



Australian Federation of Air Pilots

21 August 2018

Submission in Response to CASA's Consultation to CASR Parts 133 & 119 (CD 1804OS).

The Australian Federation of Air Pilots (AFAP) represents over 4,500 professional pilots in aviation safety and technical matters and is the largest professional pilot association in Australia. As a founding member of IFALPA, the AFAP also represents these pilots internationally with strong cooperation of over 100 international pilot associations representing well over 100,000 pilots.

We welcome this opportunity to provide feedback to the consultation:

Proposed changes to the rules for rotorcraft air transport operations – Part 119 and 133 of CASR.

PART 133 REGULATIONS COMMENTS

Qualifications of Pilots - NTS/HF

The AFAP finds that there are inconsistencies in the draft CASR Flight Operations Parts in relation to an operator's responsibilities to ensure that flight crew have completed the required Human Factors (HF) and Non-Technical Skills (NTS) training as per the draft CASR Part 119 (Division E.2—Training and assessment in human factors principles and non-technical skills).

In the current draft Part 121, there exists this requirement:

121.715 (2) (d) the pilot has successfully completed the aeroplane operator's training in human factors principles and non-technical skills relevant to the duties of a pilot in command

We believe that this Part 121 HF/NTS requirement on operators is wholly consistent with Division E.2 of CASR 119 but note that it isn't consistently applied to all the crew where it is equally applicable. This obligation on operators is just as applicable in rotorcraft operations under Part 133 but isn't found within Part 133. Part 119 Division E.2 outlines that crew, and other operational safety-critical personnel, must be trained in HF and NTS. Given the increasing recognition of the role HF/NTS has in enhancing aviation safety and mitigating risks, the AFAP believes that the clearly stated obligation, related to HF/NTS qualification requirement found in Part 121, should also be included in the relevant sections within Part 133.

Understanding that Part 133 involves operations for single or multi crew operation, this should

AUSTRALIAN FEDERATION OF AIR PILOTS

MELBOURNE OFFICE
LEVEL 4, 132-136 ALBERT ROAD
SOUTH MELBOURNE, VIC 3205
T 03 9928 5737 F 03 9699 8199

BRISBANE OFFICE
SUITE 10, 137-143 RACECOURSE ROAD
ASCOT, QLD 4007
T 03 9928 5737 F 03 9699 8199

E ADMIN@AFAP.ORG.AU
WWW.AFAP.ORG.AU

Foundation Member of the International
Federation of Air Line Pilots' Associations

be reflected in the qualifications required for all the various crew, including cabin crew and air crew members. Thus we make specific note that these HF/NTS training and qualification obligations for operators should also be reflected in Subpart 133.P—Crew other than flight crew.

Qualifications of Pilots – Ratings and Endorsements

The AFAP finds that the references to Part 61 qualifications found within Part 133 are inconsistent and currently insufficient. The AFAP believes that it is correct to clearly provide an obligation on operators that they must ensure that crew operating their aircraft are authorised and qualified to do so, as per Part 61. Currently though, the draft CASR Flight Operations Parts (Parts 121, 133 and 135) provide differing and inconsistent obligations for this responsibility, and this differs to each other Part and within the same Part.

The following table outlines and displays the inconsistencies found in the draft CASR regulations on the matter of an operator’s obligations to ensure that a pilot assigned to duty for the flight, is authorised under Part 61 to pilot the aeroplane or rotorcraft for the flight:

Operator’s Obligations to ensure that a Pilot is qualified as per Part 61			
	Part 121	Part 133	Part 135
Flight Crew Rank:	Sub Reg Reference	Sub Reg Reference	Sub Reg Reference
PIC	NIL Exists	Yes, 133.685 (2) (d)	Yes, 135.760 (2) (d)
Co-pilot	Yes, 121.720 (2) (b)	NIL Exists	NIL Exists

As we can see here, there even exists inconsistency in the CASR Flight Operations Parts between whether it is the PIC or Co-pilot (including Cruise relief co-pilots) regarding the Part 61 qualifications obligation on operators.

Cabin Crew – Number Required

The AFAP believes that the Part 133 sub regulations related to the required number of Cabin Crew (when required) could be made clearer. Sub regulation 133.790 (3) (a) provides that the requirement and numbers of cabin crew required are outlined in the 133 MOS. However, the Part 133 MOS section on the number of Cabin Crew required for various operations is absent. The relevant MOS section (133 MOS Chapter 7 — Crew other than flight crew) only relates to the training and checking requirements and provides no details of when cabin crew are required on Rotorcraft or the number when they are required.

