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Dear Jason,

AusALPA SUBMISSION ON CASA PARTS 135 AND 119 PUBLIC CONSULTATION DRAFTS

The Australian Airline Pilots' Association (AusALPA) represents more than 7,500 professional pilots within Australia on safety and technical matters. We are the Member Association for Australia and a key member of the International Federation of Airline Pilot Associations (IFALPA) which represents over 100,000 pilots in 100 countries. Our membership places a very strong expectation of rational, risk and evidence-based safety behaviour on our government agencies and processes and we regard our participation in the work of the Australia's safety-related agencies as essential to ensuring that our policy makers get the best of independent safety and technical advice.

GENERAL COMMENTS

Supporting Documents

Despite the best efforts of Scott Watson and his team, for which we are most appreciative and applaud, we find it to be a somewhat unnecessary struggle to properly consider proposed legislation that relies heavily on secondary documents that are not complete or consistent across the operational parts. To that extent, we must qualify our comments on the basis that they are made according to the material before us, knowing full well that the documents and some policy matters are not in their final form or are yet to be developed.

Drafting Style

We have made the point previously that the legal drafting, while perhaps satisfying for lawyers, is not assisting the industry's understanding of the legal framework under which they operate. It is difficult to see how much of the proposed legislation satisfies any common or ordinary meaning of "plain English" and AusALPA would be very disappointed if the end result of the regulatory development is an increase in industry non-compliance through lack of clarity.

Strict Liability

AusALPA views the Government's approach to strict liability in civil aviation law to be an unrealistic and unhelpful use of this type of provision. It represents an overly simplistic approach to compliance that focuses on pilots without sufficient, if any, regard to operational circumstance or safety outcomes. A recent example of this type of unfairness was CASA's pursuit of the pilot involved in the Westwind ditching off Norfolk Island as distinct from the neutral approach that CASA adopted towards the operator, as revealed by the Senate Inquiry.

We recognise that there is a place for strict liability offences and that the unusually high level of regulation in aviation will likely result in a higher than normal number of such offences.

However, there seems to us to be an increasing propensity to deliberately reduce complex systems to a series of simple isolated factors whose purpose is primarily to support strict liability penalty provisions, rather than to address the real safety outcomes, when those factors are part of a dynamic and interactive operational environment. This "tail wagging the dog" approach to compliance and enforcement often means that few organisational malaises are redressed or even mitigated and those who have the greatest influence and control over corporate culture inevitably escape attention, let alone sanction.

AusALPA has no evidence to date that suggests in any discernible way that CASA, DIRDC or any of the Attorney-General's portfolio agencies have done any review or reconsideration of the wholesale application of strict liability provision to civil aviation offences.

That situation was, and remains, unacceptable to us.

We have been told that a review has been planned at some future date. We have also been told that the review will be conducted separately from the operational teams developing the rule sets and, most likely, exclusively by legal practitioners from the various Government entities involved in producing civil aviation legislation. AusALPA is strongly opposed to this approach.

Any review of strict liability provisions in civil aviation law must be conducted primarily as an operational activity in the first instance. Secondly, any relevant legal advice should preferably come from external sources such as the Australian Law Reform Commission rather than from the people who may well be motivated to minimise change and to preserve the status quo. In any event, such a review is essential and urgent.

Penalty Provisions

In 1990, when the CAA licensing rules were rewritten to become Part 5 of the CARs, the operational drafters reviewed each provision and applied maximum penalties drawn from the range of 5, 10, 15, 25 and 50 penalty units. Judgement on proportionality was applied very carefully, both to reflect the balance between administrative and safety outcomes as well as to provide guidance to the courts on the relative severity of the offence.

Today, we find that what were once considered to be minor offences, indicated by low range penalties, have morphed into major offences attracting the maximum allowable penalties of 50 penalty units. There are very few, if any, offences that vary from this apparently default level of maximum penalty.

AusALPA can find no public evidence of a formal process that changed the original risk and preservation of evidence assessments to a penalty scheme for which virtually every offence attracts the allowable maximum. The complete lack of transparency of such deliberations can only create distrust among those most affected. This is particularly so when the regulations appear to have adopted a much narrower class of persons committing offences, in many cases removing operators from the spotlight. It is far from clear to us why CASA has chosen to resile from adopting the broadest range of potential offenders, reflective of a true safety systems focus.

