

# AMROBA<sup>®</sup>inc

## ADVOCATE OF THE AVIATION MRO INDUSTRY

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### THE CRIMINAL CODE

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#### Stop Press

- Albanese tells aerodrome operators that aerodromes are basically meant for aviation businesses
- Any major development to have Ministerial approval prior to starting
- What we need now is for aerodrome operators to keep costs down to attract private business
- Some businesses have moved off aerodromes to reduce costs

CASA recently presented the Attorney General’s drafts of “safety” regulations that are part of the new maintenance package and what it clearly demonstrates is the impracticality of trying to adapt the European regulatory requirements in an Australian regulatory system.

Ever since Government/Parliament decided to two-tier the aviation regulatory system and also apply the Criminal Code it is becoming increasingly obvious to all, except those brain-washed by the EASA system, that the outcome will be higher regulatory imposts than is current without any improvements in safety.

Unlike the US, EASA does not have criminal legislation associated with aviation regulations, however, individual European countries may have criminal provisions. In the US, criminal aviation specific provisions can be found in CFR Titles 13 and 49. They are not in FARs raised by the FAA’s Administrator. FARs are similar to our CAOs.

For example, in the US, ‘aviation quality’ is defined with specific criminal offences.

“(2) **Aviation quality.**--The term ‘aviation quality’, with respect to a part of an aircraft or space vehicle, means the quality of having been manufactured, constructed, produced, maintained, repaired, overhauled, rebuilt, reconditioned, or restored in conformity with applicable standards specified by law (including applicable regulations [e.g. FARs]).

(b) **Penalties.**--The punishment for an offense under subsection (a) is as follows:

(1) **Aviation quality.**--If the offense relates to the aviation quality of a part and the part is installed in an aircraft or space vehicle, a fine of not more than \$500,000, imprisonment for not more than 15 years, or both.

(2) **Failure to operate as represented.**--If, by reason of the failure of the part to operate as represented, the part to which the offense is related is the proximate cause of a malfunction or failure that results in serious bodily injury (as defined in section 1365), a fine of not more than \$1,000,000, imprisonment for not more than 20 years, or both.

(3) **Failure resulting in death.**--If, by reason of the failure of the part to operate as represented, the part to which the offense is related is the proximate cause of a malfunction or failure that results in the death of any person, a fine of not more than \$1,000,000, imprisonment for any term of years or life, or both.”

The Government conditions are making it hard for CASA to provide outcome based rules. How can you apply the Criminal Code to “outcome-based” law that is suppose to allow participants more flexibility?

Now that these drafts have been seen, it is obvious that aviation needs to return to three tier aviation requirements. Act, regulations and CASA issued ‘aviation safety standards’.

**The proposed rules will have a negative effect on your long term viability.**

### AMROBA MEMBERSHIP UPDATE

AMROBA continues to grow and participate in appropriate aviation committees. We need you.

AMROBA’s long term survival depends on MRO industry support. A minimum of 300 AMROBA members are required to make us financially viable but 500 to 1000 members is our aim.

If you are not a member access our website [www.amroba.org.au](http://www.amroba.org.au) for details of AMROBA and membership application.

We are registered as a non-profit organisation with a Management Team representing each segment of the aviation industry.

Membership growth continues to grow but many still sit on the fence collecting the benefits that AMROBA brings to the MRO industry. It is time for you to join — there is strength in numbers.

**Complete an application and join now.** [www.amroba.org.au](http://www.amroba.org.au)

# Operator & Maintainer Responsibilities

## Bilateral Agreements Saga

The BASA with the US/FAA is still being negotiated so that our local businesses may gain access to the US market.

Comments have once again been sought from the industry. Do we need to comment on the need to obtain an agreement that benefits local industry — a given.

The Department of Infrastructure, Transport, Regional Development and Local Government and the Civil Aviation Safety Authority invite comment on proposed amendments to the BASA between Australia and the United States.

**E a s y — E x p a n d “Safety” agreements into trade agreements so CASA approved documents are recognised by NAAs in foreign countries.**

## Alternative Rules

The continued growth of regulations could be reduced if “aviation quality” was defined in the proposed “punitive” regulatory system that CASA is developing.

Less regulations would also be required if CASA used its legislative function to develop and promulgate *Aviation Safety Standards* that the regulations would require to meet so CASA could issue you with a certificate, licence or rating.

The Productivity Commission has many papers identifying over regulation having a very negative effect on the viability of Australian businesses.

AMROBA has attempted to clarify what is conflicting regulatory requirements that can be applied differently by individuals within CASA.

