

ATTACHMENTS

to the
**Civil Aviation Safety Authority's Submission to the
Senate Standing Committee on Rural Affairs and Transport**

Rural Affairs and Transport References Committee

***Pilot training and airline safety including consideration of the Transport
Safety Investigation Amendment (Incident Reports) Bill 2010***

Attachment A	<i>Civil Aviation Regulations 1988, Division 8—Commercial pilot (aeroplane) licence</i>
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Division 8 Commercial pilot (aeroplane) licence

5.103 Interpretation

In this Division:

commercial flying school means a school for which there is an Air Operator's Certificate that authorises flying training for the issue of a commercial pilot (aeroplane) licence.

commercially trained person means a person who has successfully completed a training course conducted by a commercial flying school in accordance with the relevant aeroplane syllabus.

Note 1 The following terms used in this Division are defined in regulation 2:

aeroplane flight review	chief flying instructor	instrument ground time
aeroplane pilot licence	cross-country flight time	overseas pilot licence
aeroplane pilot rating	flight crew rating	recognised aeroplane
aeroplane proficiency check	flight test	registered
air law examination	flight time	responsible authority
approved testing officer	flying school	syllabus
CASA flying operations inspector	flying training	synthetic flight trainer
	instrument flight time	theory examination.

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Note 2 The following terms used in this Division are defined in subregulation 5.01 (1):

aeroplane conversion training	multi-pilot aeroplane single pilot aeroplane	special design feature endorsement
aircraft endorsement class endorsement	single place aeroplane special design feature	type type endorsement.

Note 3 The term *pilot acting in command under supervision* is defined in subregulation 5.01 (3).

5.104 What are the qualifications for a commercial pilot (aeroplane) licence?

- (1) For the purposes of subregulation 5.09 (1), a person is qualified to hold a commercial pilot (aeroplane) licence if the person:
 - (a) is at least 18 years old; and
 - (b) holds, or is qualified to hold, a radiotelephone operator licence; and
 - (c) has been awarded a pass in a commercial pilot (aeroplane) licence theory examination; and
 - (d) has been awarded a pass in a commercial pilot (aeroplane) licence flight test; and
 - (e) meets the standards set out in the aeroplane syllabus that are relevant to the commercial pilot (aeroplane) licence; and
 - (f) meets the aeronautical experience requirements set out in:
 - (i) if the person is a commercially trained person — regulation 5.111; or
 - (ii) if the person is not a commercially trained person — regulation 5.113, 5.114 or 5.115.
- (2) In spite of subregulation (1), a person is qualified to hold a commercial pilot (aeroplane) licence if the person:
 - (a) satisfies the requirements of paragraphs (1) (a) and (b) and subparagraph (1) (f) (ii); and
 - (b) holds, or has held, a pilot qualification:
 - (i) that CASA is satisfied is at least equivalent to a commercial pilot (aeroplane) licence; and
 - (ii) that was issued by the Defence Force of Australia.

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- (3) In spite of subregulation (1), a person is qualified to hold a commercial pilot (aeroplane) licence if:
- (a) the person:
 - (i) holds, or has held, an overseas pilot licence that is at least equivalent to the commercial pilot (aeroplane) licence; and
 - (ii) satisfies the requirements of paragraphs (1) (a), (b) and (d) and subparagraph (1) (f) (ii); and
 - (iii) has been awarded a pass in a commercial pilot (aeroplane) licence overseas conversion examination; or
 - (b) the person:
 - (i) holds a current overseas pilot licence that is at least equivalent to the commercial pilot (aeroplane) licence; and
 - (ii) satisfies the requirements of paragraphs (1) (a) and (b) and subparagraph (1) (f) (ii); and
 - (iii) is employed by, or is working under an arrangement with, an operator to whom regulation 217 applies; and
 - (iv) has satisfactorily completed an aeroplane proficiency check required by regulation 217; and
 - (v) has been awarded a pass in a commercial pilot (aeroplane) licence overseas conversion examination.
- (4) In spite of subregulation (1), a person is qualified to hold a commercial pilot (aeroplane) licence if, under regulation 5.165, the person is qualified to hold an air transport pilot (aeroplane) licence.
- (4A) Despite subregulation (1), a person is qualified to hold a commercial pilot (aeroplane) licence if the person:
- (a) is qualified, under regulation 5.207, to hold a multi-crew pilot (aeroplane) licence; and
 - (b) satisfies the requirements of paragraphs (1) (d) and (e); and
 - (c) meets the aeronautical experience requirements set out in regulation 5.116A.

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- (5) For the purposes of subparagraph (3) (b) (iv), a person is not taken to have satisfactorily completed an aeroplane proficiency check unless the operator who employs, or arranges the work of, the person gives CASA written notice that the person has satisfactorily completed the check.
- (6) For the purposes of this regulation, an overseas pilot licence is equivalent to a commercial pilot (aeroplane) licence if it authorises the holder of the licence to fly aeroplanes as pilot in command in commercial operations.

5.105 What does a commercial pilot (aeroplane) licence authorise a person to do?

- (1) A commercial pilot (aeroplane) licence authorises the holder of the licence:
 - (a) to fly a single pilot aeroplane as pilot in command while the aeroplane is engaged in any operation; and
 - (b) to fly a multi-pilot aeroplane as pilot in command while the aeroplane is engaged in any operation other than a charter operation, or a regular public transport operation; and
 - (c) to fly an aeroplane as co-pilot while the aeroplane is engaged in any operation.
- (2) The authority given by subregulation (1) is subject to the limitations set out in regulations 5.106, 5.107, 5.108, 5.109 and 5.110.

5.106 What kind of aeroplane may a commercial (aeroplane) pilot fly?

- (1) Subject to subregulation (2), a commercial pilot (aeroplane) licence does not authorise the holder of the licence to fly an aeroplane as pilot in command, or co-pilot, unless the holder also holds:
 - (a) a type endorsement or class endorsement; and
 - (b) if the aeroplane has a special design feature — a special design feature endorsement;that authorises the holder to fly the aeroplane in that capacity.

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- (2) A commercial pilot (aeroplane) licence authorises the holder of the licence to fly an aeroplane without holding an aircraft endorsement for the aeroplane:
- (a) in dual flying — for the purpose of satisfying the requirements for the issue of an aircraft endorsement for the aeroplane; or
 - (b) in any capacity — for the purpose of:
 - (i) testing the aeroplane; or
 - (ii) carrying out an experiment in relation to the aeroplane;if CASA has given the holder permission under subregulation 5.50 (1) to fly the aeroplane in those circumstances; or
 - (c) as pilot in command — for the purpose of satisfying the requirements for the issue of an aircraft endorsement for the aeroplane if:
 - (i) the aeroplane is a single place aeroplane; and
 - (ii) CASA has given the holder permission under subregulation 5.23 (5) to fly the aeroplane.

5.107 Commercial (aeroplane) pilot: rating required

- (1) Subject to subregulation (3), a commercial pilot (aeroplane) licence does not authorise the holder of the licence, in the course of flying an aeroplane, to carry out any activity for which a flight crew rating is required:
- (a) as pilot in command, or co-pilot — unless the holder also holds a flight crew rating, or grade of flight crew rating, that authorises him or her to carry out the activity in that capacity in the aeroplane; or
 - (b) in dual flying — unless the holder is receiving training in carrying out the activity from a person approved by CASA under regulation 5.20 to give flying training in relation to the rating, or grade of rating.
- (2) A commercial pilot (aeroplane) licence authorises the holder of the licence:

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- (a) if the holder is approved under regulation 5.21 to give aeroplane conversion training — to give the training without holding a flight instructor (aeroplane) rating:
 - (i) in an aeroplane for which the holder also holds an aircraft endorsement; and
 - (ii) to a person who holds an aeroplane pilot licence; and
- (b) if the holder is approved under regulation 5.20 to give flying training in relation to an aeroplane pilot rating — to give the training without holding a flight instructor (aeroplane) rating.

Note Under subregulation 5.01 (2), flying training is an activity for which a flight crew rating is required.

- (3) The holder of a commercial pilot (aeroplane) licence may fly as pilot in command of an aeroplane at night under the V.F.R. without holding an aeroplane grade of night V.F.R. rating, if:
 - (a) the aeroplane is flying in a traffic pattern; and
 - (b) weather conditions in the traffic pattern are such that the flight can be conducted as a V.F.R. flight; and
 - (c) an authorised flight instructor has made an entry in the holder's personal log book to the effect that the holder has met the night V.F.R. handling requirements in an aeroplane; and
 - (d) the holder has, within 90 days before the day of the flight, carried out:
 - (i) at least 3 take-offs and 3 landings at night while flying an aeroplane under the V.F.R. as pilot in command; or
 - (ii) at least 1 take-off and 1 landing at night while dual flying in an aeroplane under the V.F.R.; and
 - (e) the holder conducts the flight under the direct supervision of an authorised flight instructor; and
 - (f) there are no passengers in the aeroplane.

5.108 Commercial (aeroplane) pilot: regular flight reviews required

- (1) A commercial (aeroplane) pilot must not fly an aeroplane as pilot in command if the pilot has not, within the period of 2 years immediately before the day of the proposed flight, satisfactorily completed an aeroplane flight review.

Penalty: 50 penalty units.

Note A pilot who flies aeroplanes for an operator to whom regulation 217 applies will be required to undertake proficiency checks at more frequent intervals.

- (2) An aeroplane flight review must be conducted only by an appropriate person and, unless the person otherwise approves having regard to the circumstances of the case, must be conducted in:
- (a) an aeroplane:
- (i) of the type in which the pilot flew the greatest amount of flight time during the 10 flights the pilot undertook as pilot in command immediately before the flight review; and
 - (ii) unless the type of aeroplane mentioned in subparagraph (i) is a single place aeroplane — that is fitted with fully functioning dual controls; and
 - (iii) unless the type of aeroplane mentioned in subparagraph (i) is a single place aeroplane or is not fitted with wheel brakes — that is fitted with dual control brakes; or
- (b) an approved synthetic flight trainer appropriate to the type of aeroplane mentioned in subparagraph (a) (i).

Note For *appropriate person* see subregulation (8).

- (3) If:
- (a) a commercial (aeroplane) pilot undertakes an aeroplane flight review; and
 - (b) the requirements of subregulation (2) are not satisfied in relation to the review;
- the pilot is taken not to have satisfactorily completed the review.

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- (4) If a commercial (aeroplane) pilot satisfactorily completes an aeroplane flight review, the person conducting the review must make an entry in the pilot's personal log book to the effect that the pilot has satisfactorily completed the aeroplane flight review.

Penalty: 10 penalty units.

- (4A) An offence against subregulation (1) or (4) is an offence of strict liability.