Has CASA withdrawn from providing guidance to the Courts on relative severity of offences, leaving the Courts to determine proportionality simply on the basis of the arguments presented in each case? Has the concept of system safety fallen out of favour within CASA in preference to targeting only pilots, many of whom have no real or effective protections whatsoever in preserving their livelihoods when faced with conflict between safety and commercial outcomes?

AusALPA strongly asserts that there must be a transparent process that re-examines all of the penalty provisions in accordance with a publicly available doctrine and that includes relevant stakeholders. Once again, this review process must be an operational review rather than a legal practitioner's review in the same vein as we set out above for the review of strict liability provisions.

Strict Liability and Penalty Review Timing

AusALPA considers both these reviews to be urgent.

Part of the development of any new rules must be demonstrations of good faith by the regulator that the imposition of penalties, both administrative and criminal, are the outcome of well-considered, systematic and proportionate assessments of the gravity of each offence. It is critical that the reviews are not seen to be self-serving internal processes, since the required collateral outcome is the building of trust in the way that the regulator meets its duty to the Australian public, rather than to itself.

PART 135 REGULATIONS COMMENTS

Readability of the Documents

AusALPA has engaged many of our representatives and staff to review the various CASR Flight Operations Parts. A recurring theme of comment is regarding the difficulty with reading the documents and understanding the linkages and interrelationship with other sections in either the relevant associated MOS, or to the other CASR Parts. One means of improving this would be to apply a consistent method of indexation and subpart division across all these, and other, CASR Parts.

When solely considering the indexation of the draft documents, AusALPA finds that the draft documents for Part 121 to be the closest to a good example of readability, with improvements still possible. Within the draft Part 121 documents, the subpart in the regulations (the Part) corresponds to the subpart within the MOS. For example, subpart N within the Part is for Flight Crew and this is provided in almost the same manner within the MOS where there is at least an annotation in parentheses as such "CHAPTER 6: (SUBPART 121.N – Flight crew)".

We believe that it would be quite beneficial to the user of the documents if the MOS subparts were annotated as they are in the CASR Parts. This should also be applied to all other CASR Parts and associated MOSs. Continuing the example, subpart N –

Flight Crew, should be annotated the same across all the flight operations CASR draft documents, rather than the current situation:

Flight Ops CASRs: Useful Subpart Indexation Consistently Applied					
CASR Part #	91	119	121	133	135
Part	Yes	Yes	Yes	Yes	Yes
MOS	No	Nil MOS	Partially	No	No

With the exception of Part 119, all the other four Parts have subpart linkages to and from Part 91. There exists some consistency across the regulatory Parts but it is within the MOSs that there is considerable inconsistency. AusALPA believes that this is an area of amendment that must be addressed prior to the final rulemaking.

AusALPA would like to acknowledge the presence of some useful linkages provided in the draft documents. Within CASR 135.005, paragraph (2) provides a useful table to outline which Part 135 CASRs supersede those in Part 91. However, beyond those regulations that supersede others, there are many other regulations where Part 91 requirements continue to apply and in some instances, this has been annotated with a very useful note. For example, within CASR 135.045:

135.045 Compliance with flight manual

(1) The operator of an aeroplane for a flight contravenes this subregulation if the aeroplane is operated in a way during the flight that does not meet a requirement or limitation that:

- (a) is set out in the aeroplane’s flight manual; and
- (b) relates to the operation of the aeroplane.

Note: The pilot in command of the aeroplane must also ensure the aeroplane is operated in accordance with the aircraft flight manual instructions: see regulation 91.100.

AusALPA finds that this is a most useful note and we firmly encourage the provision of this type of note as much as possible. Unfortunately, we find that this is currently a limited example. For instance, a similar note linking CASR 135.070(2) and (3) to CASR 91.115(2) would be equally useful and there are most likely other opportunities to replicate this method and in turn, improve the readability, comprehension and compliance of the CASRs by users

AusALPA notes that the Draft AMC/GM includes some (but not all) cross-references, which we presume will migrate to the MOS, however it is our preference for the linkage-note to be in the primary legislation.

Flight Planning Requirements and CASR linkages

CASR 135.145(3)(a) outlines a requirement for access to weather assessment, for planning purposes, prior to and during a flight. We note that the MOS doesn’t provide further on this point and nor does the AMC. It is not listed within the AMC, MOS or the Part that there is a relevant Part 91 MOS reference on this topic which provides the applicable process for the purposes of Part 121 and, we presume, part 135.