Firstly, normal business processes clearly identify there is a contract, written or verbal, between identities whenever one does work for someone else in relation to aircraft, CAR42ZC(1) states that this must be between the aircraft’s registered operator or PiC and the ‘maintainer’.

CAR42ZC(1) states that a maintainer must only do the work that the registered operator/PiC has authorised them to do. Like having your car serviced, defect rectification also needs to be authorised either prior to starting the work or prior to commencing the defect rectification.

However, CAR43(7) places another onus on the maintainer that prevents him/her signing a maintenance release to return the aircraft to service if the maintainer, during his/her review of the aircraft’s maintenance requirements, finds other maintenance that is due and the registered operator/PiC does not authorise the maintainer to correct the defect.

Registered operators, irrespective how well they control aircraft airworthiness and maintenance aspects, are subject to a ‘hidden’ cost for the maintainer to carry out a review of the aircraft’s maintenance records whenever a maintenance release is to be issued.

Many AMO/LAMEs have been held accountable for issuing a maintenance release when a maintenance task has been missed even if the registered operator/PiC had not authorised them to do the maintenance.

If maintenance is missed then there are two ‘culprits’ under the regulations; the registered operator for not authorising the maintainer and the maintainer for not reviewing the records and bringing it to the registered operator’s attention.

New rules will hopefully clarify this situation by transferring the responsibility to review the maintenance records before issuing a maintenance release back to the registered operator.

The maintainer will only be held responsible for the maintenance that they are actually ‘contracted’ to carry out.

## DAMP — Is It Over Reaction?

The only thing that is certain in aviation is the continued growth in regulatory requirements that add to the costs of performing maintenance.

Ask owners of Jabiru aircraft what is the difference in on-going maintenance costs between VH & non VH registered aircraft and they will be told it is the costs imposed by the regulatory system.

The drug/alcohol monitoring system is one such system. Small business is treated like large businesses with multi-layered management levels. On-going reporting costs add to the costs of managing a small business.

Nobody in this industry objects to the random testing program operated by CASA but many are questioning the need for small businesses to have a DAMP and the on-going CASA audits of manuals and compliance to a system that has done little in improving aircraft safety.

The aircraft registered operator eventually pays for the implementation of this system that add to the increasing regulatory burden. How many fail the random drug tests carried out by CASA?

It is estimated that this system adds more than \$5K annually to the costs of operating a small [maintenance] business.

# Part 145 Maintenance Organisation Offences

The proposed system also has offences related to training provided by the Part 145 organisation not discussed here. The following provisions are some of the increasing offence provisions of Part 145.

## 145.065 Provision of maintenance services

(1) If a Part 145 organisation provides maintenance services, it must provide the services only in accordance with:

- (a) its exposition; and
- (b) the approval rating for each class of aircraft or aeronautical product for which the organisation is approved to provide maintenance services; and
- (c) the approval rating for each specialist service that the organisation is approved to provide; and
- (d) any limitations applying to an approval rating mentioned in paragraph (b) or (c); and
- (e) the privileges that apply to the approval rating under the Part 145 Manual of Standards.

Penalty: 50 penalty units.

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

## 145.075 Requirement to provide employees with exposition

- (1) A Part 145 organisation commits an offence if:
  - (a) an employee of the organisation provides maintenance services on behalf of the organisation; and
  - (b) the organisation did not, before the employee began providing the services, make available to the employee the part of the organisation's exposition that relates to the provision by the employee of maintenance services on behalf of the organisation.

Penalty: 50 penalty units.

## 145.080 Requirement to comply with directions

(1) If CASA issues a Part 145 organisation with a direction under subregulation 145.060 (3), the organisation must comply with the direction within the time mentioned in the direction.

Penalty: 50 penalty units.

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

## 145.045 Approval subject to conditions

It is a condition of approval of a Part 145 organisation that:

- (a) the organisation must, at all times, comply with the requirements of:
  - (i) its exposition; and
  - (ii) the approval rating for each class of aircraft or aeronautical product for which the organisation is approved to provide maintenance services; and
  - (iii) the approval rating for each specialist service that the organisation is approved to provide; and
  - (iv) any limitations applying to an approval rating mentioned in subparagraph (ii) or (iii); and
  - (v) the Part 145 Manual of Standards; and
  - (vi) Part 42 and this Part; and
- (b) the organisation must ensure that, at all times, its employees comply with the requirements mentioned in paragraph (a).

*Note 1* The approval is also subject to the conditions set out in Part 11.

*Note 2* Subpart 11.G empowers CASA to issue directions.

### Comments:

Industry participants will not only be held accountable to comply with the legislation, but it will now include the very specific details stated in an Exposition and the Manual of Standards.