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

- (5) A commercial (aeroplane) pilot who has, within the period of 2 years immediately before the day of the proposed flight:

- (a) passed a flight test conducted for the purpose of:
 (i) the issue of an aeroplane pilot licence; or
 (ii) the issue, or renewal, of an aeroplane pilot rating; or
(b) satisfactorily completed an aeroplane proficiency check;
or
(c) satisfactorily completed aeroplane conversion training given by the holder of a grade of flight instructor (aeroplane) rating that authorises him or her to conduct aeroplane flight reviews;

is taken to have satisfactorily completed an aeroplane flight review.

Note Conversion training given by a person who does not hold a flight instructor (aeroplane) rating must not be substituted for a flight review.

- (6) For the purposes of paragraph (5) (b), a commercial (aeroplane) pilot is not taken to have satisfactorily completed an aeroplane proficiency check unless the organisation that conducted the check has made an entry in the pilot's personal log book to that effect.

- (7) CASA may approve a synthetic flight trainer for the purposes of paragraph (2) (b).

- (8) In this regulation:
appropriate person means:

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- (a) an authorised flight instructor who holds a grade of flight instructor (aeroplane) rating that authorises him or her to conduct flight reviews in aeroplanes; or
- (b) an approved testing officer; or
- (c) a CASA flying operations inspector.

5.109 Commercial (aeroplane) pilot: recent experience requirements

- (1) A commercial (aeroplane) pilot must not fly an aeroplane as pilot in command if the aeroplane is carrying any other person and the pilot has not satisfied whichever of the following requirements is applicable:
 - (a) if the proposed flight is to be undertaken in daylight — the pilot has, within the period of 90 days immediately before the day of the proposed flight:
 - (i) carried out at least 3 take-offs and 3 landings while flying an aeroplane as pilot in command or as pilot acting in command under supervision or in dual flying; or
 - (ii) satisfactorily completed an aeroplane proficiency check; or
 - (iii) passed a flight test conducted for the purpose of the issue of an aeroplane pilot licence, or the issue, or renewal, of an aeroplane pilot rating;
 - (b) if the proposed flight is to be undertaken at night — the pilot has, within the period of 90 days immediately before the day of the proposed flight:
 - (i) carried out at least 3 take-offs and 3 landings at night while flying an aeroplane as pilot in command or as pilot acting in command under supervision or in dual flying; or
 - (ii) satisfactorily completed an aeroplane proficiency check that was conducted at night; or
 - (iii) passed a flight test that was conducted at night for the purpose of the issue of an aeroplane pilot licence, or the issue, or renewal, of an aeroplane pilot rating.

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Penalty: 25 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

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

5.110 Commercial (aeroplane) pilot: requirements if over 60 years old

- (1) A commercial (aeroplane) pilot who is at least 60 years old must not fly as pilot in command of an aeroplane:
- (a) that is engaged in commercial operations; and
 - (b) that is carrying passengers.

Penalty: 50 penalty units.

- (1A) An offence against subregulation (1) is an offence of strict liability.

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

- (2) Subregulation (1) does not apply to a commercial (aeroplane) pilot if:

- (a) the pilot flies an aeroplane:
 - (i) that is fitted with fully functioning dual controls; and
 - (ii) that has an operating crew that includes a qualified pilot who is not the pilot in command; or
- (b) in the case of a pilot who is less than 65 years old — within the period of 1 year immediately before the day of the proposed flight the pilot has satisfactorily completed an aeroplane proficiency check or an aeroplane flight review; or
- (c) in the case of a pilot who is at least 65 years old — within the period of 6 months immediately before the day of the proposed flight the pilot has satisfactorily completed an aeroplane proficiency check or an aeroplane flight review.

- (3) In this regulation:

qualified pilot means a commercial (aeroplane) pilot or an air transport (aeroplane) pilot who:

- (a) holds a command endorsement for the aeroplane; and

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- (b) if an activity for which a flight crew rating is required is to be carried out during the flight — holds a flight crew rating, or grade of flight crew rating, that authorises him or her to carry out the activity as pilot in command of the aeroplane; and
- (c) either:
 - (i) is less than 60 years old; or
 - (ii) satisfies the requirements of paragraph (2) (b) or (c).

Note The activities for which a flight crew rating is required are set out in subregulation 5.01 (2).

5.111 Aeronautical experience: commercially trained persons

- (1) For the purposes of subparagraph 5.104 (1) (f) (i), a commercially trained person's aeronautical experience must consist of at least 150 hours of flight time flown as a pilot during the person's training course.
- (2) For the purposes of subregulation (1), the 150 hours must be flown in a registered aeroplane and must include:
 - (a) 70 hours of flight time as pilot in command; and
 - (b) 20 hours of cross-country flight time as pilot in command; and
 - (c) 10 hours of instrument flight time.
- (3) For the purposes of subregulation (2), the same flight time may be counted towards as many of paragraphs (a), (b) and (c) as describe the flight time.

5.112 Commercially trained persons: time spent in synthetic flight trainer

- (1) A period of 10 hours or less spent by a commercially trained person practising simulated flight in an approved synthetic flight trainer may be treated as if it were part of the 150 hours mentioned in subregulation 5.111 (1).
- (2) The period in an approved synthetic flight trainer must not be treated as if it were part of any of the periods mentioned in paragraphs 5.111 (2) (a) and (b).

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- (3) If the period in an approved synthetic flight trainer includes instrument ground time, that time may be treated as part of the 10 hours of instrument flight time required by paragraph 5.111 (2) (c), but not more than 5 hours of instrument ground time may be treated in that way.
- (4) CASA may approve a synthetic flight trainer for the purposes of this regulation.

5.113 Aeronautical experience: commercial (helicopter) pilots and air transport (helicopter) pilots

- (1) For the purposes of subparagraph 5.104 (1) (f) (ii), the aeronautical experience of a person who is not a commercially trained person but who holds a commercial pilot (helicopter) licence or an air transport pilot (helicopter) licence must consist of:
 - (a) at least 60 hours of flight time as a pilot of a registered aeroplane, or a recognised aeroplane; and
 - (b) at least 10 hours of cross-country flight time as pilot in command of a registered aeroplane, or a recognised aeroplane; and
 - (c) at least 10 hours of instrument flight time in a registered aeroplane, or a recognised aeroplane.
- (2) For the purposes of subregulation (1), the same flight time may be counted towards as many of paragraphs (1) (a), (b) and (c) as describe the flight time.
- (3) If a person complies with subregulation (1) by flying a total flight time of less than 200 hours, the person's aeronautical experience for the purposes of subparagraph 5.104 (1) (f) (ii) must include a period of additional flight time equal to the difference between 200 hours and that total flight time.
- (4) In this regulation:

additional flight time means recognised flight time as a pilot of any 1 or more of the following:

 - (a) a registered aeroplane;
 - (b) a recognised aeroplane;
 - (c) a helicopter;

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- (d) a gyroplane;
- (e) a glider (other than a hang glider).

5.114 Aeronautical experience: private (helicopter) pilots

- (1) For the purposes of subparagraph 5.104 (1) (f) (ii), the aeronautical experience of a person who is not a commercially trained person but who holds a private pilot (helicopter) licence must consist of:
 - (a) at least 80 hours of flight time as a pilot of a registered aeroplane, or a recognised aeroplane; and
 - (b) at least 15 hours of cross-country flight time as pilot in command of a registered aeroplane, or a recognised aeroplane; and
 - (c) at least 10 hours of instrument flight time in a registered aeroplane, or a recognised aeroplane.
- (2) For the purposes of subregulation (1), the same flight time may be counted towards as many of paragraphs (1) (a), (b) and (c) as describe the flight time.
- (3) If a person complies with subregulation (1) by flying a total flight time of less than 200 hours, the person's aeronautical experience for the purposes of subparagraph 5.104 (1) (f) (ii) must include a period of additional flight time equal to the difference between 200 hours and that total flight time.
- (4) In this regulation:
 - additional flight time* means recognised flight time as a pilot of any 1 or more of the following:
 - (a) a registered aeroplane;
 - (b) a recognised aeroplane;
 - (c) a helicopter;
 - (d) a gyroplane;
 - (e) a glider (other than a hang glider).

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**5.115 Aeronautical experience for subparagraph
5.104 (1) (f) (ii): persons other than helicopter pilots**

- (1) For the purposes of subparagraph 5.104 (1) (f) (ii), the aeronautical experience of a person who is not covered by regulation 5.113 or 5.114 must consist of:
 - (a) at least 100 hours as pilot in command; and
 - (b) at least 100 hours of flight time in a registered aeroplane, or a recognised aeroplane; and
 - (c) at least 20 hours of cross-country flight time as pilot in command of a registered aeroplane, or a recognised aeroplane; and
 - (d) at least 10 hours of instrument flight time in a registered aeroplane, or a recognised aeroplane.
- (2) For the purposes of subregulation (1), the same flight time may be counted towards as many of paragraphs (1) (a), (b), (c) and (d) as describe the flight time.
- (3) If a person complies with subregulation (1) by flying a total flight time of less than 200 hours, the person's aeronautical experience for the purposes of subparagraph 5.104 (1) (f) (ii) must include a period of additional flight time equal to the difference between 200 hours and that total flight time.
- (4) In this regulation:

additional flight time means recognised flight time as a pilot of any 1 or more of the following:

 - (a) a registered aeroplane;
 - (b) a recognised aeroplane;
 - (c) a helicopter;
 - (d) a gyroplane;
 - (e) a glider (other than a hang glider).

5.116 Time spent in synthetic flight trainer for regulations 5.113, 5.114 and 5.115

- (1) A period of 10 hours or less spent by a person, who is not a commercially trained person, practising simulated flight in an approved synthetic flight trainer may be treated as if it were part of the additional flight time mentioned in subregulations 5.113 (3), 5.114 (3) and 5.115 (3).
- (2) If the period in an approved synthetic flight trainer includes instrument ground time, that time may be treated as part of the 10 hours of instrument flight time required by paragraphs 5.113 (1) (c), 5.114 (1) (c) and 5.115 (1) (d), but not more than 5 hours of instrument ground time may be treated in that way.
- (3) If a period of instrument ground time is treated as part of the 10 hours of instrument flight time required by paragraph 5.113 (1) (c), 5.114 (1) (c), or 5.115 (1) (d), that period must not be treated as part of the additional flight time mentioned in subregulations 5.113 (3), 5.114 (3) and 5.115 (3).
- (4) CASA may approve a synthetic flight trainer for the purposes of this regulation.

5.116A Aeronautical experience: persons qualified to hold multi-crew pilot (aeroplane) licence

- (1) For paragraph 5.104 (4A) (c), a person's aeronautical experience must consist of at least 150 hours of flight time flown as a pilot.
- (2) For subregulation (1), the 150 hours of flight time must:
 - (a) be flown in a registered aeroplane; and
 - (b) include:
 - (i) 70 hours of flight time as pilot in command; and
 - (ii) 20 hours of cross-country flight time as pilot in command; and
 - (iii) 10 hours of instrument flight time.
- (3) For subregulation (2), the same flight time may be counted towards as many of subparagraphs (2) (b) (i), (ii) and (iii) as describe the flight time.

