

Rural Affairs and Transport Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Budget Estimates May 2011

Infrastructure and Transport

Question no.: 141

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: Section 42ZC(6) Regulation

Proof Hansard Page/s: 67 (26/05/2011)

Senator Abetz asked:

Senator ABETZ: Can I ask you then, in general terms, for what purposes is an instrument issued under Section 42Z(c)6 of the regulations? Why was that countenanced?

Mr McCormick: I think we will have to take that on notice.

Answer:

In general terms, regulation 42ZC(6) of the Civil Aviation Regulations 1988 provides that CASA may, in appropriate cases, and subject to such conditions as may be necessary, authorise a person, who is not otherwise licensed to do so, to carry out specified maintenance on an Australian aircraft in Australian territory, or specified maintenance on an aircraft component or aircraft material in Australian territory.

The provision countenances such authorisations only in circumstances where: the maintenance involved is specified with reasonable particularity; the person authorised has the skills and ability to carry out the maintenance competently and the maintenance is carried out in accordance with such conditions as may be required to ensure it is carried out safely.

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Infrastructure and Transport

Question no.: 142

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: Airline upgrades

Proof Hansard Page/s: 68 (26/05/2011)

Senator Xenophon asked:

Senator XENOPHON: Do you see any issue in your role as the paramount regulator for aviation safety in this country for any executives in CASA—those involved in investigations—to be receiving upgrades from any airline?

Mr McCormick: No, I do not. Provided it is properly declared, I do not see an issue at all.

Senator XENOPHON: ‘Provided it is properly declared’, but is a proper declaration something that ought to be public?

Mr McCormick: As I say, we have not turned our mind to it. I can take that on notice.

Answer:

CASA is considering the question of whether, and if so in what circumstances, CASA staff members might properly accept an upgrade, and if it is determined that they may properly, what would constitute a proper disclosure in such circumstances.

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Question no.: 143

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: Period before new CASA employees oversight operators

Proof Hansard Page/s: 69 (26/05/2011)

Senator Xenophon asked:

Senator XENOPHON: I will touch on some of these issues of show cause tomorrow, but I want to talk about issues of enforcement and comparable jurisdictions. There is a smaller talent by virtue of Australia and our small aviation market. I think there was an issue where Mr Rossiter, a senior CASA executive, went on to be head of safety at Jetstar. I have said I accept fully there was no conflict in between his shift and the exemption he gave to CAO48 before he went off to Jetstar. I accept that and I accept the market is smaller. How do you deal, I guess the other way around, when you have people coming from an airline to work with CASA? If someone has worked for Qantas does that mean they would not be investigating Qantas incidents for a certain period? Do you have some gap between having CASA investigators who have worked with one of the major airlines, which I understand has to happen all the time? How do you deal with that?

Mr McCormick: We do what you have said there. If someone comes from an airline to our organisation we do not allow them to oversee that airline straightaway. I think in some instances about 18 months has transpired before that person is—

Senator XENOPHON: Is that the benchmark?

Mr McCormick: I do not know whether we actually have a benchmark. Again, I can take that on notice and give you some examples, if you like.

Answer:

CASA has a well established policy on conflict of interest which details, amongst other things, requirements for a potential applicant or a person to be employed by CASA to declare interests that may conflict or be reasonably thought to conflict with their intended duties at CASA. The policy expressly provides that consideration should be given to an applicant's previous employment in the aviation industry.

CASA treats all such cases on their merits with consideration being given to the nature of the work involved, the time elapsed since a person may have been employed with an aviation organisation and the nature of the employment the person may have had with a previous employer. Notwithstanding, wherever possible such duties are arranged so as to avoid the assignment of regulatory duties or responsibilities in relation to an organisation with which the officer was previously affiliated.

In circumstances where a new hire has declared an interest as a previous employee of an airline overseen by the office in which the new hire is located, the manager will properly exclude the inspector from regulatory duties or responsibilities for that airline for a period of time, generally two years.

