous Goods Panel (DGP).

The ICAO-TI contain some definitions that are specific to the transport of DG by air, which have been developed by the ICAO DGP and adopted into the ICAO-TI.

The definitions within the ICAO-Ts will and should, always align with ICAO Annexes (e.g. with Annex 18, 6 or 13).

Wherever possible, the definitions within regulation 92.010 should align with the definitions of the ICAO Annexes (in the first instance), and then the ICAO-TI (if in addition to those within the Annexes).

CASA is required to adopt in regulation specific definitions contained within Annex 18.

### **3.36.3 Issue**

The definitions within the UN Model Regulations, the ICAO Annexes and the ICAO-TI change from time-to-time.

There are some definitions in the Annex 18 which are not included in Part 92 or already defined within Part 92 but require amendment to align with those in Annex 18.

### **3.36.4 Key objectives**

The key objectives of this policy amendment are to:

- Add the definitions within Annex 18 for use in Part 92 which are missing from the definitions as contained within Part 92.
- Enable all the definitions within ICAO-TI for use in Part 92 by reference to the complete list.

## **3.37 Reinstatement of regulation 92.080 – Exclusions from requirement about dangerous goods statement and amendment to include an exclusion for Australia Post (D5.6)**

### **3.37.1 Reference(s):**

- Regulation 92.080 - Exclusions from requirement about dangerous goods statement (repealed)
- CASR 92.070 - Dangerous goods statement (Act s 23A)
- ICAO-TI Part 1;2.3 - Transport of Dangerous Goods by Post

### 3.37.2 Background

On 27 June 2011, regulation 92.080 – Exclusions from requirement about DG statement was removed and repealed when CASA conducted a regulatory sweep for all provisions in the CASRs which enabled an exemption to be issued and brought the powers of exempting under the CASRs into Subpart 11F.

Originally, regulation 92.080 was purposefully made to allow for a low-level exclusion (not an exemption) designed to be issued by the DG Inspectorate as per their assigned delegations.

This was done to cut red tape, reduce processing costs and time, and streamline urgent applications providing an administrative mechanism with minimal to no safety implications to CASA or industry.

An exclusion or exemption has been issued each year since the introduction of Part 92.

#### 3.37.2.1 Australia Post Amendment

Since regulation 92.080 was removed, an internal review of regularly issued standing exemptions was conducted. This review resulted in finding that an exclusion for our Designated Postal Authority (DPO) being Australia Post, from the requirement for the DG statement under regulation 92.070 should be added to regulation 92.080, should it ever be reinstated. Refer 'Other Information' for a copy of regulation 92.070.

According to the general public, Australia Post effectively has a 'No DG's in the Post' policy. There is a list of DGs and provisions within the ICAO-TI Part 1;2.3., which permits a small amount of low-risk DG in the post for the benefit of the Australian population.

Australia Post places warning notices and stickers on every street post box (SPB), posters at every point of entry (i.e. Post Office counters or agencies). Australia Post provides a copy of their DG policy and other related information available online.

As such, Australia Post utilise both road and air to deliver postal services. The size of the item being posted and the service purchased, determines which mode of transport the letter, parcel or mail travels to its destination on.

For example, normal sized letters, mail and parcels that weigh no more than 500 grams, is no more than 20 millimetres thick and is 360 millimetres long and is no wider than 260 millimetres, can be posted by a person and sent via 'normal post' (i.e. standard delivery times depending on postcode). The person does not need to make a DG statement in accordance with subregulation 92.070(4). The dimensions of the postal items were determined in order to align with Aviation Security Requirements.

However, if the item exceeds the size limit, the person consigning the postal item is required to (in accordance with paragraph 92.070(1)(a)) sign a written statement that the cargo does not contain DG. This is documented in Australia Post procedures (available online).

This declaration allows Australia Post to act as a freight forwarder and to rely on the statement when on-forwarding postal items to an operator for air transport (as per the provisions of regulation 92.075).



Normally, mail delivered to remote parts of Australia arrives by road. There are instances where communities can be cut off by road for weeks and/or months at a time due to local flooding (for example during the 'wet season' in the northern parts of Australia).

In these cases, Australia Post notify CASA seeking an exemption against the requirement of the DG statement to account for 'normal mail' and/or parcels (without a DG statement) to be mixed in with larger parcels (lodged at a DPO and has a DG statement) and to be permitted for carriage by aircraft into the affected remote areas. By creating an exclusion for the DPO, this would also reduce unnecessary processing of exemptions, including a reduction in cost and time to both Australia Post and CASA, while automatically facilitating an important service to rural Australia.