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5.117 Cross-country flight time

- (1) For paragraphs 5.111 (2) (b), 5.113 (1) (b), 5.114 (1) (b) and 5.115 (1) (c) and subparagraph 5.116A (2) (b) (ii), the cross-country flight time must include a flight of at least 300 miles that includes:
 - (a) at least 1 full stop landing at; and
 - (b) at least 1 take-off from;
each of 2 or more aerodromes that are not the aerodrome from which the flight commenced.
- (2) For the purposes of this regulation, a landing is a full stop landing if, after landing, the aeroplane's speed is reduced to taxi speed before take-off begins.

5.118 Aeronautical experience: calculation of flight time

Each period of flight time flown by a person as a pilot, but not flown:

- (a) as pilot in command; or
- (b) as pilot acting in command under supervision; or
- (c) in dual flying;

must be halved in calculating the person's flight time for the purposes of regulations 5.111, 5.113, 5.114, 5.115 and 5.116A.

Note Under regulation 5.40, a person must not fly as pilot acting in command under supervision unless he or she holds a commercial pilot licence, an air transport pilot licence or a multi-crew pilot (aeroplane) licence.

5.119 How and when may a commercial pilot (aeroplane) licence flight test be attempted?

- (1) A commercial pilot (aeroplane) licence flight test must be conducted only by an approved testing officer or a CASA flying operations inspector in an aeroplane:
 - (a) for which the person attempting the test holds an aircraft endorsement; and
 - (b) that is fitted with:
 - (i) fully functioning dual controls; and

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- (ii) an electronic system for communication between the person conducting the test and the person attempting the test that is serviceable when the test begins; and
 - (iii) dual control brakes; and
 - (iv) if the aeroplane has a propeller — a constant speed propeller; and
- (c) that has a cruise speed of at least 120 knots true air speed when the aeroplane's engines are set at a recommended cruise power specified in the flight manual, or pilot's operating handbook, for the aeroplane; and
- (d) that has a suitable means of simulating instrument flight conditions.

- (2) An approved testing officer, or a CASA flying operations inspector, must not conduct a commercial pilot (aeroplane) licence flight test if the person attempting the test has not been recommended for the test by the chief flying instructor of the flying school where the person attempts the test.

Penalty: 25 penalty units.

- (3) A chief flying instructor must not recommend a person for a commercial pilot (aeroplane) flight test unless subregulation (3AA) or (3AB) applies to the person.

Penalty: 25 penalty units.

- (3AA) This subregulation applies to a person who:

- (a) satisfies the requirements of paragraphs 5.104 (1) (b), (c), (e) and (f); and
- (b) is at least 16.

Note Under paragraph 5.104 (1) (a) a person must be at least 18 to qualify for a commercial pilot (aeroplane) licence.

- (3AB) This subregulation applies to a person who:

- (a) is qualified, under regulation 5.207, to hold a multi-crew pilot (aeroplane) licence; and
- (b) satisfies the requirements of paragraph 5.104 (1) (e); and
- (c) meets the aeronautical experience requirements set out in regulation 5.116A.

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- (3A) An offence against subregulation (2) or (3) is an offence of strict liability.

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

- (4) If:
- (a) a person attempts a commercial pilot (aeroplane) licence flight test; and
 - (b) the requirements of subregulations (1), (2) and (3) are not satisfied in relation to the attempt;
- the person is taken not to have been awarded a pass in the test.

Division 9 Commercial pilot (helicopter) licence

Note 1 The following terms used in this Division are defined in regulation 2:

air law examination	flying school	overseas pilot licence
approved testing officer	flying training	personal log book
CASA flying operations inspector	general flight time	responsible authority
cross-country flight time	helicopter flight review	syllabus
dual flying	helicopter pilot licence	synthetic flight trainer
flight test	helicopter pilot rating	theory examination.
flight time	helicopter proficiency check	

Note 2 The following terms used in this Division are defined in subregulation 5.01 (1):

aircraft endorsement	multi-pilot helicopter	type.
command endorsement	single pilot helicopter	
helicopter conversion training	single place helicopter	

Note 3 The term *pilot acting in command under supervision* is defined in subregulation 5.01 (3).

5.120 What are the qualifications for a commercial pilot (helicopter) licence?

- (1) For the purposes of subregulation 5.09 (1) a person is qualified to hold a commercial pilot (helicopter) licence if the person:
- (a) is at least 18 years old; and

Division 13 Air transport pilot (aeroplane) licence

Note 1 The following terms used in this Division are defined in regulation 2:

aeroplane flight review	cross-country flight time	recognised aeroplane
aeroplane pilot licence	dual flying	recognised flight time
aeroplane pilot rating	flight time	registered
aeroplane proficiency check	flying training	synthetic flight trainer
air law examination	instrument flight time	theory examination.
air transport (aeroplane) pilot	instrument ground time	
	overseas pilot licence	
	personal log book	

Regulation 5.165

Note 2 The following terms used in this Division are defined in subregulation 5.01 (1):

aeroplane conversion training	single place aeroplane	type
aircraft endorsement	special design feature	type endorsement.
class endorsement	special design feature	
	endorsement	

Note 3 The term *pilot acting in command under supervision* is defined in subregulation 5.01 (3).

5.165 What are the qualifications for an air transport pilot (aeroplane) licence?

- (1) For the purposes of subregulation 5.09 (1), a person is qualified to hold an air transport pilot (aeroplane) licence if the person:
- (a) is at least 21 years old; and
 - (b) holds, or is qualified to hold, a flight radiotelephone operator licence; and
 - (c) holds a commercial pilot (aeroplane) licence; and
 - (d) holds, or has held, a command (multi-engine aeroplane) grade of instrument rating; and
 - (e) has been awarded a pass in an air transport pilot (aeroplane) licence theory examination; and
 - (f) has the aeronautical experience set out in regulation 5.172.

Note 1 Details of the flight radiotelephone operator licence are set out in Division 3 — Flight radiotelephone operator licence.

Note 2 Details of the commercial pilot (aeroplane) licence are set out in Division 8 — Commercial pilot (aeroplane) licence.

Note 3 Details of instrument ratings are set out in the Civil Aviation Orders.

- (2) In spite of subregulation (1), a person is qualified to hold an air transport pilot (aeroplane) licence if:
- (a) the person:
 - (i) holds, or has held, an overseas pilot licence that is at least equivalent to the air transport pilot (aeroplane) licence; and
 - (ii) satisfies the requirements of paragraphs (1) (a), (b), (d) and (f); and

Regulation 5.165

- (iii) has been awarded a pass in an air transport pilot (aeroplane) licence overseas conversion examination; or
- (b) the person:
 - (i) holds a current overseas pilot licence that is at least equivalent to the air transport pilot (aeroplane) licence; and
 - (ii) satisfies the requirements of paragraphs (1) (a), (b), (d) and (f); and
 - (iii) is employed by, or is working under an arrangement with, an operator to whom regulation 217 applies; and
 - (iv) has satisfactorily completed an aeroplane proficiency check required by regulation 217; and
 - (v) has been awarded a pass in an air transport pilot (aeroplane) licence overseas conversion examination; or
- (c) the person:
 - (i) holds a multi-crew pilot (aeroplane) licence; and
 - (ii) satisfies the requirements of paragraphs (1) (a), (b) and (f); and
 - (iii) satisfies the requirements for the grant of a command endorsement for a multi-pilot aeroplane; and
 - (iv) holds a command (multi-engine aeroplane) grade of instrument rating.
- (3) For the purposes of subparagraph (2) (b) (iv), a person is not taken to have satisfactorily completed an aeroplane proficiency check unless the operator who employs, or arranges the work of, the person gives CASA written notice that the person has satisfactorily completed the check.
- (4) For the purposes of this regulation, an overseas pilot licence is equivalent to an air transport pilot (aeroplane) licence if it authorises the holder of the licence to fly aeroplanes as pilot in command in air transport operations.

Regulation 5.166

- (5) CASA must ensure that an air transport pilot (aeroplane) licence issued to a person who is qualified under paragraph (2) (c) and who does not have the aeronautical experience set out in regulation 5.116A is endorsed 'not valid for single pilot operations other than private operations'.

5.166 What does an air transport pilot (aeroplane) licence authorise a person to do?

- (1) An air transport pilot (aeroplane) licence authorises the holder of the licence to fly an aeroplane as pilot in command, or co-pilot, while the aeroplane is engaged in any operation.
- (2) The authority given by subregulation (1) is subject to the limitations set out in regulations 5.167, 5.168, 5.169, 5.170 and 5.171.

5.167 What kind of aeroplane may an air transport (aeroplane) pilot fly?

- (1) Subject to subregulation (2), an air transport pilot (aeroplane) licence does not authorise the holder of the licence to fly an aeroplane as pilot in command, or co-pilot, unless the holder also holds:
- (a) a type endorsement or class endorsement; and
 - (b) if the aeroplane has a special design feature — a special design feature endorsement;
- that authorises the holder to fly the aeroplane in that capacity.
- (2) An air transport pilot (aeroplane) licence authorises the holder of the licence to fly an aeroplane without holding an aircraft endorsement for the aeroplane:
- (a) in dual flying — for the purpose of satisfying the requirements for the issue of an aircraft endorsement for the aeroplane; or
 - (b) in any capacity — for the purpose of:
 - (i) testing the aeroplane; or
 - (ii) carrying out an experiment in relation to the aeroplane;

Regulation 5.168

if CASA has given the holder permission under subregulation 5.50 (1) to fly the aeroplane in those circumstances; or

- (c) as pilot in command — for the purpose of satisfying the requirements for the issue of an aircraft endorsement for the aeroplane if:
 - (i) the aeroplane is a single place aeroplane; and
 - (ii) CASA has given the holder permission under subregulation 5.23 (5) to fly the aeroplane.

5.168 Air transport (aeroplane) pilot: rating required

- (1) Subject to subregulations (2) and (3), an air transport pilot (aeroplane) licence does not authorise the holder of the licence, in the course of flying an aeroplane, to carry out any activity for which a flight crew rating is required:
 - (a) as pilot in command, or co-pilot — unless the holder also holds a flight crew rating, or grade of flight crew rating, that authorises him or her to carry out the activity in that capacity in the aeroplane; or
 - (b) in dual flying — unless the holder is receiving training in carrying out the activity from a person approved by CASA under regulation 5.20 to give flying training in relation to the rating, or grade of rating.
- (2) An air transport pilot (aeroplane) licence authorises the holder of the licence:
 - (a) if the holder is approved under regulation 5.21 to give aeroplane conversion training — to give the training without holding a flight instructor (aeroplane) rating:
 - (i) in an aeroplane for which the holder also holds an aircraft endorsement; and
 - (ii) to a person who holds an aeroplane pilot licence; and
 - (b) if the holder is approved under regulation 5.20 to give flying training in relation to an aeroplane pilot rating — to give the training without holding a flight instructor (aeroplane) rating.