It is doubtful, in the absence of a suitable cross-reference, whether section 7 of the Part 91 MOS is legally authorised as applicable as the Part 135 process, even though it would be a bizarre outcome that the process was available for Parts 91 and 121 but not Part 135. Importantly, unless Part 91 MOS section 7.03 is properly authorised, a Part

135 flight, unable to obtain an authorised weather forecast before departure, would not be authorised to depart and subsequently obtain the weather assessment (pursuant to certain conditions).

AusALPA believes that the absence of a note cross-referencing the Part 91 MOS makes the pathway to enlightenment unnecessarily difficult, particularly if you are expecting more stringent Part 135 requirements in this context. There needs to be a consistent approach to alerting a reader to another documented process such as this, if not in the parent regulation, then certainly in the appropriate MOS entry.

Compliance with Exposition

AusALPA considers that CASR 135.055 (and the similar requirements in other operational parts) would be better placed in Part 119.

Qualifications of Pilots - NTS/HF

AusALPA 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 Part 119 (Division E.2—Training and assessment in human factors principles and non-technical skills).

For example, in the current draft Part 121, CASR 121.715(2) includes this requirement:

- (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 Part 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 small aircraft air transport operations under Part 135 but isn't found within Part 135, not even for multi crew operations. 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, AusALPA 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 135.

Understanding that Part 135 involves operations for single or multi crew operation, this should be reflected in the qualifications required for all the various crew members. Thus we make specific note that these HF/NTS training and qualification obligations for operators should also be reflected in Subpart 135.P—Crew other than flight crew.

Qualifications of Pilots – Ratings and Endorsements

AusALPA finds that the references to Part 61 qualifications found within Part 135 are inconsistent and currently insufficient. AusALPA 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 operational Parts (Parts 121, 133 and 135) provide differing and inconsistent obligations for this responsibility both within and between Parts.

The following table outlines and displays the inconsistencies found in the draft CASRs 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-pilots	Yes, 121.720 (2) (b)	NIL Exists	NIL Exists

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

Cosmic Radiation Limits

AusALPA notes that the CASR 135.375 partially reflects single dose limits in accordance with ICAO Annex 6 para 4.2.11.2 based on Concorde operational advice from the early 1970s. The referenced ICAO Circular 127 was produced in 1975 and is based on ICRP Publication 9. The latest relevant ICRP document is Publication 132 Radiological Protection from Cosmic Radiation in Aviation and the latest Australian document is ARPANSA RPS-G2 Guide for Radiation Protection in Existing Exposure Situations. While CASA at the Part 121 TWG flatly rejected updating this series of regulations on the basis that none of those documents were standards, we are compelled to make the point that Australia need not hide behind the ICAO standards development 'tortoise' to adopt a modern approach that protects aircrew against potential long-term health consequences for which we require lifetime public health records to provide the statistical data. Operations above 26,000ft can result in significant doses and we strongly recommend that flight crew radiation exposure doses should be individually monitored and optimised to ALARA levels unless competent analysis shows that no flight crew member will be exposed to in-flight radiation of 1 or more mSv per year.

ARPANSA RPS-G2 includes the following:

4.3 Aircrew exposure to cosmic rays

Aircrew are exposed to elevated levels of cosmic radiation while flying at high altitude. In Australia, it is expected that an assessment of exposure for aircrew of all domestic and long-haul crews would be warranted. The ICRP, in Publication 132 (ICRP 2016), recommends that a reference level in the 5-10 mSv y-1 range is selected by employers. The selected reference value is not a dose limit, but represents the level of dose below which exposure should be maintained and reduced as low as reasonably achievable, taking into account economic and societal factors. For Australia, a reference level of 6 mSv y-1 (see Annex A), is considered appropriate. Where the doses of aircrew are likely to exceed this reference level, and it is not possible to reduce exposure below this reference level, then the relevant clauses for occupational exposure in planned exposure situations as described in the Code for Radiation Protection in Planned Exposure Situations, RPS C-1 (ARPANSA 2016) apply.

For pregnant aircrew, additional protection of the embryo/foetus must be considered. The working conditions of a pregnant worker, after declaration of pregnancy, must ensure that the additional dose to the embryo/foetus would not exceed about 1 mSv y-1 during the remainder of the pregnancy. If a reference level is in use by employers, dose records or other pertinent assessment are to be kept to enable the optimisation of the reference level.

Radiation doses from cosmic radiation received by occasional flyers is sufficiently low that there is no need to warrant the introduction of protection measures. However, the ICRP recommends that general information about cosmic radiation associated with aviation be available for all passengers (ICRP 2016). Frequent flyers are considered as public exposure and are treated in the same way as occasional flyers (ICRP 2016).