### **3.37.3 Issue**

The internal process to issue an exemption against the requirements of the CASRs is a lengthy assessment requiring the instrument to be drafted by CASA legal for signature by a Delegate.

Sometimes such requests for an exemption are time critical which are difficult to accommodate within the current processing system.

Additionally, seeking an exemption and the renewal of the instrument every 2 years is costly to the industry and CASA from a financial and time perspective.

### **3.37.4 Key objectives**

The key objectives of this policy amendment are to:

- Reinstatement the repealed Regulation 92.080.
- Add a sub regulation to Regulation 92.080 to provide for a standing exclusion for Australia's Designated Postal Operator (DPO), being Australia Post, from the requirement for the DG statement.
- Add a paragraph into Regulation 92.070(4) to facilitate the standing exclusion for Australia Post within Regulation 92.080.

## **3.38 Dangerous goods instructor under supervision approval (D5.9)**

### **3.38.1 Reference(s):**

- Regulation 92.140 - Who may conduct training

### **3.38.2 Background**

Subregulation 92.140 (3) requires that a person must be approved by CASA to instruct and deliver a 'CASA approved' DG training course.

In the initial approval process, a person will normally apply for their DG training course to be approved by CASA, and at the same time apply for themselves to be approved as the Dangerous Goods Instructor (DG Instructor) intending on delivering that course.

Once the assessment of the course material is complete, a CASA DGI will attend onsite and observe the delivery of a training course usually with 'mock' students that are gathered for the purpose of the assessment.

### 3.38.3 Issue

The assessment process works well for the initial approval of a course and instructor, however, it does not easily facilitate the training and upskilling of a new Instructor by an approved Instructor within an existing training organisation.

This is because of the wording in subregulation 92.140 (3):

*(3) A person must not give instruction that is part of an approved training course if he or she is not approved for that purpose.*

Subsequently, CASA has implemented an 'Instruct under supervision' approval which is issued to DG Instructors under training so that they may deliver approved training course material, to a live classroom and gain the relevant experience in preparation for their CASA assessment.

This training instruction is subject to the presence of a CASA approved DG Instructor overseeing the delivery of the course or its segments, guiding the Instructor as they teach and ensuring that a satisfactory standard is maintained.

The issuance of 'Instruct Under Supervision' approvals is time consuming for CASA due to the amount of DG Instructors training in the industry at any one time.

The application process for the 'Instruct Under Supervision' approval is time consuming and subject to the availability of an Inspector to review the application, draft and issue an approval.

The 'Instruct Under Supervision' approval is costly to industry and to CASA, for no safety value gained.

Additionally, there is gender specific wording within regulation 92.140 which should be removed.

### 3.38.4 Key objectives

The key objectives of this policy amendment are to:

- Amend regulation 92.140 to include provisions for an 'instruct under supervision' type approval and remove the requirement for CASA to issue a person an 'Instruct Under Supervision' Approval
- Remove any gender specific wording and replace with suitable gender-neutral terms.

## 3.39 Amendment of regulation 92.115 - Training—certain employees of screening authorities (D5.11)

### 3.39.1 Reference(s):

- Regulation 92.115 - Training—certain employees of screening authorities
- ICAO Annex 17 - Security
- ICAO-TI Part 1;4 - Training

- ICAO Annex 9 - Facilitation

### 3.39.2 Background

Regulation 92.115 outlines the training requirements for employees of a screening agency.

*Note: The drafting instructions in C3.7 include the amendments for replacing the term "screening authority" with "screening agency". As such, this instruction has been based on the proposed amended CASR 92.115.*

A person who undertakes the function of 'screening' for a screening agency falls within the definition of a 'group E employee' (refer to ICAO Annex 17 Chapter 1 for the definition of 'screening' if required).

