



# Just Culture

## in the exercise of CASA's enforcement powers and the use of safety information

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### Purpose

To explain the nature and basis of the approach taken by the Civil Aviation Safety Authority (CASA) in applying the principles of just culture in CASA's enforcement-related actions and use of safety information, and to confirm CASA's commitment to those principles as reflected in the Regulatory Philosophy.

### Background

1. A key feature of modern Safety Management Systems is a 'just culture' regime that operates to protect individuals from punitive or disciplinary action for 'honest mistakes' made in the course of performing their aviation-related functions, where:
  - 1.1 the conduct involved is voluntarily reported in accordance with the applicable safety management procedures; and
  - 1.2 the act or omission is commensurate with an individual's experience, qualifications and training.Excluded from the scope of this kind of protection are acts involving gross negligence, recklessness, or wilful violations of applicable rules and requirements.
2. As initially promulgated in the Directive, *Limitations on the Use of Safety Information* (CASA-02-0053), and in keeping with principle 8 of CASA's Regulatory Philosophy, CASA embraces and applies these principles in the performance of its regulatory functions and the exercise its

regulatory powers. In doing so, CASA effectively extends just culture protections beyond information that is reported to CASA (voluntarily or otherwise) to include all situations in which CASA becomes aware of a person's acts or omissions that may contravene applicable regulatory requirements. This Directive supplants the Directive *Limitations on the Use of Safety Information* (CASA-02-0053), v. 3.0.

## Application

3. This Directive applies to all CASA officers and delegates exercising CASA's powers under the civil aviation legislation.

Note. A CASA **officer** means a member of the staff of CASA and includes managers.

## Directive

### 4 Limitations on the exercise of certain enforcement powers

- 4.1 Except in situations involving serious and imminent risks to air safety, CASA will not initiate administrative action to:

- 4.1.1 vary, suspend or cancel a civil aviation authorisation;

- 4.1.2 refuse to issue a civil aviation authorisation; or

- 4.1.3 issue a direction to a particular person under or pursuant to a provision of the civil aviation legislation,

if the person whose interests would be affected by such action has satisfied CASA that all necessary and appropriate steps have been, or are being, taken to:

- 4.1.4 ensure that preventive, corrective and remedial actions have been, or will timely be, taken to rectify identified deficiencies or shortcomings and/or to eliminate or effectively mitigate the risk of a recurrence of the conduct in question; and

- 4.1.5 eliminate or effectively mitigate the risk of harm, injury or damage to persons or property pending the successful completion of the actions contemplated by 4.1.4 above; and

CASA is satisfied that necessary and appropriate arrangements are in place whereby CASA is able to ascertain, on an ongoing basis, whether the actions contemplated by 4.1.4 and 4.1.5 will be, are being, and/or have been effectively taken.

For clarity, in any case where CASA cannot be satisfied that effective action of the kind mentioned in *both* 4.1.4 and 4.1.5 has been, is being or will imminently be taken, CASA may proceed to take action of the kind mentioned in 4.1.1, 4.1.2 or 4.1.3, as the case may be.

- 4.2 Notwithstanding the limitations set out in 4.1 above, CASA may take administrative action to:

- 4.2.1 vary, suspend or cancel a civil aviation authorisation;

- 4.2.2 refuse to issue a civil aviation authorisation; or

- 4.2.3 issue a direction of any kind under or pursuant to a provision of the civil aviation legislation,

if the conduct involved is reasonably seen to:

- 4.2.4 involve a grossly negligent, reckless or wilful and deliberate contravention of the

civil aviation legislation, including the breach of a duty; or

- 4.2.5 be part of a pattern of repetitive contraventions of the same or substantially similar regulatory requirement(s), or breaches of the same or substantially similar duty(ies) within the preceding three (3) years.

## 5. Limitations on action by CASA with a view to possible criminal prosecution or the issuance of an infringement notice

CASA will not seek to pursue a criminal prosecution or to issue an infringement notice except where:

- 5.1 the conduct involved is reasonably seen to constitute a grossly negligent, reckless or wilful and deliberate contravention of the civil aviation legislation<sup>1</sup>; or
- 5.2 the person has, on one or more occasions within the preceding three (3) years, been issued with an infringement notice for a breach of the civil aviation regulations involving the same or substantially similar conduct; or
- 5.3 the person has, on one or more occasions within the preceding three (3) years, been counselled by CASA for engaging in the same or substantially similar conduct; or
- 5.4 the person has, on one or more occasions within the preceding three (3) years been convicted or found guilty of an offence under the civil aviation legislation on the basis of the same or substantially similar conduct; or
- 5.5 CASA reasonably forms the view that the person has, on one or more occasions within the preceding three (3) years done any of the things mentioned in section 30DB of the *Civil Aviation Act 1988*<sup>2</sup> or in paragraphs 269(1)(a) through (e) of the *Civil Aviation Regulations 1988*<sup>3</sup>, even if action under section 30DC of the *Civil Aviation Act* to suspend a civil aviation authorisation, or action under subregulation 269(1) of the *Civil Aviation Regulations* to vary, suspend or cancel a civil aviation authorisation, may not have been taken in any of those instances.

## 6. Use of safety information by CASA to ascertain compliance with safety management system requirements

To avoid doubt, subject to the limitations described above, and consistent with the applicable

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<sup>1</sup> This limitation is intended to apply even if the offence involved is one of strict liability.

<sup>2</sup> Section 30DB provides as follows: 'The holder of a civil aviation authorisation must not engage in conduct that constitutes, contributes to or results in a serious and imminent risk to air safety'.