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Question no.: 144

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: Cabin Crew ratios

Proof Hansard Page/s: 70 (26/05/2011)

Senator Back asked:

Senator BACK: Firstly, under that section, do you control both domestic and international cabin crew to passenger ratios?

Mr McCormick: I do not know whether it is actually under that same section. I will have to take that on notice.

Answer:

Australian requirements for carriage of cabin attendants, on Australian registered aircraft engaged in charter or regular public transport operations, are set out in subsection 20.16.3:6 of the Civil Aviation Orders and apply to both international and domestic operations.

The CASA permissions, for approved operations involving 1 cabin attendant up to 50 seats, are made under regulation 208 of the Civil Aviation Regulations 1988. These permissions apply only to single aisle aircraft operating on domestic, trans-Tasman and certain short-haul international routes.

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Question no.: 145

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: Breakdown of hours

Proof Hansard Page/s: 71-72 (26/05/2011)

Senator Heffernan asked:

Senator HEFFERNAN: General aviation operators across Australia report that CASA imposed costs are sending them broke. Even more disturbing is that none of them is prepared to come forward to be identified, so I have just put Ms Ley in the gun. A typical example is the adding of an aircraft type to an air operators certificate, commonly referred to, as we all know, as an AOC. Ms Ley has provided—I will not say where it has come from—these concerns:

The simple inclusion of an aircraft, already on the operator's AOC and putting it into an additional category ... the case here is the aircraft is already in the charter category and permission is being sought for it to be included in the air work category so it can do search and rescue. Aerial work is very similar to charter except that people are looking out the window.

That is fair enough. It continues:

All SAR operations will be supervised by AusSAR. The chief pilot has added a one-line amendment to the operations manual and submitted this. CASA has stated that the job will cost \$1,400, to be paid in advance and with no guarantee of time taken to complete.

So you have got that. Even at the exorbitant charge-out rate of \$160—it begs the question: what is your charge-out rate?

Mr McCormick: We have two. \$160 per hour is one of them.

Senator HEFFERNAN: What is the other?

Mr McCormick: I can take that on notice. Sorry, we have three, I have just been informed. We have \$130, \$160 and \$190.

Senator HEFFERNAN: How can it possibly take, at \$160—we will take the median—8.75 hours to complete this straightforward desktop task?

Mr McCormick: I can take that on notice and give you a breakdown of the hours involved.

Answer:

The work described is not a straightforward change from charter to aerial work for an existing aircraft. When requesting the addition of an aerial work category to the Air Operator's Certificate (AOC) for a multi crew aircraft, such as a Metro II, there are a number of assessments that need to be made by CASA in order to ensure that an operator has in place the systems and procedures to ensure this category of operation can be conducted safely.

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The breakdown of costs for this estimate are:

- Permission application centre (application assessment, identify documents that are required, receipt payment, draft AOC in CASA system; process recommendation, reconcile costs, finalise documents including certificate for delegate, close job) 3.05 hrs
- Flying Operations Inspector (Regional Office) (Pre assessment review, Operations Manual assessment Parts A & D) 3.25 hours
- Airworthiness Inspector (Regional Office) (application assessment and airworthiness Ops Manual review) 1.70 hours
- Regional Office Administration 0.70 hours

Total revised estimate = 8.70 hours, payment required for 8.5 hours (rounded down to nearest quarter hour).

CASA charges in accordance with the rates set out in the Civil Aviation (Fees) Regulations 1995.

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Question no.: 146

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: Remuneration at CASA

Proof Hansard Page/s: 73 (26/05/2011)

Senator Heffernan asked:

Senator HEFFERNAN: To give me an idea—and you may not wish to answer this—how much do you pay the typical person who does the job at \$160 an hour?

Mr Jordan: I would have to take that question on notice.

Answer:

The rate of \$160 per hour is a composite rate. The rate is a factor of the lead person undertaking the work as well as all related organisational costs. The composite rate was constructed using activity based costing principles that are compliant with the *Australian Government Cost Recovery Guidelines July 2005*.