Subregulation 92.085 (1) provide the definition of a 'group E employee', being:

**group E employee means:**

*(a) any employee of an operator, ground handling agent, freight forwarder or screening authority who is not a group A, B, C or D employee and whose duties involve handling:*

- (i) cargo consigned for transport on an aircraft at any time after it leaves the custody of the original consignor; or*
- (ii) passengers' checked or carry on baggage; or*

*(b) a deemed employee whose function includes those duties.*

Regulation 92.115 - Training—certain employees of screening **agencies** states:

*(1) This regulation applies to an employee in Australia of a screening **agency that has not been granted an exclusion under regulation 92.155**, if the employee's duties include handling, or supervising anyone who handles, checked baggage or carry on baggage.*

*(2) The screening agency must ensure that each of its employees to whom this regulation applies undertakes training in accordance with subregulation (4):*

- (a) before the employee first performs the relevant duties; and*
- (b) every 2 years while the employee continues to have those duties.*

*Maximum penalty: 30 penalty units.*

*(3) An offence against subregulation (2) is an offence of strict liability.*

*(4) The training that such an employee must undertake is a training course appropriate for such employees that meets the requirements of regulation 92.135.*

*Note: The red wording regarding CASR 92.155 is to be reinstated as part of drafting instructions D5.2.*

### 3.39.3 Issue

Subregulation 92.115 (1) only includes the employee duties of '*handling or supervising anyone who handles*' checked baggage or carry-on baggage and does not include the function of conducting screening of persons, baggage, cargo or mail which is also a function undertaken by security screening agencies.

### 3.39.4 Key objectives

The key objective of this policy amendment is to add the function of 'conducting security screening of persons, baggage, cargo or mail' into subregulation 92.115(1).

## 3.40 Amendment of regulation 92.135 - Requirements for training course (D5.12)

### 3.40.1 Reference(s):

- Regulation 92.135 - Requirements for training course
- Table 92.135-1 - Syllabus for training courses requiring approval
- Table 92.135-2 - Syllabus for training courses not requiring approval

### 3.40.2 Background

Currently, regulation 92.135 contains two tables of syllabi; *Table 92.135-1 Syllabus for training courses requiring approval*, and *Table 92.135-2 Syllabus for training courses not requiring approval*.

To align with amendments within drafting instruction B2.9 and the requirement for all DG training courses to require CASA Approval, *Table 92.135-2* is no longer required.

### 3.40.3 Issue

The proposed amendment includes a change that all CASA training courses require approval, therefore *Table 92.135-2 Syllabus for training courses not requiring approval* needs to be deleted.

Additionally, paragraph 92.135(1)(b) is overly prescriptive and missing several functions in respect to the employee's duties and responsibilities.

Further minor amendments will be required throughout regulation 92.135 to align with the removal of non-approved CASA courses.

Table 92.135-1 requires minor amendments to the references contained within.

### 3.40.4 Key objectives

The key objectives of this policy amendment are to:

- Delete the whole 'Table 92.135-2 Syllabus for training courses not requiring approval' from regulation 92.135.
- Make minor amendments to the wording within paragraph 92.135(1)(a).
- Remove some wording within paragraph 92.135(1)(b) to simplify the requirement.

- Make minor amendments to the ICAO Technical Instructions references within Table 92.135-1.

### **3.41 Amendment of regulation 92.015 to adopt the wording for the definition of 'dangerous goods' as per proposed amendment within ICAO State Letter AN 11/27-18/47 (D5.14)**

#### **3.41.1 Reference(s):**

- Regulation 92.015 - What are dangerous goods?
- ICAO-TI Part 1;3.1 - Definitions
- Annex 18, Chapter 1 - Definitions
- ICAO-TI Part 3 - Table 3-1. Dangerous Goods List.
- ICAO State Letter AN 11/27-18/47 (copy provided if required)
- Annex 18, Electronic Filing of Differences (EFOD)

#### **3.41.2 Background**

Regulation 92.015 provides a link between the definition of dangerous goods contained within section 23(3) of the Civil Aviation Act and the list of dangerous goods contained within ICAO-TI Part 3 - Table 3-1. Dangerous Goods List.

On 12 April 2018, an ICAO State Letter was issued which proposes a change to Annex 18, and more specifically a change to the definition of 'dangerous goods' by removing the word 'risk' and replacing it with the word 'hazard' as per below extract from ATTACHMENT A to State letter AN 11/27-18/47:

***Dangerous goods.** Articles or substances which are capable of posing a ~~risk~~ hazard to health, safety, property or the environment and which are shown in the list of dangerous goods in the Technical Instructions or which are classified according to those Instructions.*

This proposed change is due to come into effect in Annex 18 on 7 November 2019.

#### **3.41.3 Issue**

The current wording within regulation 92.015 does not align with the definition of 'dangerous goods' within Annex 18 Chapter 1 or the ICAO-TI Part 1;3.1.