The ICRP, in Publication 132 (ICRP 2016), recommends that, frequent flyers who have exposures comparable to aircrew should be managed as occupationally exposed on a case-by-case basis according to prevailing circumstances. This may result in individuals assessing their own exposure using freely available dose calculators in order to be aware of their exposure and adapt their flight frequency if they feel the need and therefore use this information to engage with their employer, if appropriate.

First Aid Kit Guidance

AusALPA finds that the Part 135 provisions relating to the contents of first aid kits to be lacking in detail. CASR 135.685 provides that the MOS may require such equipment. The 135 MOS, Chapter 2, Division 2 provides a table where first aid kits are listed and the prescription of the details of the first aid kit can be found within column two of that table. However, the actual required contents of the kit are not provided here. Instead, all that the MOS table requires is that there is a provision in the first-aid kit of the details of the emergency medical supplies in the kit, not what is actually required or may be in the kit.

We recognise that this is similar to the corresponding sections within the Part 121 draft documents. However, in contrast, the Part 121 AMC provides a list of what may be included in the first aid kit whilst the Part 135 AMC does not. See GM 121.615 (Procedures relating to first-aid kits) and Table 4 of GM 135.685 (Emergency and survival equipment) for more on this difference. AusALPA believes that there shouldn't be a difference in the guidance provided within these two AMCs.

Automatic Pilot Systems and Improved Safety Mitigators

AusALPA notes that there are proposed changes to autopilot fitment and serviceability requirements for Part 135 operations. We recognise these changes as improvements and strongly support the proposed updates to the associated regulations. In particular, we strongly support the context of CASR 135.560 and support the non-inclusion of paragraph CAO 20.18 4.1C (b).

The charter accident rate in smaller single pilot aircraft is recognised to be higher than in other aircraft operations. Generally, the flight crew operating these services are less experienced and less supported by organisational structures and systems than is the case for operations where more experienced flight crew are operating. Single pilot operations are often higher workload operations too. AusALPA agrees with CASA's initiative to reduce opportunities for riskier flight by limiting autopilot inoperative operations to VMC by day only.

AusALPA also supports the removal of the above mentioned CAO paragraph on the grounds that pilot discretion can be highly problematic. We recognise that too often this pilot discretion is known and used by the operator with 'assertive suggestion' to flight crew (especially less experienced flight crew) citing that because it is possible under the regulation to do it, then it is 'ok to go'.

It should be noted that there is much within the regulations that we support but have not deemed it necessary to provide specific comment. However, this provision is a worthy exception. Similarly, we believe it is important to recognise the proposed changes related to:

- TAWS (Traffic Awareness and Warning Systems)
- Modified requirements for the fitment of airborne weather radar equipment
- Training and checking requirements for all crew.

PART 119 REGULATIONS COMMENTS

Definition of Australian Air Transport Operation

We note that CASR 119.010 (1) (d) (iii) refers to flights conducted by a foreign operator within Australia that are “not undertaken as part of a flight into or out of Australian territory”. Our questions are, when does a so-called ‘tag’ flight stop being part of an international flight and become a domestic flight? And, who decides - CASA or DIRDC?

Definitions for Part 119 - Officer

AusALPA notes that both sub-paras of CASR 119.030 use the term “executive officer”. However, the definition of “executive officer” in the Corporations Act was repealed in Act No 103 of 2004 and replaced by the “officer” definition. The CASR 119.003 definition certainly does not reflect the current Corporations Act definition, thus we believe it to be essential that CASA clarifies to whom does they intend this to apply?

Definitions for Part 119 - Significant Change

Given the existence of the definition in CASR 119.025, AusALPA finds the CASR 119.030 reference to be an unnecessary provision.

Australian Air Transport AOC Required

With reference to CASR 119.060, AusALPA is unsure why this is only a 50 PU offence in comparison with the s20AA and 20AB offences under the Civil Aviation Act 1988?

AOC Conditions for Issue - Fit and Proper Test

CASR 119.080(1)(d) extends the “fit and proper” test to “each officer of the corporation”. AusALPA finds it unclear what the test is that CASA applies, how far down the organisation’s tree does “each officer” reach and how does this juxtapose with the requirements of officers under the Corporations Law?