Note Under subregulation 5.01 (2), flying training is an activity for which a flight crew rating is required.

Regulation 5.169

- (3) The holder of an air transport pilot (aeroplane) licence may fly as pilot in command of an aeroplane at night under the V.F.R. without holding an aeroplane grade of night V.F.R. rating, if:
- (a) the aeroplane is flying in a traffic pattern; and
 - (b) weather conditions in the traffic pattern are such that the flight can be conducted as a V.F.R. flight; and
 - (c) an authorised flight instructor has made an entry in the holder's personal log book to the effect that the holder has met the night V.F.R. handling requirements in an aeroplane; and
 - (d) the holder has, within 90 days before the day of the flight, carried out:
 - (i) at least 3 take-offs and 3 landings at night while flying an aeroplane under the V.F.R. as pilot in command; or
 - (ii) at least 1 take-off and 1 landing at night while dual flying in an aeroplane under the V.F.R.; and
 - (e) the holder conducts the flight under the direct supervision of an authorised flight instructor; and
 - (f) there are no passengers in the aeroplane.

5.169 Air transport (aeroplane) pilot: regular flight reviews required

- (1) An air transport (aeroplane) pilot must not fly an aeroplane as pilot in command if the pilot has not, within the period of 2 years immediately before the day of the proposed flight, satisfactorily completed an aeroplane flight review.

Penalty: 50 penalty units.

Note A pilot who flies aeroplanes for an operator to whom regulation 217 applies will be required to undertake proficiency checks at more frequent intervals.

- (2) An aeroplane flight review must be conducted only by an appropriate person and, unless the person otherwise approves having regard to the circumstances of the case, must be conducted in:

Regulation 5.169

- (a) an aeroplane:
 - (i) of the type in which the pilot flew the greatest amount of flight time during the 10 flights the pilot undertook as pilot in command immediately before the flight review; and
 - (ii) unless the type of aeroplane mentioned in subparagraph (i) is a single place aeroplane — that is fitted with fully functioning dual controls; and
 - (iii) unless the type of aeroplane mentioned in subparagraph (i) is a single place aeroplane or is not fitted with wheel brakes — that is fitted with dual control brakes; or
- (b) an approved synthetic flight trainer appropriate to the type of aeroplane mentioned in subparagraph (a) (i).

Note For *appropriate person* see subregulation (8).

- (3) If:
 - (a) an air transport (aeroplane) pilot undertakes an aeroplane flight review; and
 - (b) the requirements of subregulation (2) are not satisfied in relation to the review;the pilot is taken not to have satisfactorily completed the review.
- (4) If an air transport (aeroplane) pilot satisfactorily completes an aeroplane flight review, the person conducting the review must make an entry in the pilot's personal log book to the effect that the pilot has satisfactorily completed the aeroplane flight review.

Penalty: 10 penalty units.

- (4A) An offence against subregulation (1) or (4) is an offence of strict liability.

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

- (5) An air transport (aeroplane) pilot who has, within the period of 2 years immediately before the day of the proposed flight:
 - (a) passed a flight test conducted for the purpose of:
 - (i) the issue of an aeroplane pilot licence; or

Regulation 5.170

- (ii) the issue, or renewal, of an aeroplane pilot rating; or
 - (b) satisfactorily completed an aeroplane proficiency check;
or
 - (c) satisfactorily completed aeroplane conversion training given by the holder of a grade of flight instructor (aeroplane) rating that authorises him or her to conduct aeroplane flight reviews;
- is taken to have satisfactorily completed an aeroplane flight review.

Note Conversion training given by a person who does not hold a flight instructor (aeroplane) rating must not be substituted for a flight review.

- (6) For the purposes of paragraph (5) (b), an air transport (aeroplane) pilot is not taken to have satisfactorily completed an aeroplane proficiency check unless the organisation that conducted the check has made an entry in the pilot's personal log book to that effect.
- (7) CASA may approve a synthetic flight trainer for the purposes of paragraph (2) (b).
- (8) In this regulation:
appropriate person means:
 - (a) an authorised flight instructor who holds a grade of flight instructor (aeroplane) rating that authorises him or her to conduct flight reviews in aeroplanes; or
 - (b) an approved testing officer; or
 - (c) a CASA flying operations inspector.

5.170 Air transport (aeroplane) pilot: recent experience requirements

- (1) An air transport (aeroplane) pilot must not fly an aeroplane as pilot in command if the aeroplane is carrying any other person, and the pilot has not satisfied whichever of the following requirements is applicable:
 - (a) if the proposed flight is to be undertaken in daylight — the pilot has, within the period of 90 days immediately before the day of the proposed flight:

Regulation 5.171

- (i) carried out at least 3 take-offs and 3 landings while flying an aeroplane as pilot in command or as pilot acting in command under supervision, or in dual flying; or
 - (ii) satisfactorily completed an aeroplane proficiency check; or
 - (iii) passed a flight test conducted for the purpose of the issue, or renewal, of an aeroplane pilot rating;
- (b) if the proposed flight is to be undertaken at night — the pilot has, within the period of 90 days immediately before the day of the proposed flight:
- (i) carried out at least 3 take-offs and 3 landings at night while flying an aeroplane as pilot in command or as pilot acting in command under supervision or in dual flying; or
 - (ii) satisfactorily completed an aeroplane proficiency check that was conducted at night; or
 - (iii) passed a flight test conducted at night for the purpose of the issue, or renewal, of an aeroplane pilot rating.

Penalty: 25 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

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

5.171 Air transport (aeroplane) pilot: requirements if over 60 years old

- (1) An air transport (aeroplane) pilot who is at least 60 years old must not fly as pilot in command of an aeroplane:
- (a) that is engaged in commercial operations; and
 - (b) that is carrying passengers.

Penalty: 50 penalty units.

- (1A) An offence against subregulation (1) is an offence of strict liability.

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

Regulation 5.172

- (2) Subregulation (1) does not apply to an air transport (aeroplane) pilot if:
- (a) the pilot flies an aeroplane:
 - (i) that is fitted with fully functioning dual controls; and
 - (ii) that has an operating crew that includes a qualified pilot who is not the pilot in command; or
 - (b) in the case of a pilot who is less than 65 years old — within the period of 1 year immediately before the day of the proposed flight the pilot has satisfactorily completed an aeroplane proficiency check or an aeroplane flight review; or
 - (c) in the case of a pilot who is at least 65 years old — within the period of 6 months immediately before the day of the proposed flight the pilot has satisfactorily completed an aeroplane proficiency check or an aeroplane flight review.
- (3) In this regulation:
- qualified pilot* means an air transport (aeroplane) pilot or a commercial (aeroplane) pilot who:
- (a) holds a command endorsement for the aeroplane; and
 - (b) if an activity for which a flight crew rating is required is to be carried out during the flight — holds a flight crew rating, or grade of flight crew rating, that authorises him or her to carry out the activity as pilot in command of the aeroplane; and
 - (c) either:
 - (i) is less than 60 years old; or
 - (ii) satisfies the requirements of paragraph (2) (b) or (c).

Note The activities for which a flight crew rating is required are set out in subregulation 5.01 (2).

5.172 Aeronautical experience: minimum requirements

- (1) For the purposes of paragraph 5.165 (1) (f), a person's aeronautical experience must consist of at least 1,500 hours of flight time that includes 750 hours as pilot of a registered aeroplane, or a recognised aeroplane.
- (2) The 750 hours must include:

Regulation 5.173

- (a) any of the following:
 - (i) at least 250 hours of flight time as pilot in command;
 - (ii) at least 500 hours of flight time as pilot acting in command under supervision;
 - (iii) at least 250 hours of flight time, consisting of at least 70 hours of flight time as pilot in command and the balance as pilot acting in command under supervision; and
 - (b) at least 200 hours of cross-country flight time; and
 - (c) at least 75 hours of instrument flight time; and
 - (d) at least 100 hours of flight time at night as pilot in command or as co-pilot.
- (3) For the purposes of paragraph (2) (b), the cross-country flight time must include at least 100 hours as pilot in command or pilot acting in command under supervision.
- (4) The balance of the 1,500 hours of flight time must consist of any 1 or more of the following:
- (a) not more than 750 hours of flight time as pilot of a registered aeroplane, or a recognised aeroplane;
 - (b) not more than 750 hours of recognised flight time as pilot of:
 - (i) a powered aircraft; or
 - (ii) a glider (other than a hang glider);
 - (c) not more than 200 hours of flight time as a flight engineer or a flight navigator calculated in accordance with subregulation 5.173 (7) and the balance of the flight time under paragraph (a) or (b).

5.173 Aeronautical experience: calculation of flight time

- (1) For the purposes of subregulation 5.172 (2), the same flight time may be counted towards as many of paragraphs 5.172 (2) (a), (b), (c) and (d) as describe the flight time.
- (3) For the purposes of paragraph 5.172 (2) (c), not more than 30 hours of instrument ground time may be substituted for an equal amount of the 75 hours of instrument flight time.

