

The analysis below has been submitted to CASA with regards to their proposals included in the NPRM. It is a pity that they do not consult prior to making such a proposal. A

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BA will be submitting a propos

al for a complete change where country-of-origin

ADs are automatically accepted with a provision in Part 39 to enable CASA to extend the compliance period based on certain criteria. This is the normal approach by most

countries when they are not the NAA responsible for the type design.

It would remove the duplication of work (reduce overhead costs to industry) and ensure

maintenance records meet international standards for

record

keeping

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Analysis of Proposed CASR Part 39

General Comments

The proposed changes to Part 39 are ***unacceptable*** and ***are to be rejected in current form*** because they will not be compatible with the maintenance suite of regulations. The maintenance suite of regulations implements requirements for the registered operator (certificate of registration holder or operator) to follow the manufacturer's instructions for continuing airworthiness in exactly the same manner as the United States. There is no need for CASA airworthiness staff to micro-manage the aviation industry as proposed in this NPRM. This NPRM would require CASA to increase their Central Office airworthiness staff levels to comply with the changes.

The proposed changes intermixes consequential changes as a result of the proposed maintenance suite of regulations and attempts to re-introduce the autonomous powers that were removed from CASA with the introduction of Part 39.

The proposed changes are not compatible, as suggested by the NPRM, with the powers of other NAAs, especially the FAA from where Part 39 was adopted. The proposed

changes are self-directed at giving autonomous powers to CASA to make ADs of data promulgated by manufacturers and not ADs promulgated by other NAAs. The other NAA has already done the technical research required.

CASA is seeking powers to convert manufacturer's instructions, no matter how promulgated, into Australian ADs instead of just mandating the foreign directive. This was a power that was removed from CASA with the introduction of Part 39 and was supported by industry and the PAP.

In addition, industry cannot accept the proposal to remove the need for CASA to obtain agreement, with the applicant, with the conditions of exclusion to an AD applied for by the applicant. This condition was requested by industry, supported by the PAP and the CASA Executive of the day and has been successfully implemented since the introduction of Part 39. Part 39 was also implemented to address political questions as a result of a number of incidents in industry prior to that period.

Basically, the NPRM proposal introduces regulations where there is absolutely no need for regulations. Regulatory advice can be given by adding Notes to regulations to clarify the intent.

In conclusion, this NPRM proposal developed by CASA, without consultation with industry, is simply about clarity in relation to the issue of a special flight permit where ADs are applicable and CASA resurrecting powers removed during the introduction of Part 39. The NPRM is rejected.

Specific comments against regulatory proposals

Regulation 21.200: The intent of the proposed change to *regulation 21.200* is to clarify that CASA or an authorised person can issue a special flight permit although ADs apply. The exception is for an AD that specifically prevents the issue of a special flight permit. This can just as easy be done by placing a *Note* after *regulation 21.200* stating that a SFP can be issued when ADs are applicable unless the AD specifically forbids the issue of a SFP, without introducing any other change to the regulations.

- This method prevents the growth of unique and unnecessary regulations.
- A Note is all that is required to clarify the issue.

Conclusion: The proposed changes are rejected; a note, however, is acceptable.

Regulation 39.1: The intent of this regulation was to restrict CASA to issuing ADs based on NAA mandatory instructions issued by a foreign NAA. The proposal expands this to include any instruction, direction or requirement issued by the manufacturer and is mentioned in the foreign directive. There is absolutely no safety case for CASA to expand the current requirement. This is an attempt by CASA to micro manage the aviation industry and to assume the responsibility of the industry itself.

- Current legislation places the responsibility on the certificate of registration holder to have maintenance schedules or system of maintenance that are appropriate and not deficient. In other words, all instructions issued by the aircraft and aeronautical product manufacturers have to be reviewed by the certificate of registration holder to ensure that the maintenance schedules or system of maintenance is appropriate and efficient. **This is not CASA's role in the aviation industry.**
- With the introduction of the maintenance suite of regulations there is improved clarity and there will be absolutely no need for CASA to review all manufacturers' requirements as it will be, as it is today, the requirement of the aviation industry.
- A NAA only has to review the data of manufacturers that the NAA approves. CASA would need an increase of staff unnecessarily to review manufacturers' data. As

it currently stands it is the same requirement utilised by other NAAs, including the FAA.

Conclusion: The amendment to regulation 39.1 is rejected.

Regulation 39.3: Current regulation is adequate and **does not require the proposed change** as it is introducing prescriptive legislation where there has been no demonstrable need. The introduction of a Note after 21.200 is all that is required.