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Question no.: 147

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: Date of commencement of cost recovery

Proof Hansard Page/s: 73 (26/05/2011)

Senator O'Brien asked:

Senator O'BRIEN: I have a question on the matters you were just raising. How long has CASA operated under a cost recovery regime for variations to air operator certificates? In other words, how long have you been charging applicants who want to either obtain or vary an air operator's certificate?

Mr McCormick: We will take that on notice; it predates me.

Answer:

CASA has been collecting fees for issues, renewals or variation of an AOC since 6 July 1996.

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Question no.: 148

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: Cost of Part 91

Proof Hansard Page/s: 74 (26/05/2011)

Senator Heffernan asked:

Senator HEFFERNAN: How much has it cost the industry and the Australian taxpayer to fund this extraordinary situation over 11 years? I have to say that it seems bloody extraordinary.

Mr McCormick: Of part 91?

Senator HEFFERNAN: Yes.

Mr McCormick: I do not have that number, but I will take that on notice.

Answer:

CASA does not itemise costs for individual parts or development of individual parts of legislation.

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Question no.: 149

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: CASR 91.295 definitions

Proof Hansard Page/s: 76 (26/05/2011)

Senator Heffernan asked:

Senator HEFFERNAN: Courts are driven by the law and not necessarily by the truth. Is it correct that the proposed CAR 91.295 makes it an offence of strict liability for a pilot to fly an aircraft over a populated area at a height of less than the higher of the minimum safe height and the minimum operating height at any particular point in a flight other than when landing or taking off?

Mr McCormick: I do not have that regulation in front of me. I will take it on notice.

Senator HEFFERNAN: Does this mean that the authority will prosecute the pilot survivor of a crash arising from an engine failure on any occasion that a person or property on the ground is endangered, even if the potential risk is not realised? Would you like to take these questions on notice?

Mr McCormick: I think so.

Senator HEFFERNAN: They are getting fairly complex. Where is flight in icy conditions, an activity generally proscribed by CAR 91.195, defined?

Mr McCormick: We will take that on notice. Part 91 is, of course, up for public consultation. We have not gone to a notice of proposed rule-making there. We would expect that people would give us some comments back in the consultation process.

Answer:

The purpose of proposed CASR 91.295 is to ensure that aircraft fly at a safe height over populous areas. This draft regulation requires an aircraft to fly no lower than the higher of (a) the height from which an emergency landing due to a failed engine could be conducted without endangering persons or property on the ground and (b) the prescribed minimum heights set out in a Table to the regulation. An offence against this regulation, as it is currently drafted, is not one of strict liability. CASR 91.295(3) sets out circumstances when flight below the minimum height is permitted, such as when the aircraft is taking off or landing.

The answer depends upon whether a pilot commits an offence against the regulation. If the pilot was below the higher of (a) the height from which an emergency landing due to a failed engine could be conducted without endangering persons or property on the ground and (b) the prescribed minimum heights set out in a Table to the regulation when an engine failure occurred, the pilot will have committed an offence.

In deciding what enforcement action, if any, would be taken against the pilot, this would depend upon all the circumstances of the case, including whether persons or property on the ground were endangered. In response to such an offence, CASA could (a) counsel the pilot,

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(b) issue an aviation infringement notice to the pilot, (c) consider taking administrative action against his or her licence, and/or (d) refer a brief of evidence to the Commonwealth Director of Public Prosecutions.

The term “icing conditions” is not defined in the proposed CASR 91.195.

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Question no.: 150

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: Proposed rule making for simulators

Proof Hansard Page/s: 77 (26/05/2011)

Senator Xenophon asked:

Senator XENOPHON: I think there is a proposal to change it. Is there a proposal to change it so that you need to have a mandatory simulator for anything from 19 seats?

Mr McCormick: We have a notice of proposed rule-making 1007OS, mandatory flight simulator training, which has been out since October 2010.

Senator XENOPHON: What does that involve? Does that involve having a mandatory simulator for any aircraft of 19 passenger seats or more?

Mr McCormick: I will take that on notice. I do not have that in front of me. There are some weights involved as well.