Conditions of an Australian air transport AOC

CASR 119.090(1)(c) makes it a condition that “each of the positions of the operator’s key personnel must be filled”. AusALPA is curious as to how this is intended to play out in real life. Nonetheless, CASR 119.100 (3) allows an unapproved person to be permanently appointed to a vacant key position without CASA approval being requested for a further 3 days. We are immediately curious as to what authority can that unapproved person exercise and how valid are their decisions, as well as to how long that this situation might persist.

Part 119 Consultation – Absence of a TWG and a MOS

AusALPA believes that the current consultation process for Part 119 to be somewhat deficient. Part 119 was “consulted” as an add-on to Part 135 and other flight operations Parts. In all cases, AusALPA understands that there was insufficient time, both in preparation and during the TWGs, to properly consider Part 119. We are aware

that the Part 121/119 TWG process unequivocally identified that Part 119 was not ready for public consultation and that considerable further work was necessary. The report of the Part 121 TWG to the ASAP is potentially misleading in that Part 119 was only briefly and incompletely examined. The collective expectation of the 121 TWG was that Part 119 needed to have another TWG to properly complete the process and a dedicated TWG for Part 119 is a position that AusALPA supports as appropriate. This would allow for a more thorough review and discussion than what is the current process for reviewing Part 119.

AusALPA believes that the citing of historic consultations to Part 119 in the summary of proposed changes is a misleading inference to support that Part 119 is being adequately consulted. When it is properly considered that alterations and additions have been made to Part 119 since those consultations, for example the CASRs relating to the FDAP changes, then this inference becomes questionable.

Additionally, a Manual of Standards (MOS) for Part 119 is currently not in existence, in spite of the draft Part 119 regulations providing references to a 119 MOS. This fact also provides weight to the position that Part 119 is being prematurely consulted.

We propose that there be a TWG convened for the review of Part 119 (and the 119 MOS). This would allow for a meaningful consultation on the Part, instead of the current partial consultation with industry. It would make most sense for a Part 119 TWG to be convened after the public consultation for Parts 121, 133 and 135 has been collated and discussed in TWGs for these Parts.

Safety Management Systems (SMS)

AusALPA notes that in the proposed changes for Part 119, provided by CASA in the CD, outlines 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 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, AusALPA 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.

AusALPA 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.

Head of Flying Operations - Qualifications and Experience

CASR 119.145(6)(b) provides an option for an “assessment in an aeroplane, rotorcraft or flight simulation training device”. AusALPA is curious about what specific management qualities CASA plans to assess and to what objective standard.

Key Personnel - Additional Qualification and Experience Requirements

AusALPA notes that CASR 119.175(2) provides an opportunity for CASA to “direct that any of the key personnel of the applicant or operator must have stated additional qualifications or experience to those otherwise required under this Subpart”.

We find this whole regulation to be problematic, particularly for a regulator who uses “in the interests of aviation safety” as a convenient reason for activities that have far more repressive and punitive characteristics than preserving the safety status quo. If the standing requirements are sensible and appropriate, why is it necessary to create extra avenues for further requirements and what additional requirements should CASA be reasonably contemplating?

Furthermore, given that the CASRs are disallowable instruments, will these written notices exceeding the standing requirements also be disallowable instruments? Will they be reviewable under CASR 201.004? We believe that CASR 119.175 creates more questions than it resolves.

Familiarisation Training for Key Personnel

CASR 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 regulation should also specify the requirements for this training. Such training should include HF/NTS awareness training (similar to that found in Division 119 E.2) and to SMS induction training (of the nature referred to in CASR 119.220(3)(f) for these key personnel. The SMS training should include components of fatigue management awareness training.

As outlined in the Part 119 summary of changes, AusALPA understands that the draft 119 Part will introduce some relaxation of requirements associated with key personnel qualifications, experience and responsibilities for the CEO, the Head of Flying Operations, the Head of Training and Checking, and the Safety manager”. We believe that in isolation, the relaxation of these requirements is unacceptable. However, when paired with an increased obligation for an operator’s key personnel to undertake specific SMS, HF/NTS and fatigue management awareness training, there could be an acceptable means created to offset this degradation of the key personnel’s required aviation expertise and qualifications.

AusALPA 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, are cognisant of the essentials of HF/NTS training and understand the essentials of fatigue management.

Operator to Conduct Checking for Flight Crew

It is not clear to AusALPA what specific purpose CASR 119.195 serves or why training has been deleted from the application of the regulation.