We note that Part 91 sub regulation 91.1460 and 91.1465 does provide some details on this matter. However, we believe that the reference to the Part 133 MOS instead of the relevant Part 91 sub regulations is problematic. We propose that either this aspect of the Part 133 sub regulations should be rectified to lead readers to the relevant section in Part 91 or that there be an appropriate amendment to the relevant section of the 133 MOS.

AUSTRALIAN FEDERATION OF AIR PILOTS

MELBOURNE OFFICE
LEVEL 4, 132-136 ALBERT ROAD
SOUTH MELBOURNE, VIC 3205
T 03 9928 5737 F 03 9699 8199

BRISBANE OFFICE
SUITE 10, 137-143 RACECOURSE ROAD
ASCOT, QLD 4007
T 03 9928 5737 F 03 9699 8199

E ADMIN@AFAP.ORG.AU
WWW.AFAP.ORG.AU

Foundation Member of the International
Federation of Air Line Pilots’ Associations

PART 119 REGULATIONS COMMENTS

Part 119 Consultation – No MOS or TWG

The AFAP believes that the current consultation process for CASR Part 119 to be somewhat deficient. The Part 121 Technical Working Group (TWG) found that a separate TWG for Part 119 would be appropriate and the AFAP supports that position. This would allow for a more thorough review and discussion than what is the current process for reviewing Part 119. Moreover, there currently isn't a Manual of Standards (MOS) for Part 119 in spite of the draft Part 119 sub regulations providing references to a 119 MOS. We propose that there be a TWG convened for the review of Part 119 (and the 119 MOS when available) prior to the commissioning of the CASR Flight Operations Parts in 2021. This would allow for a meaningful consultation on the Part, instead of the current partial consultation with industry.

Safety Management Systems (SMS)

The AFAP notes that in the proposed changes for Part 119, provided by CASA in the CD, that there is a proposal to allow some operators, currently without an SMS, to have a risk management and hazard identification system in place in lieu of an SMS. Curiously, the requirements found at Subpart 119.F (SMS) of the latest CASR Part 119 draft appear to be in disagreement with this relaxed approach proposal found in the Summary of Proposed Changes. In the draft Part 119, we note that "An Australian air transport operator must have a safety management system that is appropriate for the size, nature and complexity of the operator's Australian transport operations."

Given the conflicting information between the relevant public consultation documentation, the AFAP would like to express our support for the requirement contained in the Part 119 draft and provide an objection to the alternate idea found in the summary or proposed changes document.

The AFAP believes that it is important for all operators to be required to have an SMS however we acknowledge that an SMS should be scalable to the complexity of each operation. A risk management and hazard identification system is indeed an important part to an SMS but is insufficient without the remainder of an SMS. A requirement for a whole of SMS approach provides operators with the means in which to properly utilise the risk management and hazard identification system to achieve outcomes and to process the continuous improvement.

There are a great many aspects to an SMS that provides a means to use the identified hazard and risk data in a coordinated and thorough way that enhances safety outcomes and operational efficiencies, for example, through the use of structured Change Management Procedures. Thus, we firmly believe that a risk management and hazard identification system is an important inclusion in an SMS, however on its own is quite insufficient.

AUSTRALIAN FEDERATION OF AIR PILOTS

MELBOURNE OFFICE
LEVEL 4, 132-136 ALBERT ROAD
SOUTH MELBOURNE, VIC 3205
T 03 9928 5737 F 03 9699 8199

BRISBANE OFFICE
SUITE 10, 137-143 RACECOURSE ROAD
ASCOT, QLD 4007
T 03 9928 5737 F 03 9699 8199

E ADMIN@AFAP.ORG.AU
WWW.AFAP.ORG.AU

*Foundation Member of the International
Federation of Air Line Pilots' Associations*

Familiarisation Training for Key Personnel

Sub regulation 119.130 addresses the need for familiarisation training for key personnel: “An Australian air transport operator must ensure that, before a person appointed as any of the operator’s key personnel begins to carry out the responsibilities of the position, the person has completed any training that is necessary to familiarise the person with the responsibilities.”

We believe that this sub regulation should also include a requirement for HF/NTS awareness training (similar to that found in Division 119 E.2) and to SMS induction training (of the nature referred to in sub regulation 119.220 (3) (f), for these key personnel.

The AFAP recognises and supports the standard safety management philosophy that, for an SMS to function properly and adequately, safety management needs to be embodied from the top down. For this to occur, it is essential that the accountable key managers receive training with how their SMS works and also cognisant of the essentials of HF/NTS training.

FDAP – Flight Data Analysis Program Protections

The AFAP finds that there is a significant and objectionable change proposed for FDAP within the draft CASR Part 119. Furthermore, we note that this change was not included in the summary of proposed changes for any of the CDs of the three consultations (121, 133 and 135), which are currently open for consultation. We are unsure if this was an accidental oversight or a deliberate obfuscation. However in any event, we believe this to be contrary to a transparent and acceptable public consultation approach.