The wording within regulation 92.015 defines 'dangerous goods' as follows:

*For the purposes of subparagraph (b)(ii) of the definition of dangerous goods in subsection 23(3) of the Act, the things specified in the Dangerous Goods List contained in the Technical Instructions are declared to be dangerous goods.*

*Note: Explosives are dangerous goods whether or not they are mentioned in the Dangerous Goods List—see the Act, subsection 23(3).*

The current definition of 'dangerous goods' within Annex 18 is as follows:

***Dangerous goods.*** Articles or substances which are capable of posing a hazard to health, safety, property or the environment and which are shown in the list of dangerous goods in these Instructions, or which are classified according to these Instructions.

Regulation 92.015 is missing the wording from the Annex 18 definition in reference to the effect of DG on health, safety, property or the environment.

Annex 18, Electronic Filing of Differences (EFOD) contains a list of definitions that CASA is required to adopt in regulation, including the definition of 'dangerous goods'.

The current definition of DG within regulation 92.015 did not meet the requirements of ICAO during their last audit of CASA and must be amended to achieve compliance with ICAO Standards and Recommended Practices (SARPs).

### **3.41.4 Key objectives**

The key objectives of this policy amendment are to amend the definition of 'dangerous goods' in regulation 92.015 to align as close as possible with Annex 18 definition of 'dangerous goods'.

## **3.42 Amend regulation 92.195 to remove reference to Regular Public Transport (RPT) (E6.1)**

### **3.42.1 Reference(s):**

- Regulation 92.195 - Carriage of ammunition by air security officers
- Aviation Transport Security Act 2004 - Division 4 - Definitions, Section 9 Definitions
- Aviation Transport Security Regulations 2005 - Regulation 1.06 Prescribed air services

### **3.42.2 Background**

The new CASR flight operations regulations come into effect 25 March 2021, being:

- a. Part 91 – the general operating and flight rules for Australian aircraft
- b. Part 119 – the certification and management for all Australian air transport Air Operator's Certificate (AOC) holders
- c. Part 121 – larger aeroplane air transport operations
- d. Part 133 – rotorcraft conducting air transport operations
- e. Part 135 – smaller aeroplane air transport operations
- f. Part 138 – aerial work operations.

The current Civil Aviation Regulations are structured in a manner which defines the segments of industry using terms such as Regular Public Transport (RPT).

The term 'prescribed air service' is defined within section 9 of the Aviation Transport Security Act 2004 as:



***"prescribed air service means an air service prescribed in the regulations for the purposes of this definition."***

Regulation 1.06 of the Aviation Transport Security Regulations further describes 'prescribed air services' as:

#### **1.06 Prescribed air services**

- (1) For the definition of ***prescribed air service*** in section 9 of the Act, an air service of any of the following kinds is prescribed:
  - (a) a regular public transport operation;
  - (b) an air service in which a jet is used;
  - (c) an air service in which an aircraft with a certificated maximum take-off weight greater than 5 700 kilograms is used.
- (2) However, an air service is not taken to be a prescribed air service if the Secretary declares, by instrument in writing, that the air service is not a prescribed air service.

#### **3.42.3 Issue**

The term 'regular public transport' is not used in the new CASR flight operations regulations.

Paragraph 92.195(1)(b) and (2)(b) uses the wording:

'...the officer is on duty in an aircraft engaged in regular public transport operations...'.

As of the 25 March 2021, 'regular public transport' will not be a definition recognised in the legislation.

#### **3.42.4 Key objectives**

The key objective of this policy amendment is to amend regulation 92.195 to replace the wording 'regular public transport' with the term 'prescribed air service' as defined in section 9 of the Aviation Transport Security Act 2004. CASA has separately provided advice to the Department of Home Affairs (and other similarly affected government entities) regarding the changes in terminology arising from the new CASR flight operations regulations.

### **3.43 Dangerous Goods Information in Cargo Terminals (E6.2)**

#### **3.43.1 Reference(s):**

- Regulation 92.200 - Information in passenger terminals
- Regulation 92.205 - Information with tickets

#### **3.43.2 Background**

ICAO-TI Part 7;5 details provisions for information to passengers and crew regarding the carriage of DG aboard an aircraft as part of carry-on or checked baggage. ICAO-TI Part 7;5 also includes requirements for operators to inform their passengers (prior to boarding) about the



types of DG forbidden to be transported aboard an aircraft at each of the places where tickets are issued (including via websites and check-in kiosks etc).