Answer:

The Notice of Proposed Rule Making (NPRM) published in October 2010 proposed that pilots must be trained in certain abnormal aircraft manoeuvres in simulators, if available, rather than in aircraft.

In general terms, for aircraft certificated for 20 or more passengers, or weighing more than 8618 kg, the NPRM proposed that pilot training be provided in simulators, if available in Australia or in a recognised country overseas.

For multi-engine aircraft certificated for between 10 and 19 passenger seats, it is proposed that the training would have to be conducted in a simulator, if available in Australia. If a simulator was not available in Australia but was available overseas, the operator's check pilots would have to travel overseas for the training.

CASA is currently considering the responses to the NPRM.

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Question no.: 151

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: Safety of travelling infants

Proof Hansard Page/s: 85 (26/05/2011)

Senator Nash asked:

Senator NASH: Perhaps you could take on notice for CASA to come back with some detail about their involvement and the requirement for safety of travelling infants, as well as any audit processes that are in place of an ongoing nature that monitor infants in aircraft?

Mr Mrdak: On behalf of CASA I will take that on notice.

Answer:

The requirements for the carriage of children and infants are detailed in subsection 20.16.3:13 of the Civil Aviation Orders. This provision specifies that an infant may be carried in the arms or on the lap of an adult passenger, or in a bassinet or in an infant seat, during a flight, provided that the restraint requirements of the subsection, and regulation 251 of the Civil Aviation Regulations 1988 – Seat belts and safety harness - (which applies to all passengers in the aircraft including infants), are complied with at times when seat belts must be fastened.

Scheduled and unscheduled audits are performed by CASA inspectors and the carriage of infants may be included in the scope of those audits.

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Question no.: 152

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: CASA charges

Proof Hansard Page/s: Written

Senator Heffernan asked:

General Aviation operators across Australia report that **CASA** imposed costs are sending them broke. Even more disturbing is that none of them is prepared to come forward to be identified for fear of retribution. A typical example - is the adding of an aircraft type to an operator's **Air Operations Certificate** (A.O.C). I have constituents with concerns about the simple '**inclusion**' of an aircraft - already on the operator's A.O.C - and putting it into an **additional** category.

For example, the case here is the aircraft is already in the **Charter** category - and permission is being sought for it to be included in the **Airwork** category - so it can do search and rescue. **Aerial Work (AWK)** is very similar to **charter** except that people are looking out of the window. All **SAR** operations will be supervised by **AUSAR**. The Chief Pilot has added a one line amendment to the Operations Manual and submitted this. **CASA** has stated that the job will cost **\$1400**, to be paid in advance and with no guarantee of time taken to complete.

- 1) Even at the exorbitant charge out rate of \$160 per hour how can it possibly take 8.75 hours to complete this straightforward desktop task?
- 2) What scrutiny is **CASA** under in terms of its fees and charges?
- 3) How can it demonstrate that these charges are reasonable?
- 4) What right of appeal exists for operators?

Answer:

- 1) See answer to question 145.
- 2) CASA is subject to the same external examination as other government agencies including from the Australian National Audit Office, the Parliament and the Commonwealth Ombudsman. CASA is also required to demonstrate compliance with the Australian Government Cost Recovery Guidelines through the approval of a Cost Recovery Impact Statement.
- 3) CASA charges in accordance with the rates set out in the *Civil Aviation (Fees) Regulations 1995*. In order to address the burden of regulatory charges and to reduce the impact on industry, particularly on regional and general aviation, the Government has capped CASA's regulatory fees at \$15 million per annum for at least five years, subject to adjustments for CPI increases. CASA initially provides an estimate of the work to each applicant.

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- 4) CASA provides an internal review process so that applicants who believe either the initial estimate of costs or the final total payment requested for a service is incorrect may ask CASA to review the calculation process.

If they are not satisfied with the result of a review, the matter can be escalated to CASA management for consideration. As noted above, recourse may be had to the Commonwealth Ombudsman and, in appropriate cases, persons dissatisfied with the imposition of a fee or charge for a service may challenge the imposition of such a fee or charge in the courts.