Regulation 5.173

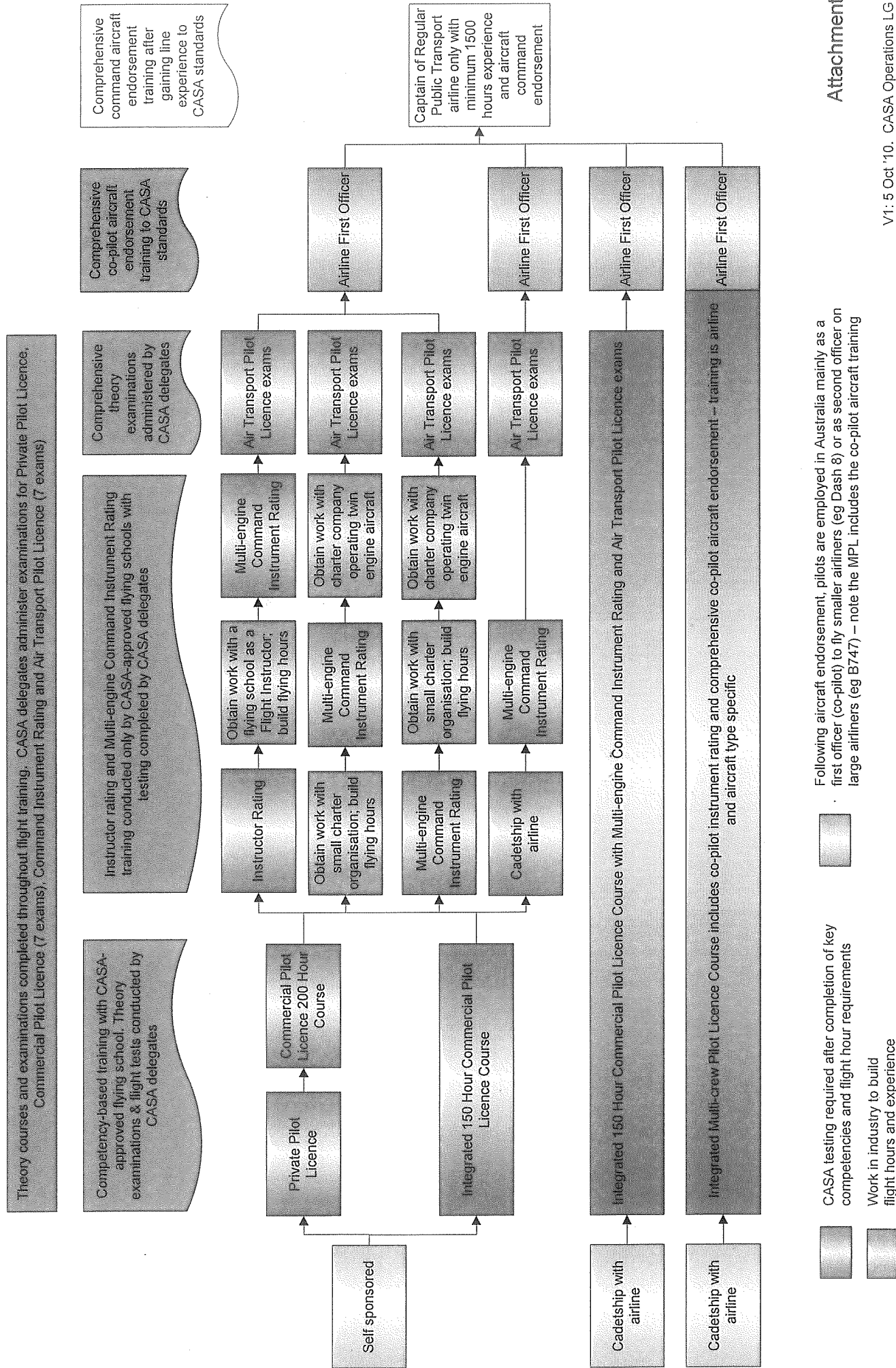
- (4) For the purposes of subregulation 5.172 (4), not more than 100 hours in an approved synthetic flight trainer may be substituted for an equal amount of the flight time required under subregulation 5.172 (4).
- (5) The 100 hours mentioned in subregulation (4) must not include more than 25 hours in a synthetic flight trainer that is not a flight simulator.
- (6) CASA may approve a synthetic flight trainer for the purposes of subregulation (4).
- (7) In calculating the hours of flight time for the purposes of paragraph 5.172 (4) (c):
- (a) each 3 hours of flight engineer time in regular public transport operations is counted as 1 hour of flight time; and
 - (b) each 4 hours of flight navigator time in regular public transport operations is counted as 1 hour of flight time.
- (8) Each period of flight time flown by a person as a pilot, but not flown:
- (a) as pilot in command; or
 - (b) as pilot acting in command under supervision; or
 - (c) in dual flying;
- must be halved in calculating the person’s flight time for the purposes of regulation 5.172.

Division 14 Air transport pilot (helicopter) licence

Note 1 The following terms used in this Division are defined in regulation 2:

air law examination	flying training	overseas pilot licence
air transport (helicopter) pilot	helicopter flight review	personal log book
	helicopter pilot licence	recognised flight time
dual flying	helicopter pilot rating	synthetic flight trainer
flight time	helicopter proficiency check	theory examination.

Typical pathways for training and experience requirements for entry into an airline



Following aircraft endorsement, pilots are employed in Australia mainly as a first officer (co-pilot) to fly smaller airliners (eg Dash 8) or as second officer on large airliners (eg B747) – note the MPL includes the co-pilot aircraft training



WORKING PAPER

**ACCIDENT INVESTIGATION AND PREVENTION (AIG)
DIVISIONAL MEETING (2008)**

Montréal, 13 to 18 October 2008

Agenda Item 1: Annex 13

1.7: Attachment E to Annex 13

ENHANCING THE SUSTAINABLE BENEFITS OF STANDARD 5.12

(Presented by Australia)

SUMMARY

This paper proposes that AIG recommend to the Commission that a Working Group be established to consider amendments to Standard 5.12 of Annex 13 with a view to enhancing its contribution to safety.

Action for the meeting is in paragraph 3.

1. INTRODUCTION

1.1 Australia has been a consistently strong supporter of the objective of Standard 5.12 and Attachment E to Annex 13 — *Aircraft Accident and Incident Investigation*, which is to ensure the availability of data and information for future safety. In achieving this objective, Australia agrees with the statement in paragraph 2.3 of Attachment E that national laws and regulations protecting safety information should ensure that a balance is struck between the need for the protection of safety information in order to improve aviation safety, and the need for the proper administration of justice.

1.2 At the same time, Australia recognises that a different balance also needs to be struck between the protection of such information for the purpose of improving aviation safety generally and over the longer-term, and the occasionally legitimate need for Annex 13 accident investigation agencies to share some safety information with relevant regulatory authorities in order to address a specific and immediate risk to air safety. On this basis, greater clarity is sought as to whether the 'proper administration of justice' includes forms of regulatory action necessary to eliminate or minimise a serious and imminent risk to safety, noting this might encompass a range of actions including, but not limited to, the variation, suspension or cancellation of a licence or operating certificate.

1.3 It may be too early to amend Attachment E. However, as submitted in Australia's 2007 Assembly paper, there are inconsistencies in the Annex and with Attachment E that require further consideration. Moreover, Standard 5.12 is couched so broadly in terms of the onus on the State, and the scope of material protected, that it risks undermining protection for really critical material such as CVR recordings, investigator interviews of operational staff, and analysis opinions. Grading the protections required in 5.12, with an emphasis on these records, could lead to a more sustainable regime for the future and greater State compliance.

1.4 Australia proposes that, after taking into account the analysis of the implementation levels of 5.12 and Attachment E to be provided at the meeting, the AIG should recommend to the Commission that a Working Group be established to review how sensitive safety information is to be protected under the framework provided by the Convention and Annex 13. Such a review could include consideration of the issues raised in paragraph 1.2 above. The Working Group should be given terms of reference to recommend revisions to the Convention and Annexes if deemed necessary.

2. DISCUSSION

2.1 Australia submitted Working Paper A36-WP/126 at the Assembly's 36th session in September 2007. Paragraphs 4.1 to 4.6 of the paper provide the reasoning for Australia's proposal that the framework for the protection of safety information needs to be properly reviewed in depth and revised. A36-WP/126 identifies obvious problems with the interpretation and workability of 5.12 and Attachment E. The Technical Commission's report to the 36th Assembly agreed that this matter should be referred to this AIG Divisional Meeting. On 9 May 2008, ICAO wrote to States seeking advice on whether Attachment E has provided any assistance with respect to the implementation of Standard 5.12. The analysis of the responses that the ICAO Secretariat receives will be beneficial for determining what needs to occur to ensure greater compliance. However, Australia expects that this analysis alone will not be sufficient for determining the full range of measures that need to be taken to improve the regime for the protection of safety information.

2.2 The letter to States asks for comment on whether Attachment E has provided States with any assistance with respect to compliance with Standard 5.12. However, asking the question assumes that Standard 5.12 is adequate and appropriate for protecting safety information in the interests of ensuring its free flow. Australia's position, as articulated in A36-WP/126, is that Standard 5.12 may not be adequate, appropriate or sufficiently clear, and that these considerations need to be examined. In examining the adequacy, appropriateness and clarity of 5.12, Australia suggests that the analysis and proposed revisions to the regime for the protection of information could be carried out effectively by a Working Group established with appropriate terms of reference for that purpose.

3. ACTION PROPOSED

3.1 Taking into account any analysis provided at the meeting of the implementation level of Standard 5.12 and Attachment E to Annex 13 the meeting is invited to:

3.1.1 Make a recommendation to the Commission that a Working Group is established to conduct a review of the regime for the protection of safety information provided by Standard 5.12. The recommendation would include charging the Working Group with proposing revisions it identifies as necessary or desirable and presenting any changes with an explanation.

3.1.2 If the meeting agrees to recommend to the Commission that a Working Group be established then the meeting also should suggest terms of reference for the Working Group. Depending on the views expressed at the meeting on any analysis provided of the implementation of Standard 5.12 and Attachment E, Australia suggests the following terms of reference:

- (a) Examine Standard 5.12 to determine whether it adequately and appropriately protects safety information in order to preserve its free-flow for safety purposes, including consideration of whether:
 - i. all the records require the same level of protection, taking into account the impact of their disclosure in blame or liability proceedings (focussing the primary protections on a subset of safety information such as CVR information, involved party interviews and investigation analysis could reduce the need for State differences and improve compliance by being more consistent with modern freedom of information laws);
 - ii. there are any other records that should be included in the Standard that require protection;
 - iii. 'inappropriate use' of safety information is adequately defined;
 - iv. the regime is too broad in requiring the State to protect information rather than requiring the State to ensure that certain organizations and individuals who collect safety information keep it confidential;
 - v. there is scope to clarify the regime in relation to making available information covered by Standard 5.12 for the purpose of enabling action to eliminate or mitigate serious and immediate risks to air safety without unacceptably compromising the free-flow of safety information.;
 - vi. there are any avoidable conflicts in the requirements of the regime;
 - vii. the administration of justice is properly balanced with the need to protect safety information, and the obligations and guidance is clear to ensure a workable and consistent approach to implementation;
 - viii. having regard to the balance referred to in sub-paragraph vii above, regulatory or administrative actions and proceedings intended specifically to eliminate or mitigate serious and immediate risks to air safety should be excluded from the concept of *inappropriate use* contemplated by sub-paragraph 1.5 c) of Attachment E to Annex 13 and Note 1 to paragraph 5.12.1 of Annex 13; and
 - ix. the regime is otherwise workable in practice; and
- (b) propose and draft amendments to the regime where the Working Group considers that it does not adequately and appropriately protect safety information.



International Civil Aviation Organization

WORKING PAPER

HLSC 2010-WP/30

15/2/10

Revised

5/3/10

HIGH LEVEL SAFETY CONFERENCE 2010

Montréal, 29 March to 1 April 2010

Theme 2: Towards the proactive management of safety

Topic 2.4: The protection of sources of safety information

INFORMATION PROTECTION FOR ACCIDENT INVESTIGATIONS

(Presented by Australia)

SUMMARY

Australia is supportive of the Secretariat's proposal (HLSC 2010-WP/7) to establish a multi-disciplinary group to review the protections of certain accident and incident records and the protections for safety data from other sources. Australia submits that with respect to the protection of accident and incident records, the review should focus on providing protections that are commensurate with the nature of the information and the purpose for which it is proposed to be disclosed.

Action: The Conference is invited to:

- a) agree that any group established in accordance with the Secretariat's proposed actions include a focus on reviewing the appropriate protections for accident and incident investigation records; and
- b) agree that the group, if established, be invited to consider the proposals in paragraphs 3.1 to 3.10 as a part of its review.