<sup>3</sup> In pertinent part, paragraphs 269(1)(a)-(e) provide as follows:

- (a) the holder of the authorisation has contravened, a provision of the Act or these Regulations, including these regulations as in force by virtue of a law of a State;
- (b) the holder of the authorisation fails to satisfy, or to continue to satisfy, any requirement prescribed by, or specified under, these Regulations in relation to the obtaining or holding of such an authorisation;
- (c) the holder of the authorisation has failed in his or her duty with respect to any matter affecting the safe navigation or operation of an aircraft;
- (d) the holder of the authorisation is not a fit and proper person to have the responsibilities and exercise and perform the functions and duties of a holder of such an authorisation;
- (e) the holder of the authorisation has contravened, a direction or instruction with respect to a matter affecting the safe navigation and operation of an aircraft, being a direction or instruction that is contained in Civil Aviation Orders.

provisions of the Civil Aviation Safety Regulations, data and information obtained, provided to, or otherwise held by, CASA may be used by CASA for the purposes of:

- 6.1 monitoring, auditing and determining compliance with, and the effective operation of, a Safety Management System, any element of a Safety Management System or other safety-related quality control or assurance process required by or under the civil aviation legislation; and
- 6.2 ascertaining whether a Safety Management System, any element of a Safety Management System or other safety-related quality control or assurance process required by or under the civil aviation legislation, may have been circumvented, manipulated, compromised or otherwise misused for the apparent purpose of:
  - 6.2.1 concealing wilful, deliberate or reckless contraventions of the civil aviation legislation; or
  - 6.2.2 avoiding compliance with obligations or duties under a Safety Management System, any element of a Safety Management System, or other safety-related quality control process that is required by or under the civil aviation legislation.

## **7. Use of safety information by operators and other service providers**

- 7.1 Subject to the safety management provisions set out in the civil aviation legislation for certain air operators and service providers, the following actions, when taken by an operator or service provider, will *not* be regarded by CASA as 'punitive' or 'disciplinary' action:
  - 7.1.1 any reasonable corrective, remedial or preventive action taken to rectify shortcomings or deficiencies in an individual's aviation-related skills, knowledge, ability or competence;
  - 7.1.2 any reasonable action taken to eliminate or minimise the risk of harm, injury or damage to persons or property pending satisfactory demonstration of necessary skill, knowledge, ability or competence by an individual in respect of whom the operator or service provider has taken action of the kind contemplated by 7.1.1 above;
  - 7.1.3 any lawful action taken on the basis of repetitive contraventions by an individual of the same or substantially similar regulatory requirement(s), or breaches of the same or substantially similar duty(ies), over a recent period of time.
- 7.2 Operators and other service providers should not be prevented from using safety information of the kind contemplated by the legislation mentioned in 7.1 above in support of otherwise lawful punitive or disciplinary action in response to grossly negligent, reckless or wilful and deliberate conduct by an individual involving the contravention of requirements specified in or under the civil aviation legislation.

## **8. Limitations on the use of cockpit voice recording information**

Nothing in this Directive is intended to affect the operation of the limitations governing the use of Cockpit Voice Recording (CVR) information specified in Part IIIB of the *Civil Aviation Act 1988*.

## **9. Challenging the inappropriate use of safety information by CASA**

- 9.1 A person who believes their interests have been or are likely to be adversely affected by
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CASA's use of safety information in a manner that is inconsistent with the terms of this Directive, may challenge CASA's use of that information. Such a challenge may be made:

9.1.1 **before CASA takes action** to vary, suspend or cancel a civil aviation authorisation, to refuse to issue a civil aviation authorisation, to issue a direction under the civil aviation legislation or to issue an infringement notice-by writing to CASA and specifying in sufficient detail:

9.1.1.1 the particular safety information involved, including, if known, the source of that information, and the means by which the person believes CASA obtained or acquired the information; and

9.1.1.2 the particular provision(s) of the Directive with which the person believes CASA's use of the information involved is or would be inconsistent; or

9.1.2 **after CASA has initiated action** to vary, suspend or cancel a civil aviation authorisation, to refuse to issue a civil aviation authorisation, to issue a direction under the civil aviation legislation or to issue an infringement notice, by raising that claim, including the information mentioned in 9.1.1.1 above, in:

9.1.2.1 the person's response to a show cause notice, or to a notice given for similar purposes; or

9.1.2.2 submissions in support of an appeal of CASA's decision in the Administrative Appeals Tribunal or an application for review in the Federal Court; or

9.1.2.3 a request that an infringement notice be withdrawn in accordance with the provisions of Part 17, Division 3 of the *Civil Aviation Regulations 1988*.

9.2 In claiming that CASA intends to use, or has used, safety information in a way that is inconsistent with this Directive, the person making that claim will be expected to provide sufficient information to suggest at least a reasonable possibility that the alleged misuse actually occurred.<sup>4</sup>

9.3 If the person's claim meets the evidentiary requirements in 9.2 above, the onus will shift to CASA to show that the use to which the information has been, or will be, put is consistent with the relevant provisions of this Directive.

## 10. Application consistent with other laws

CASA will apply the principles reflected in this Directive subject to the requirements of the *Privacy Act 1988*, the *Freedom of Information Act 1982* and other Commonwealth legislation governing the use and protection of information acquired, obtained or held by CASA in the performance of its functions and the exercise of its powers.

Pip Spence  
Director of Aviation Safety  
Date: February 2023

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<sup>4</sup> This is known as the *evidential burden* of proof, which is defined in the section 13.3 of the *Criminal Code Act 1995* as: '... the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist'.