The AFAP has prepared a substantive submission for response to the proposed FDAP changes and intends to submit this via the CASA Consultation Hub and via email to the relevant CASA personnel. Some points worthy of inclusion in summary here are:

- CASA is attempting to amend and significantly diminish FDAP protections currently found in the Civil Aviation Order 82.3 and 82.5,
- The use of safety information in disciplinary, civil, administrative and criminal proceedings should be carried out only under suitable safeguards provided by national law. The AFAP believes that there exists an acceptable provision already within the CAOs on this matter.
- The AFAP notes that the proposed changes are incongruent with CASA’s own guidance for FDAP found within CAAP SMS-4(0) “A key element in developing any FDAP is gaining the support of the pilot group. This can be achieved by management and the pilot group entering a formal agreement or FDA procedure document. Amongst other things, the core conditions of the agreement will ensure that the program is non-punitive and de-identifies crew whilst ensuring the data gathered is secure.”
- It is the AFAP’s contention that both the expression of the ways in which the “source of

AUSTRALIAN FEDERATION OF AIR PILOTS

MELBOURNE OFFICE
LEVEL 4, 132-136 ALBERT ROAD
SOUTH MELBOURNE, VIC 3205
T 03 9928 5737 F 03 9699 8199

BRISBANE OFFICE
SUITE 10, 137-143 RACECOURSE ROAD
ASCOT, QLD 4007
T 03 9928 5737 F 03 9699 8199

E ADMIN@AFAP.ORG.AU
WWW.AFAP.ORG.AU

*Foundation Member of the International
Federation of Air Line Pilots’ Associations*

operational flight data recorded by the program,” and the mechanism by which the source of operational flight data recorded by the program can be disclosed, and be made the subject of punitive action by an operator in this draft, are both flawed and unacceptable.

- The draft sub regulation in its present draft form constitutes, not only a preventable departure from uniformity and harmonisation with ICAO Annexes and international practice but in our view, would also trigger the requirement for Australia to make a notification of differences under Article 38 of the Chicago Convention 1944.
- The key issue is not only the misuse of FDAP information but what that would mean to the air safety system as a whole.

Recommendations:

The AFAP recommends that proposed sub regulation 119.220 paragraph (8) be deleted in its entirety, and that paragraph (7) be amended to delete subparagraphs (b) and (c), and be replaced with the words:

(b) in accordance with the order of a court which must determine that the requested disclosure or use outweighs the adverse domestic and international impact such release may have on the future availability of safety information.

The AFAP recommends that the proposed Part 119 Subpart 119.F include strict liability offences of sufficient magnitude as to deter offending conduct, targeted at operators who recklessly, persistently, or intentionally misuse flight data or FDAP programs to take punitive or disciplinary measure against pilots.

The AFAP recommends that any guidance material include detailed reference to operators' privacy obligations to pilots and other employees in respect of the management of notifiable data breaches under the Privacy Amendment (Notifiable Data Breaches) Act 2017 (Cth).

AUSTRALIAN FEDERATION OF AIR PILOTS

MELBOURNE OFFICE
LEVEL 4, 132-136 ALBERT ROAD
SOUTH MELBOURNE, VIC 3205
T 03 9928 5737 F 03 9699 8199

BRISBANE OFFICE
SUITE 10, 137-143 RACECOURSE ROAD
ASCOT, QLD 4007
T 03 9928 5737 F 03 9699 8199

E ADMIN@AFAP.ORG.AU
WWW.AFAP.ORG.AU

*Foundation Member of the International
Federation of Air Line Pilots' Associations*

CONCLUDING REMARKS

The AFAP recognises that considerable progress has been made toward finalising Parts 133 and 119. However, there remain some aspects which are insufficient and we encourage that a focus on achieving the ambitious timeline for completing the CASR drafting projects doesn't over shadow the necessary focus on the detail of the work.

Written by the Australian Federation of Air Pilots and Authorised by:



Captain David Booth
President
Australian Federation of Air Pilots

AUSTRALIAN FEDERATION OF AIR PILOTS

MELBOURNE OFFICE
LEVEL 4, 132-136 ALBERT ROAD
SOUTH MELBOURNE, VIC 3205
T 03 9928 5737 F 03 9699 8199

BRISBANE OFFICE
SUITE 10, 137-143 RACECOURSE ROAD
ASCOT, QLD 4007
T 03 9928 5737 F 03 9699 8199

E ADMIN@AFAP.ORG.AU
WWW.AFAP.ORG.AU

*Foundation Member of the International
Federation of Air Line Pilots' Associations*