

Strictly speaking

What the Commonwealth's strict liability laws mean for aviation.

Office of Legal Counsel, CASA

SINCE 15 December 2001, all Commonwealth offence provisions have been subject to the Criminal Code. Under the Criminal Code it is now necessary to expressly specify which offences in Commonwealth legislation are strict liability offences.

As a result, the Commonwealth Government has undertaken a Criminal Code harmonisation exercise to ensure offences that were created in Commonwealth legislation before 15 December, continue to operate in the way they were intended by Parliament to operate, before commencement of the Criminal Code.

There have been a number of amendments to Commonwealth legislation recently to make it clear which offences are strict liability offences.

Under the Criminal Code harmonisation exercise, offences have generally been classified as strict liability offences on the basis of the considerations expressed above (for example, summary offence, not punishable by term of imprisonment etc).

New regime: Under a strict liability regime, the Director of Public Prosecutions (DPP) must still prove that a person committed the physical element of the offence (eg that a person exceeded the speed limit). The DPP must also prove its case on the criminal standard of proof (i.e. it must prove its case beyond reasonable doubt).

Additionally, under a strict liability regime, a defendant can raise the defence of honest and reasonable mistake of fact. If that occurs, then the DPP must also be able to prove beyond reasonable doubt that there was no mistake. Generally, criminal offences consist of two elements – a physical element and a fault element. The

physical element of an offence is the doing of the act (or, in rare cases, the failure to do the act) which constitutes the criminal behaviour.

The fault element of an offence is the requisite state of mind of the person doing the act (for example, intention to commit the offence).

In order for a person to be found guilty



of a criminal offence that is not a strict liability offence, the prosecution must establish both elements of the offence beyond reasonable doubt.

An offence of strict liability does not have a fault element. It is not necessary on the part of the prosecution to establish that the person who undertook the criminal act had any particular state of mind, for example, knowledge or intention, at the

time he or she did so.

An example would be a speeding offence. If a person drives over the speed limit, the prosecution need only prove that the person exceeded the speed limit. It does not need to prove that the person intended to exceed the speed limit.

When are strict liability offences appropriate? Whether or not a particular offence is a strict liability offence has generally been left to the courts to determine.

Over the years, the courts have ventured numerous opinions on what criteria should be applied to determining whether offences are offences of strict liability or not. These opinions have often been inconsistent.

However, there are some guiding principles. Generally, an offence is likely to be regarded by the courts as a strict liability offence if:

- The offence is a summary offence (i.e. a minor criminal offence heard by a magistrate without a jury).
- The offence is not punishable by a term of imprisonment.
- There are other offences in the legislation which are expressed to be, or not to be, strict liability offences.
- The offence provides specific defences which imply that a fault element need not be proven, e.g. a person must not do something "without reasonable excuse".
- The offence regulates a matter of social importance (such as health, safety, consumer protection, environmental management), as opposed to "customary" criminal activities (such as property offences and offences against the person).

A summary offence that is related to aviation safety, and is punishable by a relatively small fine, has generally been regarded as a strict liability offence.

3M

Novec™

Engineered Fluids for Aircraft Cleaning

How
do you get
clean
components...

Cleaning is an essential process in aircraft production, maintenance and repair to ensure safe operation. Effective cleaning agents must remove a wide range of contaminants from the exterior, engine, hydraulic lines, avionics, liquid and gaseous lines, and other critical areas.

...without
damaging
them

The sensitive nature of aeronautic material means you need a specialty fluid. An effective cleaning agent must remove the contaminants, yet be compatible with a wide range of metals, plastics and elastomers. Additionally, it needs to be nonflammable, have low toxicity and a favourable environmental profile to meet worker and community concerns.



Are we
compatible?

3M™ Novec™ Engineered Fluids meet the following industry specifications:

- Boeing: BAC D6-17487 "Exterior and General Cleaners and Waxes."
- Boeing: BAC 5750, "Solvent Cleaning."
- NASA: SE-S-0073, "Space Shuttle Specifications for Fluid Procurement and Control."
- Aerospace Materials: ASM 1526B, "Cleaning for Aircraft Exterior Surfaces Water-Miscible, Pressure Spraying Type."

In addition, Novec fluids HFE-7100 and HFE-71DE are approved for use as an oxygen equipment wipe cleaning solvent per Boeing oxygen cleaning specification BAC 5402, "Oxygen Systems."