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Question no.: 153

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: Parachuting Instruments

Proof Hansard Page/s: Written

Senator Heffernan asked:

- 1) Who approves the issuance of Instruments?
- 2) Who approved this Instrument [405-09]
- 3) So CASA approved this Instrument
- 4) Could CASA explain what the effect of this instrument is on safety;
- 5) Could CASA explain the difference between this Instrument and the one it replaces- Instrument 278-97
- 6) If I take you to CAR [Reg] 209, could CASA explain the relationship between 405-09 and 209
- 7) If I take CASA to CAR [Reg] 152, could CASA explain the relationship between 405-09 and 152
- 8) Could CASA explain to me the effect of section 11 of Instrument 405-09
- 9) Could CASA explain to me the effect of para 4 in Instrument 405-09
- 10) So you cover trainee parachutists, what about parachutists that are already trained, these are not covered by your 405-09 instrument are they?

Answer:

- 1) The Director of Aviation Safety can exercise all powers under the regulations, including the issue of instruments. The Director has delegated these powers to specified CASA managers and other officers.
- 2) Instrument 405/09 was signed by Mr John McCormick, the Director of Aviation Safety, on 9 October 2009.
- 3) See 2.
- 4) The instrument introduces a number of enhanced safety requirements in relation to the operation of aircraft used in parachute operations.
- 5) Instrument 278 of 1997 is in similar terms to instrument 405/09, except that it does not make provision relating to the pilot holding an authorisation and does not deal with the maintenance of the aircraft.
- 6) Regulation 209 requires the operator and pilot in command of an aircraft engaged in private operations to comply with provisions of the regulations and such additional conditions as CASA directs. Instrument 405/09 sets out certain additional conditions applicable to the conduct of private operations involving parachuting activities.
- 7) Regulation 152 applies to persons who seek to conduct a parachute descent. Instrument CASA 405/09 relates to operational and aircraft related requirements for those descents conducted in a parachute training environment.

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- 8) Paragraph 11 of instrument 405/09 provides that (1) the pilot in command of an aircraft engaged in parachute training operations must not allow parachutists to exit the aircraft in controlled airspace until the pilot has received a specified Air Traffic Control (ATC) clearance; (2) a jump aircraft must use its VHF radio transceivers to communicate with ATC and to monitor and advise air traffic outside of controlled airspace; and (3) if parachutists will not be dropped within a 3 nautical mile radius of the centre of the drop zone, the pilot in command of the jump aircraft must advise ATC of the direction and extent of any extension required to the drop zone.
- 9) Paragraph 4 in Instrument 405/09 specifies the application of the Instrument, providing that it applies to aircraft engaged in parachute training operations. A parachute training operation is defined in the instrument to mean: 'an operation involving a descent by a student parachutist or a novice parachutist, and includes all tandem descents' [subpara 3(1)]. As used in the Instrument, the terms novice parachutist and student parachutist have the same respective meanings as they have in the Australian Parachute Federation's Operations Manual, as in force when the direction was issued.
- 10) Instrument 405/09 only applies to operational and aircraft related requirements for parachute training operations. Any other parachute descents not associated with parachute training operations are covered by the general parachuting provisions of instrument CASA 14/11.

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Question no.: 154

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: Legality of Parachuting Instruments

Proof Hansard Page/s: Written

Senator Heffernan asked:

CASR 152 says that these “trained parachutists” are jumping illegally then, as a person must not make a parachute descent if the descent is not:

(a) authorised in writing by CASA; and

(b) conducted in accordance with the written specifications of CASA.

- 1) So each and every one of these people since 9th October 2009 has jumped illegally?
- 2) So each one has earned a penalty of “strict liability” then?
- 3) So your Instrument is ineffective?
- 4) Does that make CASA, as maker of the Instrument commit an offence?
- 5) Under CAA 20AC

CAA 20AC Purported issue of authorisation

A person must not purport to give a civil aviation authorisation for the purposes of the regulations unless the person is authorised under those regulations to give the authorisation. Penalty: Imprisonment for 2 years.

