

#### 7.18.1 Introduction

CAA 28 Under CAA section 28, a CASA delegate must be satisfied with certain matters before CASA may legally issue an AOC. Many other decisions made under the CAA, CAR, CASR and CAO require delegates to be legally satisfied before issuing licences, ratings, endorsements, approvals, permissions etc.

The following is a guide as to the matters to be taken into consideration where a delegate is required to be satisfied under legislation before making a decision.

#### 7.18.2 Finding Satisfaction is Essentially a Six-step Process

1. **Identify the relevant legislation** that authorises the decision-making process and the applicable statutory criteria.
2. **Identify the relevant facts** and determine if it is really your decision to make under your existing delegations.
3. **Assess the identified relevant facts against the criteria set out in the applicable Regulation or Order.**
4. **Form the required opinion and make a decision.** Steps 1, 2 and 3 are straight procedures that most Inspectors undertake on a daily basis. For step 4 (this step), we enter a legal framework, which is at the heart of 'being satisfied'. There are a number of criteria to be applied in arriving at a finding of 'satisfied'.
  - a. The opinion must be one that a reasonable person could form having regard to the applicable statutory requirement.
  - b. The delegate must not confer power on himself/herself by creatively misconstruing the legislative requirements. That is, the opinion must be formed in accordance with the legislation.
  - c. The delegate must not unreasonably exercise his or her power in an arbitrary or extravagant manner.
  - d. The opinion formed must not be influenced by consideration of irrelevant material. Rather, the opinion should account for all relevant facts.
  - e. Relevant CASA policies are matters that should be taken into account, but the delegate should not be inflexible in applying policy. Exceptional circumstances may justify the over-riding or adaptation of existing policy.
  - f. Whilst a delegate must set priorities, a decision cannot be delayed excessively and should be made within a reasonable time period.

- g. The opinion formed is not required to meet an excessively demanding standard of satisfaction as to its correctness. All that is required is to meet an extension of the reasonable person test encapsulated in the common law. In other words, could a reasonable person have formed the same opinion? The delegate can form an opinion “on the balance of probability” (the civil law standard of proof) rather than on the criminal law standard of proof which requires a person to be satisfied “beyond reasonable doubt”. The final opinion must be justifiable but the total disproving of all other theories or possibilities is not necessary.
5. **Check the conclusion.** Ask yourself “*Are there reasonable grounds for forming that opinion? Do the facts satisfy the statutory requirements?*” **Peer review:** Delegates are entitled to seek advice on matters requiring particular expertise. Whenever possible, check with other delegates in your work group that your opinion meets both the relevant facts and the legislative requirements. This is not intended as a check on you as a decision-maker, rather that the opinion formed sits comfortably with the known facts/legislation and given that data, other reasonable delegates would come to the same opinion.
6. **Record the reasons for the ‘satisfaction’.** The opinion must be actually formed. That is, the delegate must hold the belief that the decision, the application of power, satisfies the legislative requirements. You need not elaborate on policy considerations taken into account but you must be able to define the decision-making process steps, and the facts/evidence considered at each stage leading up to the decision. Where facts have been discounted as irrelevant, these should be recorded to show that they do not form part of the final decision.

Write your reasons as if a commission of inquiry or tribunal may eventually sight your document. Both as a matter of professionalism and of commonsense, keep frivolity and personal comment out of the record. In addition, make sure that draft documents are taken off your files and electronic storage, as retention may create confusion. Should the draft differ from a document’s final, published form, it may be difficult to explain factors that caused a delegate to change his opinion.