- Rejected as it is unnecessary legislation that will not be needed if the suggested Note is placed after regulation 21.200 as stated above.
- There is no need to place such administrative processes in legislation.

Conclusion: The proposed change is rejected but a note as proposed would be acceptable.

Regulation 39.4: The proposed changes are rejected. This issue was thrashed out at all levels prior to the introduction of Part 39. The proposed changes remove the provisions that makes CASA obtain agreement from an applicant for an exclusion of an AD prior to issuing the exclusion. That is, CASA has to consult with the applicant before issuing the exclusion.

- This current provision was introduced so that the industry applicant was aware of the condition or conditions that CASA imposed when an AD exclusion was issued.
- Prior to the introduction of Part 39 there were many problems with AD exemptions being issued to the applicant who was not aware of the conditions attached.
- The previous system also became a political issue and the industry does not want to return to the previous system.

Conclusion: The removal of the requirement for CASA to consult and obtain agreement with the applicant is seen as natural justice to the many applicants in the past that did not agree with the conditions imposed.

In conclusion and based on the above, the proposal is rejected except for the proposal in this paper to add a Note to regulation 21.200.

As an example, Part 39 is attached in a comparison table that clearly spells out what the change introduces and the reason for rejection to this proposal.

\Ken Cannane,

Executive Director

Part 39 Airworthiness Directives	Proposed Part 39 Changes	General Comments

<p>39.0 Make-up of this Part</p> <p>This Part is made up as follows:</p> <p>39.0 Make-up of this Part</p> <p>39.1 CASA may issue airworthiness directives</p> <p>39.2 Aircraft etc covered by AD</p> <p>39.3 Australian aircraft covered by AD etc not to be operated</p> <p>39.4 Aircraft etc excluded from operation of AD on adoption of alternative method for correcting unsafe condition</p> <p>39.5 Aircraft etc excluded from operation of AD because unsafe condition has ceased to exist</p> <p>39.6 Request for review of operation of AD</p> <p>39.7 Action to be taken by CASA on receiving request under regulation 39.6</p>	<p>39.0 Make-up of this Part</p> <p>This Part is made up as follows:</p> <p>39.0 Make-up of this Part</p> <p>39.1 CASA may issue airworthiness directives</p> <p>39.2 Aircraft etc covered by AD</p> <p>39.3 Australian aircraft covered by AD etc not to be operated</p> <p>39.4 Aircraft etc excluded from operation of AD on adoption of alternative method for correcting unsafe condition</p> <p>39.5 Aircraft etc excluded from operation of AD because unsafe condition has ceased to exist</p> <p>39.6 Request for review of operation of AD</p> <p>39.7 Action to be taken by CASA on receiving request under regulation 39.6</p>	<p>No change</p>
<p>39.1 CASA may issue airworthiness directives</p> <p>(1) CASA may issue an airworthiness directive for a kind of aircraft, or a kind of aeronautical product, if:</p> <p>(a) an unsafe condition exists in an aircraft or aeronautical product of that kind; and</p> <p>(b) the condition exists, or is likely to exist, or could develop, in other aircraft or aeronautical products of that kind.</p> <p>(2) The airworthiness directive must:</p> <p>(a) be in writing; and</p> <p>(b) state the kind of aircraft or aeronautical product to which it relates; and</p> <p>(c) require that the action set out in the instrument (being action that relates to aircraft or aeronautical products of the kind stated and is, in the opinion of CASA, necessary to correct the unsafe condition) be taken at the time, or in the circumstances, mentioned in the instrument.</p>	<p>39.1 CASA may issue airworthiness directives</p> <p>(1) CASA may issue an airworthiness directive for a kind of aircraft, or a kind of aeronautical product, if:</p> <p>(a) an unsafe condition exists in an aircraft or aeronautical product of that kind; and</p> <p>(b) the condition exists, or is likely to exist, or could develop, in other aircraft or aeronautical products of that kind.</p> <p>(2) The airworthiness directive must:</p> <p>(a) be in writing; and</p> <p>(b) state the kind of aircraft or aeronautical product to which it relates; and</p> <p>(c) require that the action set out in the instrument (being action that relates to aircraft or aeronautical products of the kind stated and is, in the opinion of CASA, necessary to correct the unsafe condition) be taken at the time, or in the circumstances, mentioned in the instrument.</p>	<p><i>This proposal is of great concern to operators of aircraft. Currently subparagraph (3) restricts CASA to issuing ADs based on a foreign directive (i.e. a directive issued by a NAA) whereas the proposal is to permit CASA to issue ADs based on instructions, directions or requirements issued by manufacturers.</i></p> <p><i>This proposal was totally rejected during the consultation of Part 39 but CASA is once again attempting to place themselves in the position to micro manage the industry like no other NAA in the world.</i></p> <p><i>This proposal is totally rejected.</i></p>

(3) Subject to subregulation (4), the airworthiness directive may require a person to comply with a directive (a *foreign directive*) mentioned in the airworthiness directive that is:

- (a) issued by the aviation authority of a foreign country; and
- (b) of the same nature as an airworthiness directive.