1. INTRODUCTION

1.1 In AN-WP/8356, the Secretariat stated that it supports a review of the safety information protection regime in Annex 13 and that this matter should be raised at the next ordinary meeting of the Assembly in 2010. The Secretariat's paper for this Conference HLSC 2010-WP/7 reaffirms the support for the review by inviting the Conference to agree on the establishment of a multi-disciplinary group including States and industry.

1.2 The Secretariat has proposed that the group assist ICAO to separate the protection of certain accident and incident records from the protection of safety data from other sources. At the same time, the Secretariat has proposed that the focus of the task on the protection of data from other sources should be its protection from inappropriate use by aviation organizations.

1.3 Australia supports the action items in the Secretariat's paper. To further the beneficial outcomes from this review, Australia submits that the focus of determining the protections for accident

and incident records should be on making sure that those protections are commensurate with the sensitivity of the information and adaptable to various legal systems, having regard to the particular purposes to which such information might be put. The discussion below on the way this may be achieved could also be useful when considering the appropriate protections for safety data from other sources.

2. DISCUSSION

2.1 Determining the sensitivity of information should involve considering and balancing the significance of two factors:

- a) the nature of the information; and
- b) the purpose for which it is proposed to be disclosed.

2.2 These two factors combined affect whether or not the disclosure of the information is likely to have an adverse impact on the free flow of information. The information on its own might be sensitive because of its very nature, such as Cockpit Voice Recordings (CVRs). Other information, such as a witness statement taken from a person not involved in the accident, may not, by its nature, be as sensitive as a CVR. However, it may be considered sensitive if it is proposed to disclose the person's statement for the purpose of a criminal prosecution of the flight crew.

2.3 Disclosure of accident investigation information for a criminal prosecution warrants a high level of protection. Disclosure for other purposes, however, may warrant a different approach. An example would be where it is proposed to disclose the information so that a regulatory authority can take administrative action, which may include the variation or suspension of an authorisation, in order to prevent a serious and demonstrable threat to air safety, or otherwise, to health or life. The administrative action in this context is intended to address a real and serious threat to safety, rather than seeking to achieve a punitive or disciplinary outcome.

2.4 Standard 5.12, of Annex 13, does not establish protections that are commensurate with the varying nature of accident investigation information and the purposes for which it may be disclosed. Disclosure under standard 5.12 is only allowed if the appropriate authority for the administration of justice ('**the justice authority**') determines that the need for the disclosure outweighs the adverse domestic and international impact such information may have on the investigation or any future investigation ('**the balancing test**').

2.5 While the balancing test allows flexibility in considering the nature of accident investigation information, and the purpose of its disclosure, an initial problem with the regime is that the guidance provided to facilitate implementation is deficient. Attachment E to Annex 13 explains the principles behind the need for protection, but it does not provide guidance on steps which may be taken for the effective administration of the balancing test in a variety of situations.

2.6 A second problem is that only the justice authority can administer the balancing test. This is an inappropriate burden when the disclosure may be for the purpose of preventing a serious threat to air safety.

2.7 The third problem with standard 5.12 is that it seeks to protect all the information at its source rather than only requiring the accident investigation agency to protect the information when it is in its possession. Some information, like CVR information, should continue to be protected at its source so that any person seeking access to it is subject to the same restrictions. However, other information that is

listed in standard 5.12, such as private information, potentially should not be subject to the need for the administration of the balancing test by the justice authority before its disclosure. Australia is doubtful that any State imposes a requirement on an operator to go through this process when it discloses the name of a passenger or the flight crew for the purposes of a criminal investigation.

2.8 While this is an example of where it is unreasonable to impose the standard 5.12 protection on the information at its source, it is still reasonable to expect that standard 5.12 would mandate the imposition of a requirement on the accident investigation agency to protect the information in its possession. This is in the interests of ensuring the agency's investigation is separated from blame and liability processes.

3. PROPOSAL

3.1 Having regard to the three problems identified, a suggested approach to reforming the protections for accident and incident investigation information is to seek to determine:

- a) what information should be protected by standard 5.12;
- b) what is the sensitivity of the information;
- c) whether the information should be protected at its source, or whether standard 5.12 should only require the accident investigation agency to protect the information in its possession;
- d) who should administer the balancing test;
- e) the appropriate guidance to include in Attachment E for administering the balancing test.

3.2 Once a determination is made for the purposes of paragraph 3.1 a) above about what information should be protected by standard 5.12, consideration should be given to the sensitivity of the information. The sensitivity of the information would be determined by taking account of the nature of the information in the context of the potential purposes for which it could be disclosed (refer to paragraph 2.1 of this paper). These purposes could, for example, include criminal proceedings; civil proceedings; coronial proceedings; administrative/regulatory action generally; disciplinary action; administrative/regulatory action for the purposes of preventing a serious threat to air safety or health or life; and public release.

3.3 When the sensitivity of the information has been determined, consideration can then be given to the matters in paragraphs 3.1 c), d) and e) above, which will affect the requirements for the information's disclosure in relation to each of the potential purposes.

3.4 To assist with determining what guidance material might be included in Annex 13 for the purpose of administering the balancing test, Australia proposes giving consideration to the following:

Requirement to seek the information from a source other than the accident investigation agency

3.5 The fact that there is an Annex 13 investigation being conducted does not, and should not, prevent other authorities, organisations or individuals from making their own inquiries into an accident or incident. However, where the disclosure of information would be associated with a

proceeding connected to blame, liability or drawing adverse inferences, it is more appropriate for that proceeding to seek the information from sources other than the accident investigation agency.

3.6 During the administration of the balancing test, the fact that the information is not available from any other source would not automatically mean that the information should be disclosed. There may still be sensitivities associated with the disclosure of the information that need to be taken into account.

Consent

3.7 Obtaining the consent of the person who provided the information, or who is affected by its disclosure, may be sufficient in some situations for ensuring that the disclosure does not have an adverse impact on the free-flow of information. A high threshold for the consent would be required where the consequences of the disclosure are serious, such as in civil and criminal proceedings. This would include the consent being express, voluntary and informed. By 'informed' it is meant that the person/organization providing the consent is aware of the likely consequences of providing the consent.

3.8 In some circumstances, obtaining consent from a person may be deemed problematic. This might be the case if the person is counselled to refuse consent no matter what the intended purpose of the disclosure. In these cases an alternative would be to seek the person's perspective on the disclosure and take their perspective into account in the administration of the balancing test. Taking this approach would avoid making a decision to disclose the information in direct contravention of the person's refusal to provide consent.

Notification of potential use of information

3.9 If a person is notified of the potential uses of information before the information is sought from them, then less emphasis may need to be placed on the need to obtain the person's consent, or seek their perspective, at a later time when a decision is being made to release the information from the accident investigation agency. Accident investigation agencies should bear in mind that following this procedure affords the person providing the information an element of natural justice in the investigation process. This is important if they do not intend to seek the person's consent or perspective on releasing the information for purposes other than the accident investigation.

Publication and use limitation

3.10 When information is disclosed for a purpose other than the accident investigation, consideration should be given to imposing a publication and use limitation on the information. For example, if information is disclosed to a person or organisation to prevent a serious threat to air safety, then the information should only be used for that purpose, and not communicated further, or used in a different way.

4. CONCLUSIONS

4.1 Australia is fully supportive of the action items in the Secretariat's paper HLSC 2010-WP/7. Australia submits that the additional action items proposed in this paper will complement the review proposed to be conducted of the information protection regime for accident and incident investigation records as well as information from other sources.



International Civil Aviation Organization

WORKING PAPER

A37-WP/122
TE/56
2/9/10

ASSEMBLY — 37TH SESSION

TECHNICAL COMMISSION

Agenda Item 25: Follow-up of the High-level Safety Conference (2010)
Agenda Item 27: The protection of certain accident and incident records

TERMS OF REFERENCE FOR MULTIDISCIPLINARY GROUP ON INFORMATION
PROTECTION PROVISIONS

(Presented by Australia)

EXECUTIVE SUMMARY

The High-level Safety Conference (2010) made Recommendation 2/4 that ICAO establish a multidisciplinary group to progress activities regarding the protection of safety data and safety information with the view to ensure the availability of safety information for the management of safety. The Council of ICAO has agreed to the establishment of this group, on the basis of proposed terms of reference to be presented to the Air Navigation Commission (ANC) during the 185th Session of the ANC. The purpose of this paper is to provide support to the Council's proposals in A37-WP/60 and A37-WP/66 that certain principles for the protection of safety information be taken into account when providing the multidisciplinary group with the terms of reference, and to urge that important complementary principles also be taken into account.

Action: The Assembly is invited to endorse the proposal that, in developing the terms of reference for the multidisciplinary group, the principles outlined in paragraphs 2.2 to 2.5 of this working paper are taken into account, along with those outlined in A37-WP/60 and A37-WP/66.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objectives A & D: Safety and Efficiency
<i>Financial implications:</i>	Those attributable to the cost of establishing and maintaining the multidisciplinary group.
<i>References:</i>	A37-WP/60; A37-WP/66; A37-WP/74 Doc 9935, <i>Report of the High-level Safety Conference (2010)</i> HLSC 2010-WP/7, 22, 30, 44, 58, 66, 77, 79 HLSC 2010-SD/6 Doc 9914, <i>Report of the Accident Investigation Divisional Meeting (2008)</i> AIG/08-WP/30 C-WP/13554 C-DEC 190/6 Annex 13 – <i>Aircraft Accident and Incident Investigation</i> State letter AN 12/53.1-10/56

1. INTRODUCTION

1.1 Recommendation 2/4 (a) of the High-level Safety Conference (HLSC 2010) (Montréal 29 March – 1 April) is for ICAO to establish a multidisciplinary group to progress activities regarding the protection of safety data and safety information with the view to ensure the availability of safety information for the management of safety.

1.2 The ICAO Council has agreed to this Recommendation and to the presentation of proposed terms of reference for the multidisciplinary group to the Air Navigation Commission (ANC) during its 185th Session (C-WP/13554; C-DEC 190/6). Australia proposes that the Assembly should encourage the Secretariat to present, and the ANC to establish, terms of reference for the task force that take account of the matters in paragraphs 2.2 to 2.5 below.

2. DISCUSSION

2.1 HLSC (2010) Recommendation 2/4 (c) states: when establishing the terms of reference for the group, ICAO should take into account the ideas developed in the working papers on this item and should consider:

- 1) protection of safety data in support of SSP and SMS other than those related to accidents and incidents records;
- 2) protection of certain accident and incident records; and
- 3) interactions between safety and judicial authorities and the concept of an open reporting culture.

2.2 Related to the terms above, Australia supports the Council's proposal in A37-WP/60 that draft Resolution 25/1 would form a high-level framework to guide the work of the proposed multidisciplinary task force that will address the legal, technical and operational aspects related to the sharing of safety information. Australia also supports the concepts with respect to the protection of safety information expressed in draft resolutions 27/1 and 27/2, appended to A37-WP/66, being used to guide the deliberations of the multidisciplinary group.