Without limiting subsection (1), a person is to be taken to give an authorisation for the purposes of that subsection if the person endorses the authorisation on another document (for example, endorses a rating on a licence or in a log book).

- 6) From what you have said, this Instrument is not effective then?

Answer:

1 -6) General (i.e. non-training) parachute operations are authorised under CASA Instrument CASA 14/11.

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Question no.: 155

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: Parachuting Instruments and AIP 2.0

Proof Hansard Page/s: Written

Senator Heffernan asked:

1. Could CASA explain to me if all operations for parachute jumping comply with this AIP
 - a) Please explain when the Australian Parachute Federation APF became the Regulator?
 - b) How the APF can ensure that agreements between CASA,ASA and the airport operator are valid
 - c) Could CASA direct me to your regulations and the AIP, where this is the case
 - d) Could CASA direct me to your regulations where you can pass regulatory control to a third party APF for the approval of a pilot for a “jump pilot”
 - e) Could CASA explain to me how these actions by you do not compromise public safety
 - f) If the Instrument and the published Instrument is defective, how does CASA co-relate the two issues in terms of safety

Answer:

1. It is not clear from the question which part of the AIP is being referred to.
 - a) The Australian Parachute Federation (APF) is a Recreational Aviation Administering Organisation which administers the activities of its members to ensure compliance with the applicable civil aviation legislation, including the APF’s procedural and operational rules, compliance with which is a condition of the authorisation under which its members may lawfully conduct parachute descents.
 - b) It is not clear what agreements are being referred to.
 - c) See b).
 - d) The introduction of jump pilot authorisations was a safety enhancement for parachute training operations that required training of a jump pilot prior to conducting the operation. These requirements are in addition to the requirements the pilot must satisfy under the civil aviation legislation. As the APF conduct parachuting operations and the operations of the aircraft in relation to parachuting is an integral part, it is prudent that the APF properly have control over this aspect of their operations.
 - e) As a Recreational Aviation Administering Organisation the authority under which APF members may conduct parachute descents is dependent upon CASA’s continuing satisfaction with the APF’s management of its administrative oversight obligations. CASA is of the view that this approach to self-administration is entirely consistent with, and certainly does not compromise, the interests of public safety.
 - f) CASA does not consider the Instruments 405/09 and 14/11 to be defective. One instrument relates to general parachuting operations and the other to training.

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Question no.: 156

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: Parachuting and airspace

Proof Hansard Page/s: Written

Senator Heffernan asked:

Agreement between ASA [AirServices Australia] and CASA regarding Parachute operations, could CASA explain how this operates

ASA/CASA agreement on airspace use [2.0]

- 1) If the Instrument and the published AIP vary in content and extent, which publication should the pilot, the parachute jumper, the airport operator rely on?
- 2) So CASA is telling me that there could be some confusion result?
- 3) If so, you are telling me as Safety regulator that you have caused confusion for an operator.
- 4) How can CASA reconcile that and ensure "Safe Skies for All"

Answer:

It is not clear what Airservices Australia/CASA agreement is being used as a reference.

- 1) AIP ENR 5.5-4 is consistent with CASA 405/09. The AIP provides further information about the instrument.
- 2) No, that should not be the case.
- 3) No.
- 4) CASA considers the documents are consistent.

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Question no.: 157

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: Non-training parachutists

Proof Hansard Page/s: Written

Senator Heffernan asked:

No authorisation from 8th October 2009 to January 2011 for non-training parachutists

Please explain why CASA has not issued infringement notices to the around 300, 000 parachutists who have not been properly covered by your Instrument and the \$660 million of fines that occur, as this is “An offence of strict liability”

Example from Goulburn Airport, where a CASA official has given approval for the operation. That person was the director of a Company recently given an AOC for a training school. The other Director made the application to the Airport operator to have a parachute school.

- 1) If you have an airport under the 8500FT CTA step, with parachute drops occurring from 10000 to 12000FT, would you expect there to be an agreement for this operation
- 2) If there was no such agreement, would CASA consider the operation dangerous?
- 3) If there was no such agreement, would CASA consider the operation illegal?
- 4) How would such an operation comply with your ASA / CASA agreement
- 5) If CASA found such an operation, what would CASA do as the safety regulator?