These requirements are covered in the regulations under regulation 92.200 - Information to passengers and regulation 92.205 - Information with tickets:

**CASR 92.200 - Information in passenger terminals**

*(1) The owner or operator of an airport terminal must comply with the provisions of the Technical Instructions concerning information that must be given to passengers about the carriage of dangerous goods on aircraft.*

*Penalty: 10 penalty units.*

*(2) The information required by subregulation (1) must at least be given by means of a sufficient number of notices, prominently displayed at each of the places at an airport where tickets are issued, passengers checked in and aircraft boarding areas maintained, and at baggage collection areas.*

**CASR 92.205 - Information with tickets**

*(1) A person (other than an aircraft operator) who issues a passenger ticket must ensure that the person to whom the ticket is issued is given information about the kinds of dangerous goods that must not be transported on an aircraft.*

*Penalty: 10 penalty units.*

*(2) The information required by subregulation (1) must at least be given by means of information with the ticket and notices, visible to persons to whom tickets are issued, in each place where tickets are issued.*

ICAO-TI Part 7;4.8 mandates that operators provide for similar DG information to be made available at cargo acceptance areas. More specifically, ICAO-TI Part 7;4.8 - Cargo acceptance areas - Provision of information states:

*'An operator or the operator's handling agent must ensure that notices giving information about the transport of dangerous goods are sufficient in number, prominently displayed and provided at a visible location(s) at the cargo acceptance points to alert shippers/agents about any dangerous goods that may be contained in their cargo consignment(s). These notices must include visual examples of dangerous goods, including batteries.'*

### **3.43.3 Issue**

Subpart 92.E requires regulations to cover the requirement for the provision of DG information in a cargo terminal, at any areas where DG cargo is accepted into the air transport system.

### **3.43.4 Key objectives**

The key objective of this policy amendment is to create a new regulation under Subpart 92.E which covers the requirements of ICAO-TI Part 7;4.8 - Cargo acceptance areas - Provision of information.

### **3.44 Create offence provisions for the ability to issue an AIN to passengers if they attempt to carry dangerous goods contrary to regulation 92.030 (E6.4)**

#### **3.44.1 Reference(s):**

- Regulation 92.030 - Compliance with Technical Instructions—passengers and crew
- ICAO-TI Part 8 - Provisions for dangerous goods carried by passengers or crew

#### **3.44.2 Background**

It is an offence for passengers to carry DG on an aircraft unless those DG fall within the items permitted under ICAO-TI Part 8, the passenger provisions.

Regulation 92.030 requires that passengers or crew comply with the provisions of Part 8 in the ICAO-TI regarding the carriage of DG on an aircraft.

Subregulation 92.030 (2) states:

*(2) Subject to subregulation (3), it is a condition of the carriage of dangerous goods on an aircraft by a person that the person complies with the requirements (if any) of the Technical Instructions:*

- (a) concerning the type of dangerous goods that a person may carry on board an aircraft; or*
- (b) as to whether the dangerous goods may be carried in the person's carry on/ baggage or in checked baggage; or*
- (c) limiting the quantity of such goods that may be carried on the aircraft, or in checked or carry on baggage; or*
- (d) requiring the aircraft operator's approval before the goods are carried.*

#### **3.44.3 Issue**

Regulation 92.030 outlines the requirements to include an offence for the carriage of forbidden DG or DG carried in excess of, or contrary to, the provisions within ICAO-TI Part 8. This is being added as part of the policy document of A1.4.

Regulation 92.030 does not provide for the situation where a passenger has attempted to carry DG in contravention to ICAO-TI Part 8 nor does it contain an offence against which an AIN could be issued.

#### **3.44.4 Key objectives**

The key objective of this policy amendment is to amend regulation 92.030 to provide an offence for attempting to carry DG contrary to the requirements of 92.030.

### 3.45 Create offence provisions for the ability to issue an AIN to a Shipper if they attempt to consign dangerous goods contrary to regulation 92.035 (E6.5)

#### 3.45.1 Reference(s):

- Regulation 92.035 - Compliance with Technical Instructions—persons who consign dangerous goods
- Section 23 of the Act - Dangerous Goods
- Section 23A of the Act - Statements of the contents of cargo

#### 3.45.2 Background

Regulation 92.035 requires that persons who consign DG for carriage on an aircraft comply with the requirements of the ICAO-TI.