2.3 The draft resolutions emphasise the need for protections for information that are commensurate with the nature of the information as derived from its source. Consistent with this principle, Australia proposes that the protections should be commensurate with the purpose for which the information is proposed to be disclosed.

2.4 Further, it is suggested that the multidisciplinary group should be encouraged to liaise with representatives of other technical professions, similar to aviation, that have complex safety systems to determine whether a consistent approach can be taken to interacting with judicial and other relevant authorities.

2.5 Addressing these matters would cover the concerns raised in the papers put forward at the HLSC (2010) under topic 2.4 (HLSC 2010-WP/7; HLSC 2010-WP/22; HLSC/10-WP/30;

HLSC 2010-WP/44; HLSC 2010-WP/58; HLSC 2010-WP/66; HLSC 2010-WP/77; HLSC 2010-WP/79). It would also cover corresponding concerns raised in the papers put forward at the AIG Divisional Meeting (2008) under agenda item 1.7, having particular regard to the paper put forward by Australia (AIG/08-WP/30).

3. CONCLUSION

3.1 Australia is fully supportive of the recommendation to establish a multidisciplinary group to review information protection provisions with a view to ensure the availability of safety information for the management of safety. This objective is more likely to be achieved if the terms of reference governing the work of the multidisciplinary group clearly address relevant concerns raised at the HLSC (2010) (Doc 9935) and the AIG Divisional Meeting (2008) (Doc 9914).

— END —



International Civil Aviation Organization

WORKING PAPER

A37-WP/289
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24/9/10
(Information paper)
English only

ASSEMBLY — 37TH SESSION

TECHNICAL COMMISSION

Agenda Item 25: Follow-up of the High-level Safety Conference (2010)

Agenda Item 26: Safety management and safety data

Agenda Item 27: The protection of certain accident and incident records

SOME CAVEATS ON “JUST CULTURE”

(Presented by Australia)

EXECUTIVE SUMMARY

This paper draws attention to the need to give careful consideration to the use and application of the expression “just culture” and the importance of ensuring that useful mechanisms for encouraging the free and frank disclosure of information are balanced with the need to take critical safety-related action in particular cases.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective A (Safety — <i>Enhance global civil aviation safety</i>), having particular regard to measures 4 and 8; and Strategic Objective F (Rule of Law — <i>Strengthen law governing international civil aviation</i>), having particular regard to measure 5.
<i>References:</i>	A37-WP/60, A37-WP/66, A37-WP/122 and A37-WP/74 A36-WP/10, A36-WP/71, A36-WP/112, A36-WP/126, A36-WP/224 and A36-WP/232 Doc 9902, <i>Assembly Resolutions in Force</i> (as of 28 September 2007) Doc 9899, <i>Report of the Technical Commission of the 36th Session of the Assembly</i> Doc 9859, <i>Safety Management Manual (SMM)</i> , 2nd Ed. 2009 and 1st Ed. 2006 Doc 9935, <i>Report of the High-level Safety Conference (2010)</i> Doc 9914, <i>Report of the Accident Investigation Divisional Meeting (2008)</i> Annex 13 — <i>Aircraft Accident and Incident Investigation</i>

1. INTRODUCTION

1.1 In adopting Resolutions A36-7 — *ICAO Global Planning for Safety and Efficiency* and A36-8 — *Non-disclosure of certain accident and incident records*, the 36th Session of the Assembly was mindful of the several contributions¹ touching on the important relationship between the free and frank reporting and exchange of information related to aviation safety occurrences, the application of that information to efforts specifically calculated to enhance aviation safety, and the impediment to those efforts posed by the use of such information for what are broadly characterised as “inappropriate” purposes.²

1.2 In pertinent part, the 36th Session of the Assembly resolved to *urge* Contracting States to promote:

“[...] a just culture by creating an environment in which the reporting and sharing of information is encouraged and facilitated and in which remedial action is undertaken in a timely fashion when deficiencies are reported”³

1.3 Recognizing, in a related albeit narrower context, that “the protection of certain accident and incident records from inappropriate use is essential to ensure the continued availability of all relevant information to accident investigators in future investigations”, the 36th Session of the Assembly further resolved to urge Contracting States to:

“examine and if necessary adjust their laws, regulations and policies to protect certain accident and incident records in compliance with paragraph 5.12 of Annex 13, in order to mitigate impediments to accident and incident investigation, in consideration of the legal guidance for the protection of information from safety data collection and processing systems issued by ICAO, as set out in Attachment E to Annex 13”⁴

1.4 With particular regard to considerations of “the contribution of a just culture environment to aviation safety” in both contexts, the Technical Commission observed, in its Report to the 36th Session of the Assembly, that useful guidance could be found in Attachment E to Annex 13 — *Aircraft Accident and Incident Investigation* and the then-current edition of the *ICAO Safety Management Manual (SMM)* (Doc 9859). Acknowledging the manifest deficiencies in the latter and the possible need for improvements to the former, however, the Technical Commission commended consideration of Attachment E to Annex 13 to the Accident Investigation and Prevention (AIG) Division Meeting in 2008, and stressed the need to update and improve the guidance provided in the *SMM*.⁵

1.5 The AIG/2008 considered and reported at some length on issues germane to the concept of a “just culture”, making specific recommendations to ICAO on the need to constitute “an appropriate group of experts” to assist ICAO in a review of paragraph 5.12 and Attachment E to Annex 13.⁶ Related issues were considered by the High-level Safety Conference (HLSC) convened by ICAO in

¹ See Working Papers A36-WP/10, A36-WP/71, A36-WP/112, A36-WP/126, A36-WP/224 and A36-WP/232.

² See *Report of the Technical Commission to the 36th Session of the Assembly* (Doc 9899, A36-TE), pp. 12-15 and 17-21.

³ Assembly Resolution A36-7, Appendix A, para 4 c) (Doc 9902)

⁴ Assembly Resolution A36-8, 1 (Doc 9902)

⁵ *Report of the Technical Commission* (Doc 9899, A36-TE), p. 18, paras 28:12 and 28:14.

⁶ *Report of the Accident Investigation and Prevention (AIG) Divisional Meeting* (2008) (Doc 9914), pp. 1.7-2 to 1.7-2

March-April 2010, which also recommended that a multi-disciplinary task force be established for these purposes, having regard, among other things, to the ideas developed in the working papers presented to the HLSC on those issues.⁷

1.6 Australia actively participated in the discussion of these issues, and presented relevant working papers on them, at both the AIG/2008 and the HLSC 2010.⁸ A working paper on aspects of these issues is also presented by Australia to the current session of the Assembly,⁹ to which the ICAO Council has presented three related working papers in which recommendations to the Assembly are accordingly made.¹⁰

1.7 Reflecting the recommendation of the AIG/2008, the current edition of the *SMM* devotes considerable attention to the elements of an effective safety and reporting “culture”. In doing so, the *SMM* offers cogent cautionary observations about the meaning and implications of culture in this context.¹¹ Caution is similarly extended to the meaning and implications of the expression “just culture”.

2. JUST CULTURE AS A CONTESTED CONCEPT

2.1 While there may well be some broad measure of general understanding about what might constitute a just culture in relation to the reporting, disclosure and use of aviation safety-related information, in the absence of a specific, agreed and demonstrably shared understanding of what that expression means, the uncritical adoption of that expression for universal application is at best premature and fraught with risk. ICAO prudently cautions that, having regard to effective systems for safety reporting, “[t]he word culture . . . and the context in which it is used in this case can lead to misperceptions and misunderstanding.”¹² ICAO also states: “Global adoption of a single, common safety or just culture could . . . be considered discriminatory, perhaps even judgemental . . .”¹³

2.2 Most current proposals for just culture predicate on the assumption that clear lines can be drawn between acceptable and unacceptable behaviour. Then, generally without specifying the particular criteria, many of the arguments in support of a just-culture approach to the disposition of safety information further proceed on the false assumption that what is unacceptable behaviour can be ascertained by fixed, circumscribed criteria that are independent of context, language or interpretation. Attempting to identify a particular set of values, policies, procedures and practices as definitively indicative of a just culture implicitly places any alternative set of values, policies, procedures and practices outside the ambit of such a frame. By implication, any approach that fails to satisfy those particular circumscribed criteria becomes “unjust”.

2.3 It is important therefore that there is further consideration of the meaning and practical application of just culture to ensure that the fundamental assumptions on which the concept is based are clearly articulated, broadly accepted and well-understood by everyone involved. At the same time, it may be useful to explore the utility of the term in light of its potentially contentious connotations.

⁷ *Report of the High-Level Safety Conference 2010* (Doc 9935), pp. 1-7 to 1-8.

⁸ See Working Papers AIG/08-WP/30 and HLSC/10-WP/30.

⁹ A37-WP/122 (Agenda Item 25).

¹⁰ Working Papers A37-WP/60, A37-WP/66 and A37-WP/74.

¹¹ *Safety Management Manual (SMM)* (Doc9859), 2nd Edition (2009), pp. 2-23 to 2-30.

¹² *SMM*, 2nd Edition, p. 2-30, para 2.8.21.

¹³ *SMM*, 2nd Edition, p. 2.30, para 2.8.21.

3. SAFETY AND JUSTICE AS A FALSE DICHOTOMY

3.1 Consideration of the factors that govern the use to which various kinds of safety-related information might be put invariably revolve around the propriety of the use of such information exclusively for safety-related purposes, on the one hand, and for a range of other improper purposes, variously described as involving disciplinary, civil, administrative and criminal proceedings, on the other.¹⁴

3.2 Although their form and content may vary from jurisdiction to jurisdiction, civil, administrative and criminal proceedings are generally types of judicial or otherwise legal proceedings. Recognizing that there will be differences in this context as well, disciplinary proceedings generally contemplate processes by which an employee of an organization may be brought to account and negatively sanctioned by his or her employer because of conduct in which the employee has been found to have engaged. In all such cases, the essential objectives of these proceedings are, in the first instance to establish and attribute blame, fault and or culpability for an act or omission, and then to (a) impose an obligation to pay compensation for the harm or damage done; (b) constrain or prohibit a person from exercising certain privileges; and/or (c) penalise the person for their conduct.

3.3 The proceedings and processes mentioned in paragraph 3.2 are elements of a State's system of justice, or in the case of organizational disciplinary proceedings, actions usually undertaken within a legally established or legally ordained industrial relations framework. All of these proceedings include processes that are implicitly directed toward an objective other than the enhancement of safety and/or the prevention of accidents.

3.4 In many cases, however, administrative proceedings are initiated by the aviation safety regulator solely in the interests of safety; that is, for the primary purpose of preventing (or minimizing the likelihood of) an accident. To achieve this purpose, the most suitable administrative action may involve the variation, suspension or in some cases even the cancellation of a person's civil aviation authorization. This is certainly the case in Australia.