If you have any questions about Novec™ Engineered Fluids for use in Aircraft Cleaning please contact our Distributor:

SOLVENTS AUSTRALIA Pty Ltd Ph: 02 9979 6866 Email:
admin@solvents.net.au or www.solvents.net.au

Visit the 3M web site at www.3m.com/fluids
Or phone 3M Australia on 02 9677 5660



Operations Manuals, Dangerous Goods Courses and Manuals, Instrument Rating Courses

Professional and Personalised services.

Manuals and Courses to CASA requirements and your specific needs.

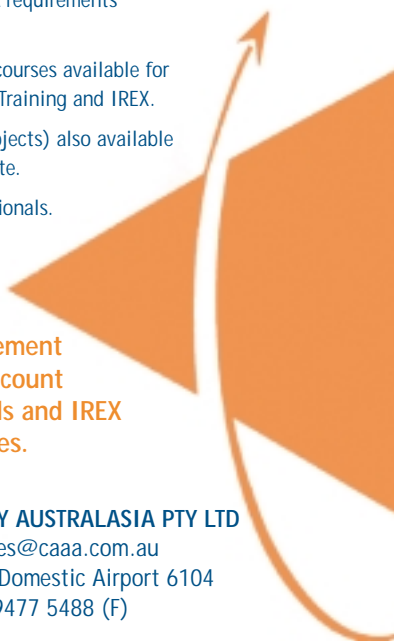
Classes and correspondence courses available for Dangerous Goods Awareness Training and IREX.

Sample examinations (all subjects) also available Order TODAY from our web site.

Experienced Aviation professionals.

Mention this advertisement and receive a 20% Discount on all Dangerous Goods and IREX Correspondence Courses.

CIVIL AVIATION ACADEMY AUSTRALASIA PTY LTD
ACN 099 016 136 enquiries@caaa.com.au
130 Fauntleroy Ave Perth Domestic Airport 6104
(08) 9477 5477 (P) (08) 9477 5488 (F)
www.caaa.com.au



SECOMBE AVIATION
THE ATPL (A) SPECIALISTS
Written by an ex RAAF pilot for pilots

ATPL (A) CORRESPONDENCE COURSE

- ★ Tremendous pass rate
- ★ Professionally developed manuals
- ★ INDIVIDUAL subjects available
- ★ Flight Planning made EASY!!
- ★ Free 1800 HELP LINE
- ★ All amendments included
- ★ Practise ATPL exams with answers

For details and cost, phone or fax
1800 636 830 or **02 4754 4461**

SECOMBE AVIATION PTY LTD
PO Box 4260, WINMALEE 2777
Website: www.hermes.net.au/atplhelp
E-mail: atplhelp@hermes.net.au

LET ME HELP YOU GET YOUR OPS. MANUAL THE EASY WAY!

We'll produce it with a minimum of fuss, save you hours of time and tailor it specifically to your needs. You'll end up with an easy-to-use, practical format for day-to-day use that exceeds CASA requirements. Compliance statement is included. AVCATS manuals represent top value for money. Also enquire about:

- Exemptions
- Dangerous Goods Manuals
- AOC Applications



AVCATS

Aviation Consulting
and Training Services

A member of the Civil Group

TALK TO
JOHN ORLOWSKI
(03) 9752 6777
Fax: (03) 9752 5022
Mobile: 0419 365588



Postal address: PO Box 2750 Cheltenham Victoria Australia 3192 www.civil.com.au/avcats
e-mail: jjo@netspace.net.au AVCATS Pty. Ltd.

Print Post Approved 381677-00644
If undeliverable please return to:
CASA ARN Update Team
GPO Box 2005, Canberra, ACT, 2601
AUSTRALIA

SURFACE MAIL

POSTAGE
PAID
AUSTRALIA

CHANGED YOUR ADDRESS?

Do we have your correct mailing address?

Fill out the details below and post in an envelope (no stamp required) to: CASA Regulatory Service Division (LARP) Reply paid 836 Fortitude Valley QLD 4006, Australia. The details provided will update your contact information held by CASA.

ARN /Licence no. _____ Name _____

Address _____ Town/Suburb _____

State/Country _____ Postcode _____

Phone (bh)_() _____ Phone (ah)_() _____ Mobile _____

Fax_() _____ Email _____

Your signature (or authorised agent) _____