Part 42 is still virtually unknown as CASA has not yet circulated all of it for comment by the MSC.

AMROBA has suggested that a basic Exposition should be, in draft form, in CASA promulgated Manual of Standards and move the detail in the Manual of standards into AC & GMs.

The Part 145 Manual of Standards would need more clarity if all of industry must comply with its provisions.

Expositions and Manual of Standards can be/are very prescriptive — increased regulatory impost with more restrictive compliance costs.

The Government's Green paper proposes to:

- ensure CASA finalises its regulatory reform process to remove unnecessary regulatory impediments to the ongoing viability and growth of the general aviation sector
- consider options to help address the burden of regulatory charges, including charges on the general aviation sector.

**Will CASA adopt this policy?**

**CASA states a regulatory change proposal will be subjected to the following criteria:**

- Does it enable the transfer of safety responsibilities to industry?
- Is it consistent with international practice?
- Does it avoid "over-regulation"?
- Does it take into account complementary legislation?
- Is it simple, understandable, valid and internally consistent?

**Do proposed rules meet this criteria?**

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## What are Aviation Safety Standards?

The Civil Aviation Act states a function of CASA is to develop and promulgate 'aviation safety standards' so where are these standards?

**The Act states: aviation safety standards** means **standards** relating to the following:

- (a) the flight crews engaged in operations of aircraft;
- (b) the design, construction, maintenance, operation and use of aircraft and related equipment;
- (c) the planning, construction, establishment, operation and use of aerodromes;
- (d) the establishment and use of airspace;
- (e) the planning, construction, establishment, maintenance, operation and use of:
  - (i) services and facilities of the kind covered by paragraph 8 (1) (a) of the *Air Services Act 1995*; and
  - (iii) services of a kind referred to in paragraph 6 (1) (b) of the *Australian Maritime Safety Authority Act 1990* to the extent that those services use aircraft;

and any construction associated with those facilities or services;"

AMROBA suggests CASA should use this function to develop and promulgate **Aviation Safety Standards (ASS)** prior to developing regulations that would make it an offence not to comply with **ASSs** instead of creating Regulatory Compliance Manuals of Standards.

For instance, CASA, as a Licensing Authority, has the power to develop a CASS for just about every certificate, licence or rating they need to issue/grant. Nothing in the Act states that these standards need to be in legislation.

Therefore, the Civil Aviation (Criminal Code applied) Safety Regulations could make it an offence for certificate/licence holders not to comply with an 'ASS' promulgated by CASA and not apply the criminal code to the standard itself.

Are 'Manual of Standards' CASA promulgated Aviation Safety Standards or are they Regulatory Compliance Standards?

Currently, proposed Manual of Standards do not have the clarity of a standard whilst including very specific provisions.

**For example, is an aircraft's Type Certificate & Type Certificate Data Sheet an aviation safety standard for an aircraft?**

They were accepted as aviation safety standards initially and were to be kept in a Manual of Standards.

**Is an Inertial Navigation Workshop Standard an aviation safety standard?**

This provision of the Act surely enables CASA to replace CAOs standards and undocumented needed standards with CASA promulgated **ASSs**.

This would dramatically reduce the size of the Civil Aviation (Criminal Code) Safety Regulations.

CASA must change its regulatory development policy and start identifying the safety offences – it is accepted Australia will, because of the government directives to two-tier and apply criminal code, have unique aviation legislation.

Example: Act, Regulations & CASA promulgated **Aviation Safety Standards**

## The Aircraft Maintenance Engineers/Technician Creed

### Worth Remembering

**"UPON MY HONOR** I swear that I shall hold in sacred trust the rights and privileges conferred upon me as a qualified aircraft maintenance engineer/technician. Knowing full well that the safety and lives of others are dependent upon my skill and judgment, I shall never knowingly subject others to risks which I would not be willing to assume for myself, or for those dear to me.

**IN DISCHARGING** this trust, I pledge myself never to undertake work or approve work which I feel to be beyond the limits of my knowledge nor shall I allow any non qualified superior to persuade me to approve aircraft or equipment as airworthy against my better judgment, nor shall I permit my judgment to be influenced by money or other personal gain, nor shall I pass as airworthy aircraft or equipment about which I am in doubt either as a result of direct inspection or uncertainty regarding the ability of others who have worked on it to accomplish their work satisfactorily.

**I REALIZE** the grave responsibility which is mine as a qualified aircraft maintenance engineer/technician, to exercise my judgment on the airworthiness of aircraft and equipment. I, therefore, pledge unyielding adherence to these precepts for the advancement of aviation and for the dignity of my vocation."