Safety Management Systems - Flight Data Analysis Program (FDAP) Protections

AusALPA recognises that CASR 119.220(7) and (8), as well as CASR 119.225, introduce approaches to FDAP that are inconsistent with the current framework under Part 82 of the CAOs. A lack of targeted stakeholder engagement meant that we were not aware of the July 2012 consultation (simply titled NPRM 0903OS) and consequently did not participate, but we do not believe that the existence of that consultation changes the current situation. In any event, AusALPA unreservedly rejects those changes.

We have separately engaged with the Director of Aviation Safety and the Executive Manager Legal & Regulatory Affairs and noted that the proposed regulations are unacceptable to us. We state the following:

Conclusions

It appears that CASA intends to subvert a multi-partisan safety-related process in order to create a workplace surveillance scheme which will be totally rejected by the pilot community.

Without substantial review by CASA and relevant stakeholders of the objectives and appropriate balances in safety data collection, particularly in regard to transparency and review provisions, the current proposals will severely damage the level of trust upon which our safety data collection systems rely.

Recommendations

Part 119 should be consulted separately in its own right, as has been the case for the other Parts, and the agreed TWG should be held prior to any further public consultation and certainly before the regulations are made.

The proposed CASRs 119.220 and 119.225 must be withdrawn and not replaced until review and adequate consultation has occurred and suitable alternative provisions have been agreed upon.

In preparation for the implementation of Amendment 40-B to Annex 6 Part 1 Edition 10 and Edition 2 of Annex 19 on 07 November 2019, AusALPA is most willing to assist in the development of more appropriate means of identifying and resolving violations while providing balanced constraints on the behaviour of all stakeholders in safety data collection and utilisation.

Compliance with Exposition by an Operator - and Others

Given that Part 119 is applicable for all persons operating within an organisation, not just AOC holders, AusALPA finds CASR 119.280 limited in scope. It is not clear to us why there is only a provision for the operator. We believe that a more generalised provision, such as that found in CASR 121.035, would be more fitting, since this currently proposed provision would appear to make it an offence to not meet a non-safety related requirement in the exposition.

Flight Crew Licences and Medical Certificates vs Competency to Perform Tasks

AusALPA recognises the valid reasons for CASR 119.300. However, this led us to consider what might be the greater benefit to aviation safety. Having a copy of the licences and medicals is important but, in the greater and practical scheme of things, is this the most important focus for an operator or is it more properly on taking all reasonable steps to ensure that a person is qualified to conduct a task assigned to them by the operator? AusALPA has been unable to locate a regulation that addresses this latter issue within the draft Part 119 - there are other provisions scattered throughout the operational parts, but we consider that to be a more piecemeal option than a single provision in Part 119 and/or in Part 91. Perhaps a cross-reference to CASR 119.320 may assist, although not as a direct substitute for a specific duty.

Retention Periods for Personnel Records

With a mindfulness of consistency with our other submission comments in relation to cosmic radiation exposure, we provide that CASR 119.305 also address the retention of records for radiation dose. In the broader picture of radiation dose records for flights above 26000ft, which exceed 1 mSV per year, AusALPA urges CASA to adopt this approach:

Radiation Dose Records

- Operators should produce individual annual dosage records to which air crew members should have regular access on a permanent basis.
- To allow a better comparison with cancer statistics and facilitate epidemiological studies in the future, dose and medical records should be kept until the greater of:
 - the crew member reaches or would have reached the age of 75, or
 - at least 30 years after retiring from flying.
- In order to provide appropriate protection for individual dosage records, they should be stored in national radiation registers rather than in company records.

Maximum period for use of foreign registered aircraft in Australian territory

CASR 119.325(1) uses the phrase "in any 12 month period". We recognise that the phrase "any consecutive 12 month period" was the style used in the fatigue rules SIEs and this has generally worked well to ensure that the 12 month period both looked forward and back. However, it may be the case that with the provision of suitable guidance material, any doubt should be removed.

CONCLUDING REMARKS

AusALPA recognises that considerable progress has been made toward finalising Part 135.

However, there remain some contentious issues and we are cautious about how much traction the TWG feedback has gained in refining these operational parts.

We remain concerned that the structural design of the MOS is counter-intuitive and unnecessarily detrimental to improving the essential self-education of various stakeholders. We have highlighted the need for CASA to ensure that it is abundantly

clear whether a Part 91 or Part 91 MOS process is the default process or whether it is superseded by a provision in another Part. Currently, it is most difficult to clearly determine CASA's intentions in those situations, notwithstanding the issues of drafting style. AusALPA believes that the uncertainty can only have an adverse effect on compliance and understanding as well.

Yours sincerely,




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