Answer:

The question assumes no authorisation was in place for non training parachutists from 8 October 2009. This is not correct. Instrument 405/09 does not apply to a non tandem parachutist who is not a student or novice parachutist. This means that there are no additional requirements on a parachute descent involving such persons, not that such operations are not authorised. They are authorised by an authorisation and specifications made under regulation 152.

- 1) Airservices may require an agreement for the conduct of the operation with the parachute operator for the operation in a Control Area (CTA). The only agreement required by CASA would be under Civil Aviation Advisory Publication 152-1 Section 5.5, if the operation was in CTA and permission was sought to drop through cloud.
- 2) See 1).
- 3) See 1).
- 4) It is not clear what Airservices Australia/CASA agreement is being referred to. The operations must comply with the requirements of CASA 405/09, 14/11 and the requirements in AIP ENR 5.5-4 (2).
- 5) CASA would take the appropriate regulatory action if the operator breached any of the conditions of the Instruments.

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Question no.: 158

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: Use of Instruments and AIPs

Proof Hansard Page/s: Written

Senator Heffernan asked:

- 1) Why are instruments used instead of AIP [Aeronautical Information Package (AIP) Book, AIP Supplements and Aeronautical Information Circulars (AIC)] for what is permanent information required for the safety of flight?
- 2) If Instruments are the best method of promulgating information, why are these not referred to in the AIP's
- 3) How can CASA expect pilots to find this type of information, when it is not promulgated on a routine basis
- 4) Are all the Instruments shown on CASA web site?

Answer:

- 1- 4) In accordance with the Legislative Instruments Act, where the Civil Aviation Regulations require an instrument to be made, all such instruments must be registered on the Federal Register of Legislative Instruments, which is readily available to the public on the Internet. Some regulations require that certain instruments issued under those regulations (including, in some cases, instructions) are to be published in the AIP.

Rural Affairs and Transport Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

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Infrastructure and Transport

Question no.: 159

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: Part 91

Proof Hansard Page/s: Written

Senator Heffernan asked:

Part 91 of the proposed Civil Aviation Safety Regulations 2011 aims effect a number of regulations in the aviation industry. The first discussion paper was published by CASA in 1999. It has been followed at various times by a NPRM in 2001 and several subsequent industry reviews. The existing draft of Part 91 was prepared after those reviews were “frozen” in 2006.

- 1) How does CASA justify leaving the industry in limbo for 11 years? Has CASA provided explanations to the industry and a proposed timeline so that the industry can prepare and plan for changes to its regulations?
- 2) How much has this lengthy review process cost?
- 3) What is the estimated cost of implementing these changes?

Answer:

- 1) CASA has kept the industry informed of progress with Part 91 on an on-going basis. In addition to postings on the CASA website, updates are given regularly at meetings of the Standards Consultative Committee and its sub-committees. Pilots and operators will be given sufficient time to prepare for the new regulations before they enter into force. Training and education publications will be developed and briefings given to the industry to prepare them for the introduction of the regulations.
- 2) CASA does not itemise costs for individual parts or development of individual pieces of legislation.
- 3) In accordance with established procedure, the estimated cost to implement the Part 91 changes will be made public in a Regulation Impact Statement.

Rural Affairs and Transport Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Budget Estimates May 2011

Infrastructure and Transport

Question no.: 160

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: Strict Liability Offences

Proof Hansard Page/s: Written

Senator Heffernan asked:

Strict Liability Offences - CASA's proposed *Civil Aviation Safety Regulation 2011* amendments propose offences of "strict liability".

Why do you believe it is necessary to remove any defence of honest and reasonable mistake from these regulations when exactly such a defence of reasonableness is regularly included as an element in the existing regulations?

Answer:

No such defence is removed for strict liability offences. Sections 6.1 and 9.2 of the *Criminal Code Act 1995* (Cth) expressly provide a defence of mistake of fact to a strict liability offence.