Regulation 92.035(2) states:

*"(2) It is a condition of the consignment for carriage of dangerous goods on an aircraft that the consignor of the goods complies with the requirements of the Technical Instructions:*

- (a) concerning the classification of the goods; and*
- (b) limiting the quantity of such goods that may be carried in the one consignment; and*
- (c) concerning:*
  - (i) the packing of the goods; and*
  - (ii) the marking of the goods; and*
  - (iii) the labelling of the goods; and*
  - (iv) segregation of the goods from other dangerous goods; and*
  - (v) the documentation for the goods; and*
  - (vi) the provision of information about the goods; and*
  - (vii) empty packaging.*

*Note: This regulation creates a defence to the offences created by subsections 23(2) and (2A) of the Act. A defendant charged with either of those offences bears an evidential burden in relation to the matters set out in this regulation—see subsection 13.3(3) of the Criminal Code."*

#### 3.45.3 Issue

Regulation 92.035 does not provide for the situation where a person has attempted to consign DG in contravention to the requirements of the ICAO-TI and regulation 92.035. For example, if a person makes a false declaration that their cargo does not contain DG, yet it is picked up by the freight forwarder, after lodging but before the statement has yet to be relied upon by the freight forwarder.

This creates a situation where the only legal mechanism for enforcement is a prosecution under section 23 of the Civil Aviation Act.

There is currently no offence for an attempt to commit an offence under regulation 92.035, by which the issuing of an AIN could be made. CASA should have the ability to issue an AIN for an attempt to consign DG contrary to the regulations.

#### **3.45.4 Key objectives**

The key objective of this policy amendment is to amend regulation 92.035 to provide an offence for attempting to consign DG contrary to the requirements of regulation 92.035.

## **4 Policy assessment**

### **4.1 Intended policy position**

CASA's preferred policy position is to align with ICAO's standards and recommended practices (SARPs) to ensure compliance at an international level, while maintaining consistency with the transport of DG by air within Australian territory.

### **4.2 Impacts on industry**

The changes proposed have an overall positive impact to industry. A reduction in costs is evidenced by the reduction of approvals, exemptions and permissions required to be issued by CASA. Any costs incurred from the proposed changes overall are outweighed by the removal and lowering of costs by adding common industry approvals into regulation and providing outcomes-based legislation for industry to operate within.

### **4.3 Implementation and transition**

#### **4.3.1 Implementation considerations**

CASA is working towards a commencement date of 1 February 2021. A communications plan for industry is scheduled for 2020 in the lead up to the making of the regulations.

#### **4.3.2 Transitional considerations**

Potential transitional, application and savings provisions have been identified and suggested within the relevant policy. Below is a summation of these provisions:

- Application provisions may be required to allow for the gap between proposed making date of Part 92 amendments at the end of January 2021 and the commencement of the new flight operations regulations on 25 March 2021.
- A transitional provision may be required to bridge the initial 36-month period after commencement if an organisation were to cease business within that time. All existing training organisations will be required to transition across and meet this requirement.
- A transitional provision may be required to allow for a period of time by when the training providers can develop their training record-keeping systems, if required, to be able to meet the new requirements of regulation 92.145. This has been identified within policy document A1.6.
- A savings provision may be required for Civil Aviation Order (CAO) 29.6 to bridge the period from commencement of the amendments to Part 92 and the commencement of the new Part 138 regulations.
- A transitional provision will be required to provide for a grace period to assist operators to meet any reporting gaps between the existing regulations and the new reporting requirements.

- The new 'group G employee' requirements may require a transitional provision which includes a period of time (i.e. 12 months from commencement) to allow for an educational and promotional campaign, and to allow for the persons to develop the training requirements outlined within the new regulation.
- A transitional provision may be required to allow operators a period to ensure that the new requirements for DG information to be displayed at Cargo Terminals is met.
- A transitional provision may be required for the introduction of a mandatory challenge as this is not currently a requirement under the ICAO-TI. Operators will need a period to train their employees and put other measures in place to ensure that the requirements of this new regulation are able to be met. CASA is considering a period of 12 months from the commencement date.

#### **4.4 Closing date for comment**

CASA will consider all comments received as part of this consultation process and will incorporate changes to the regulation as appropriate. Comments on the draft new policy should be submitted through the online response form by close of business 5 September 2019.