(4) The airworthiness directive may require a person to comply with a foreign directive as in force or existing either at a particular time or from time to time.

(5) An airworthiness directive issued under subregulation (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Note For *aeronautical product* see the Dictionary.

(3) Subject to subregulation (4), the airworthiness directive may require a person to comply with **either or both of** the following:

(a) a directive(a *foreign directive*) mentioned in the airworthiness directive that is:

- (i) issued by the aviation authority of a foreign country; and
- (ii) of the same nature as an airworthiness directive;

(b) an instruction, direction or requirement that:

(i) is issued by the manufacturer of aircraft or aeronautical products of the kind to which the airworthiness directive relates; and

(ii) is mentioned in the airworthiness directive.

(4) The airworthiness directive may require a person to comply with a foreign directive, **or an instruction, direction or requirement mentioned in paragraph 3 (b)**, as in force or existing either at a particular time or from time to time.

(5) An airworthiness directive issued under subregulation (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Note For *aeronautical product* see the Dictionary.

39.2 Aircraft etc covered by AD

If an AD has been issued for a kind of aircraft or a kind of aeronautical product, then, except for aircraft or aeronautical products excluded from the operation of the AD under regulation [39.4](#) or [39.5](#), all aircraft or aeronautical products of that kind are covered by the AD until:

- (a) the AD is revoked; or
- (b) all the requirements of the AD have been complied with.

Note For *AD* and *aeronautical product* see the Dictionary.

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- (a) the AD is revoked; or
- (b) all the requirements of the AD have been complied with.

Note For *AD* and *aeronautical product* see the Dictionary.

No change

39.3 Australian aircraft covered by AD etc not to be operated

A person must not operate an Australian aircraft that is covered by an AD, or is fitted with an aeronautical product covered by an AD, and the registered owner of such an aircraft must not allow the aircraft to be operated:

(a) in contravention of a requirement (if any) of the AD that affects the operating limitations of the aircraft; or

(b) while any other requirement of the AD has not been complied with.

Penalty: 50 penalty units.

Note For **Australian aircraft** see subs 3 (1) of the Act; for **AD** and **aeronautical product** see the Dictionary.

39.3 Australian aircraft covered by AD etc not to be operated

(1) A person must not operate an Australian aircraft that is covered by an AD (other than an aircraft to which subregulation (4) applies), or is fitted with an aeronautical product covered by an AD (other than an aircraft to which subregulation (5) applies), and the registered owner of such an aircraft must not allow the aircraft to be operated:

(a) in breach of a requirement (if any) of the AD that affects the operating limitations of the aircraft; or

(b) while any other requirement of the AD has not been complied with.

(2) The registered operator of an aircraft that is covered by an AD (other than an aircraft to which subregulation (4) applies), or is fitted with an aeronautical product covered by an AD to which subregulation (5) applies, must not permit a person to operate the aircraft:

(a) in breach of any requirement of the AD that affects the operating limitations of the aircraft; or

(b) while any other requirement of the AD has not been complied with.

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

(4) This subregulation applies to an aircraft covered by an AD if:

(a) the AD does not contain a statement to the effect that a special flight permit must not be issued for an aircraft covered by an AD; and

(b) the aircraft is authorised to fly under a special flight permit that is in force.

(5) This subregulation applies to an aircraft that is fitted with an aeronautical product covered by an AD if:

(a) the AD does not contain a statement to the effect that a special flight permit must not be issued for an aircraft fitted with an aeronautical product covered by an AD; and

The proposal changes the emphasis of the Part and introduces a strict liability provision.

This is another reason for rejection.

In addition, the same approach in subparagraphs (4) & (5) can be achieved by placing a "Note" after the current regulation and regulation 21.200 stating that a special flight permit can not be issued when a AD specifically states a special flight permit cannot be issued.

This proposal is "over regulating" and changes Part 39 from the harmonisation efforts previously agreed with industry.

(b) the aircraft is authorised to fly under a special flight permit that is in force.

Penalty: 50 penalty units.