3.5 Similarly, an employer may take action to enhance an individual's skills and competence, and to prevent or limit that individual from performing aviation-related activities until an acceptable level of competence can be demonstrated. Where action is taken for this purpose, its objective is safety.

3.6 It is wrong to characterize the safety actions taken by regulators and employers described in paragraphs 3.4 and 3.5 as inappropriate. This does not mean that the impact of such actions may not have an influence on the free flow of information because of the sometimes serious consequences that arise from these actions for a person or an organization. As serious as they may be, however, the occurrence of such incidental consequences does not make the actions giving rise to them inappropriate.

3.7 The free flow of safety information can still be managed by balancing the impact on the free flow of safety information generally against the need to take safety action in a particular instance. In striking that balance, action necessary to minimise or eliminate a serious and immediate danger to safety is likely to allow for a greater disclosure from protected sources of safety information than the case may be where safety-related action is not necessary to address a serious and immediate danger to safety.

¹⁴ See Annex 13, para 5.12.1, *Note 1*, and Attachment E to Annex 13, para 3.5.

3.8 No concept of just culture should preclude the possibility that there are a range of actions that may be taken by aviation safety regulatory authorities and other employing organizations which properly balance the impact on the future free flow of safety information against the safety-related objective of taking those actions in particular cases. However, the standard contained in paragraph 5.12 of Annex 13, the guidance in Attachment E to Annex 13, the *SMM* and other materials dealing with the same considerations may not provide the appropriate mechanisms for the release of safety information in circumstances that require preventative safety action to be taken.

4. THE LEGAL CONTENT OF A CONCEPT OF JUST CULTURE

4.1 Much of the literature supporting the development and implementation of a just culture in the aviation community seems to be at pains to underscore a distinction between justice and what the law in different jurisdictions requires and permits. This is particularly apparent in connection with discussions about the criminalization of aviation accidents and what are described as genuine mistakes in aviation-related contexts. At the same time, however, the same literature is quick to exclude from the protections provided by a just culture reporting regime, conduct characterized as wilful, deliberate, intentional or amounting to recklessness or gross negligence.

4.2 Noting that the meaning and import of these decidedly legal terms vary among major legal systems, and from jurisdiction to jurisdiction even within the same legal system, the use of these terms in, and the importation of these decidedly legal concepts into, the discourse on just culture that so often essays to distance itself from the courts and the law, is unhelpful.

4.3 Without foreclosing what can and should be a round and vigorous discussion on the circumstances under which certain kinds of safety-related information may and may not properly be used for various purposes, unless the fundamental premises of these discussions are to be altered significantly, the decidedly legal nature of the issues involved in these considerations should be explicitly recognized, and reflected in the composition of the multidisciplinary task force contemplated by Recommendation 2/4 of the High-Level Safety Conference.¹⁵

5. CONCLUSION

5.1 Complementing the discussion reflected in, and which will presumably be generated by, the relevant Assembly working papers presented by the ICAO Council,¹⁶ the working papers expected to be presented by other States and organizations on these issues, and Australia's working paper on the topic,¹⁷ this Information Paper is intended to draw attention to the need to give careful consideration to the use and application of the expression just culture and the importance of ensuring that useful mechanisms for encouraging the free and frank disclosure of information are rationally balanced with the need to take critical safety-related action in particular cases.

— END —

¹⁵ See Working Paper A37-WP/74.

¹⁶ See Working Papers A37-WP/60, A37-WP/66 and A37-WP/74.

¹⁷ Working Paper A37-WP/122 (Agenda Item 25).

Resolution 25/1: Principles for a code of conduct on the sharing and use of safety information

Whereas ensuring the safety of international civil aviation is the responsibility of Member States both collectively and individually;

Whereas the Convention and its Annexes provide the legal and operational framework upon which Member States can build a civil aviation safety system based on mutual trust and recognition, requiring that all Member States fulfil their obligations in implementing the Standards and Recommended Practices (SARPs) and in adequately performing safety oversight;

Recalling that mutual trust between States, as well as public confidence in the safety of air transportation is contingent upon access to adequate information regarding the implementation of international SARPs;

Recalling that transparency and the sharing of such information are fundamental tenets of a safe air transportation system and that one of the objectives of sharing information is to ensure a consistent, fact-based and transparent response to safety concerns at the State and at the global levels;

Recognizing that the safety information in the possession of individual States, aviation industry and aviation organizations regarding the existence of operational hazards has the potential to provide a clearer perspective on existing and emerging areas of risk and the opportunity for timely interventions to improve safety when shared and acted upon collectively;

Recognizing that there is a need to develop principles of confidentiality and transparency to ensure that safety information is used in an appropriate, fair and consistent manner, solely to improve aviation safety and not for inappropriate purposes, including for the purpose of gaining economic advantage; and

Mindful that the use of such information for other than safety-related purposes may inhibit the provision of such information, with an adverse effect on aviation safety;

The Assembly:

1. *Instructs* the Council to develop a Code of Conduct for the Sharing and Use of Safety Information based on the following principles, among others
 - a) Member States will collect and share relevant and appropriate safety information to ensure that they can effectively discharge their individual and collective responsibilities for the safety of international civil aviation;
 - b) Member States will utilize safety information to assist in ensuring that operations under their oversight are conducted in full compliance with applicable SARPs and other regulations;
 - c) Member States, aviation industry and aviation organizations will ensure that shared safety information is used in an appropriate, fair and consistent manner, solely to improve aviation safety;
 - d) Member States, aviation industry and aviation organizations will use caution in disclosing information, keeping in mind equally the need for transparency and the possibility that such disclosure may inhibit the future provision of such information; and
 - e) Member States receiving safety information from another State, will agree to provide levels of confidentiality and uphold principles for disclosure equivalent to those provided by the State generating the information.

Resolution 27/1: Non-disclosure of certain accident and incident records

Whereas the primary objective of the Organization continues to be that of ensuring the safety of international civil aviation worldwide;

Whereas it is essential that cognizance be taken that it is not the purpose of the investigation of accidents and incidents to apportion blame or liability;

Recognizing that it is essential that all relevant information be made available to the accident investigators to facilitate the establishment of the causes and/or contributing factors of accidents and incidents in order to enable preventative action to be taken;

Recognizing that the prevention of accidents is essential to safeguard the continued confidence in air transport;

Recognizing that public attention will continue to focus on States' investigative actions, including calls for access to accident and incident records;

Recognizing that the protection of certain accident and incident records from inappropriate use is essential to ensure the continued availability of all relevant information to accident investigators in future investigations;

Recognizing that the use of information, derived from accident investigations, for disciplinary, civil, administrative and criminal proceedings is not a means to improve aviation safety;

Recognizing that the measures taken so far to ensure the protection of certain accident and incident records may not be sufficient, and *noting* the issuance by ICAO of legal guidance to assist States in this regard;

Recognizing that the legal guidance in Attachment E to Annex 13 has assisted many States in the development and implementation of means to protect certain accident and incident records from inappropriate use;

Considering that a balance needs to be struck between the need for the protection of safety information and the need for the proper administration of justice, and that protection should be to a level commensurate with the nature of the information each source generates, as well as with the purpose of disclosure of such information;

Mindful that the accident investigation authorities and the civil aviation authorities acknowledged the need for further study by ICAO on the protection of safety information; and

Recognizing the recommendations of the High-level Safety Conference 2010 to establish a multidisciplinary group to address the protection of certain safety information;

The Assembly:

1. *Urges* Contracting States to continue to examine and if necessary adjust their laws, regulations and policies to protect certain accident and incident records in compliance with paragraph 5.12 of Annex 13, in order to mitigate impediments to accident and incident investigations, in consideration of the legal guidance for the protection of information from safety data collection and processing systems issued by ICAO;

2. *Instructs* the Council to consider to enhance, in view of the results of the work of the multidisciplinary group, the provisions on the protection of certain accident and incident records with the aim of facilitating the implementation of Annex 13 provisions addressing the protection of safety information, taking into account the necessary interaction between safety and judicial authorities in the context of open reporting culture; and

3. *Declares* that this resolution supersedes Resolution A36-8.

Resolution 27/2: Protecting information from safety data collection and processing systems in order to improve aviation safety

Whereas the primary objective of the Organization continues to be that of ensuring the safety of international civil aviation worldwide;

Recognizing the importance of the free communication of safety information amongst the stakeholders of the aviation system;

Recognizing that the protection of safety information from inappropriate use is essential to ensure the continued availability of all relevant safety information, to enable proper and timely preventive actions to be taken;

Concerned by a trend for safety information to be used for disciplinary and enforcement actions and to be admitted as evidence in judicial proceedings;

Noting the importance of a balanced environment in which disciplinary action is not taken as consequence of actions by operational personnel that are commensurate with their experience and training, but where gross negligence or wilful violations are not tolerated;

Mindful that the use of safety information for other than safety-related purposes may inhibit the provision of such information, with an adverse effect on aviation safety;

Considering that a balance needs to be struck between the need for the protection of safety information and the need for the proper administration of justice, and that protection should be to a level commensurate with the nature of the information each source generates, as well as with the purpose of disclosure of such information;

Recognizing that technological advances have made possible new safety data collection, processing and exchange systems, resulting in multiple sources of safety information that are essential in order to improve aviation safety;

Noting that existing international laws, as well as national laws and regulations in many States, may not adequately address the manner in which safety information is protected from inappropriate use;

Noting the issuance by ICAO of legal guidance aimed at assisting States enact national laws and regulations to protect information gathered from safety data collection and processing systems, while allowing for the proper administration of justice;

Recognizing that the legal guidance in Attachment E to Annex 13 has assisted many States in the development and implementation of means to protect information gathered from safety data collection and processing systems;

Mindful that the civil aviation authorities acknowledged the need for a further study by ICAO on the protection of safety information; and

Recognizing the recommendations of the High-level Safety Conference 2010 to establish a multidisciplinary group to address the protection of certain safety information;

The Assembly:

1. *Urges* all Contracting States to continue to examine their existing legislation and adjust as necessary, or enact laws and regulations to protect information gathered from all relevant safety data collection and processing systems based, to the extent possible, on the legal guidance developed by ICAO, as set out in Attachment E to Annex 13;

2. *Urges* the Council to cooperate with Contracting States and appropriate international organizations regarding the development and implementation of guidance to support the establishment of effective safety-reporting systems, and the achievement of a balanced environment where valuable information derived from all relevant safety data collection and processing systems is readily accessible, while respecting principles of administration of justice and freedom of information;

3. *Instructs* the Council to consider to enhance, in view of the results of the work of the multidisciplinary group, the provisions on the protection of information gathered from safety data collection and processing systems (SDCPS) with a view to ensure and sustain the availability of safety information required for the management of safety, taking into account the necessary interaction between safety and judicial authorities in the context of open reporting culture; and

4. *Declares* that this resolution supersedes Resolution A36-9.