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ANSWERS TO QUESTIONS ON NOTICE

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Infrastructure and Transport

Question no.: 161

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: Proposed Fuel Requirements

Proof Hansard Page/s: Written

Senator Heffernan asked:

The new proposed 91.510 states that the pilot in command of an aircraft commits an offence if he or she has not planned the flight to ensure that after landing, the amount of fuel remaining in the aircraft's fuel tanks will be at least the aircraft's fixed fuel reserve.

- 1) What was the rationale for making fuel requirement breaches a strict liability offence?
- 2) Is it possible for a pilot to provide an excuse for this offence in certain circumstance, for example in poor weather?
- 3) How will these restrictions be regulated?
- 4) What safety considerations have CASA examined for creating offences of strict liability, i.e. does the association recognise that this may alter the mindset of pilots and cause them to act against their better judgement in order to avoid an offence?
- 5) Please outline how this regulation will improve flight safety.

Answer:

- 1) The intent of proposed regulation 91.510 is for pilots to take on fuel before a flight and to monitor fuel consumption during the course of a flight, to ensure that they can land safely with a fuel reserve. This provision is a strict liability offence for the same reason the current corresponding requirement specified in regulation 234 of the Civil Aviation Regulations 1988 is a strict liability offence as regards aircraft fuel requirements.
- 2) Section 30 of the *Civil Aviation Act 1988* provides for the defence of extreme weather conditions or other unavoidable cause, for offences under the Act or regulations. The *Criminal Code Act 1995* provides other defences in relation to offences, including any strict liability offences.
- 3) Compliance with the proposed regulation 91.510 will be monitored and enforced in the same way compliance with other flight rules are regulated. For private operations this could take the form of a ramp check. CASA's regulatory investigation of an accident or incident in which fuel carriage may have been an issue, could also provide a basis for regulatory action.
- 4) Proposed Part 91 of the Civil Aviation Safety Regulations sets out general operating and flight rules for aircraft operations, serving the same general purpose as the rules of the road serve for surface transport, which are also commonly formulated as offences of strict liability. The regulations are intended to ensure safe aircraft operating practices and, when considered by a reasonable person, they should not 'alter the mindset of pilots' or cause or encourage them to take unsafe action to avoid committing an offence. In addition to the defences mentioned in response to Question

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- 2, the regulations typically set out exceptions to a number of rules of general application, so as not to create offences where none should exist.
- 5) This regulation will improve flight safety by ensuring pilots take on sufficient fuel and monitor fuel use on an on-going basis during the course of a flight. CASA is aware that a number of accidents are due to mismanagement of fuel and lack of proper pre-flight planning.

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Question no.: 162

Program: n/a

Division/Agency: (CASA) Civil Aviation Safety Authority

Topic: Tiger Show Cause Notice

Proof Hansard Page/s: Written

Senator Heffernan asked:

CASA issued a “show cause” notice to Tiger Airways, 23 March 2011.

- 1) What were the safety concerns alluded to by CASA in their explanations of the show cause notice?
- 2) Why has CASA not released the details for their “show cause”?
- 3) Why does CASA believe that the public should not be made aware of all of the information required when choosing an airline?
- 4) What was the nature of Tiger’s response? Provide details.
- 5) Have Tiger given any indication of a change in procedure to ensure these security concerns do not occur again? If so, provide details.

Answer:

1 to 5) A show cause notice draws the attention of an aircraft or maintenance operator to certain safety-related concerns CASA has about that operator.

The details of a show cause notice are based on information CASA has to hand at the time the notice is served, and the recipient of the notice is invited to provide CASA with reasons why CASA’s concerns may not be warranted.

An operator’s input is sought and assessed *before* CASA forms a conclusive view about the matters to hand and makes a decision on that basis.

This is a natural justice requirement.

Consistent with the practice of other leading national aviation regulatory authorities, CASA does not publicly release details of a Show Cause Notice.

CASA continually monitors the safety of airlines flying in Australia. If CASA at any time considered an airline’s operations to pose a serious and imminent risk to safety it would act immediately to suspend the airline’s Air Operator’s Certificate (AOC).