Note For **Australian aircraft** see subs 3 (1) of the Act; for **AD** and **aeronautical product** see the Dictionary.

39.4 Aircraft etc excluded from operation of AD on adoption of alternative method for correcting unsafe condition

(1) Subject to subregulation (2), CASA may, on the written request of a person (the **applicant**), by instrument in writing, exclude from the operation of an AD an aircraft or aeronautical product that, apart from this regulation, would be covered by the AD, on condition that the applicant takes the action set out in the instrument, at the time, or in the circumstances, mentioned in the instrument.

(2) CASA must not issue an instrument under subregulation (1) unless CASA and the applicant have agreed that the action specified in the instrument, if taken in accordance with the instrument, will provide an alternative method for correcting the unsafe condition that the AD seeks to correct.

(3) If CASA issues the instrument, the aircraft or aeronautical product is excluded from the operation of the AD unless the applicant fails to comply with the condition set out in the instrument.

Note For **AD** and **aeronautical product** see the Dictionary.

39.5 Aircraft etc excluded from operation of AD because unsafe condition has ceased to exist

(1) A person may ask CASA in writing to exclude from the operation of an AD an aircraft or aeronautical product that, apart from this regulation, would be covered by the AD, on the ground that the unsafe condition that the AD seeks to correct does not exist, and cannot develop, in the aircraft or aeronautical product because of:

(a) a modification of, or repairs to, the aircraft or aeronautical product that were approved under regulation 35 of CAR 1988; or

(b) a modification of the aircraft or aeronautical product that was carried out in accordance with a supplemental type certificate

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This change removes the requirement of CASA to consult with an applicant and obtain agreement with the applicant when issuing an exclusion to an AD. This a return to the problems pre Part 39 where CASA would impose conditions that were not able to be complied with by the applicant and quite regularly did not get to the applicant.

Another reason for rejection.

No change

applicable to the aircraft or aeronautical product.

(2) If CASA is satisfied that the unsafe condition does not exist, and cannot develop, in the aircraft or aeronautical product:

(a) CASA must, by instrument in writing, exclude the aircraft or aeronautical product from the operation of the AD; and

(b) the instrument has effect accordingly.

Note For AD, aeronautical product and supplemental type certificate see the Dictionary.

39.6 Request for review of operation of AD

A person may ask CASA in writing to review the operation of an AD on the ground that all aircraft or aeronautical products covered by the AD, or all aircraft or aeronautical products of a kind mentioned in the request (being aircraft or aeronautical products covered by the AD), need no longer be covered by the AD because:

(a) the instructions issued by the manufacturer or manufacturers of those aircraft or aeronautical products for the carrying out of maintenance on those aircraft or aeronautical products have been amended; and

(b) if maintenance is carried out on those aircraft or aeronautical products in accordance with those instructions as amended, the unsafe condition that the AD seeks to correct will no longer exist, or is not likely to exist, or cannot develop, in those aircraft or aeronautical products.

Note For AD and aeronautical product see the Dictionary.

39.7 Action to be taken by CASA on receiving request under regulation 39.6

(1) Within 28 days after receiving a request from a person (the **applicant**) under regulation 39.6, CASA must give to the applicant a notice setting out:

(a) the steps that CASA proposes to take to investigate whether the ground on which the request is made can be substantiated; and

(b) an estimate of the time likely to be taken by the investigation.

(2) In carrying out the investigation, CASA must consider:

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(2) If CASA is satisfied that the unsafe condition does not exist, and cannot develop, in the aircraft or aeronautical product:

(a) CASA must, by instrument in writing, exclude the aircraft or aeronautical product from the operation of the AD; and

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(a) the instructions issued by the manufacturer or manufacturers of those aircraft or aeronautical products for the carrying out of maintenance on those aircraft or aeronautical products have been amended; and

(b) if maintenance is carried out on those aircraft or aeronautical products in accordance with those instructions as amended, the unsafe condition that the AD seeks to correct will no longer exist, or is not likely to exist, or cannot develop, in those aircraft or aeronautical products.

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(2) In carrying out the investigation, CASA must consider:

No change

No change

(a) all information provided by the applicant (whether on his or her own initiative or at the request of CASA); and

(b) any other information that CASA reasonably considers to be relevant to the investigation. (3) If, after carrying out the investigation, CASA is satisfied that the ground for making the request has been substantiated, CASA must revoke or amend the AD (as the case requires) so that those aircraft or aeronautical products to which the request relates are not covered by the AD.

(4) This regulation does not affect the power that, apart from this regulation, CASA has to revoke or amend an AD.

Note For AD and aeronautical product see the Dictionary.

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