



CASR PART 92 (DANGEROUS GOODS) POST IMPLEMENTATION REVIEW

ASAP TECHNICAL WORKING GROUP (TWG)

TASKING INSTRUCTIONS and **SECOND** REPORT

The Part 92 PIR Technical Working Group (TWG) is established and operates in accordance with the Terms of Reference of the Aviation Safety Advisory Panel (ASAP) dated September 2017 (or as amended).

PURPOSE

The role of the TWG will be to provide relevant technical expertise and industry sector insight for the development of legislation in accordance with the agreed policy principles.

The TWG will:

- Provide industry sector insight and understanding of current needs and challenges in relation to the consignment and carriage of dangerous goods by air
- Provide current, relevant technical expertise for the development, analysis and review of legislative and non-legislative solutions to the identified issues
- Assist with the review of policies, existing regulations, advisory materials and transition strategies in relation to Part 92 – Consignment and carriage of dangerous goods by air
- Provide a recommendation to the ASAP regarding whether it should provide endorsement and/or conditional endorsement of policies, regulations, advisory materials and transition strategies in relation to the Part 92 PIR project.

KEY PRINCIPLES

The following principles for the amendment are:

Principle 1: To seek the alignment of Part 92 with ICAO requirements (unless there are extenuating reasons) for any provision that is either more or less restrictive than ICAO requirements.

Note: Article 87 of the Chicago Convention on Civil Aviation seeks “to secure the highest practicable degree of uniformity in regulations, standards, procedures and organisations in relation to aircraft, personnel, airways and auxiliary services...”

Principle 2: Australian situations should only be made more restrictive where it was considered necessary from safety perspective, reflected an international emerging practice, or thought likely that ICAO may adopt the Australian initiative.

Principle 3: Any new imposts should not constitute a major additional expense or burden; that new measures should be encouraged rather than mandated, and that new legislative measures ought not to be going beyond existing mainstream industry practices.

Principle 4: Rather than CASA’s delegates repetitively issuing similar permissions under Section 23 of the Act, statutory exclusions through Subpart 92.D, which maintain an equivalent level of safety, and for which there is sufficient level of demand; should be developed.

Principle 5: Where possible, consider the benefit of removing additional compliance costs from burdensome regulations, particularly where there appears to be common areas of responsibility or overlap with other Government agencies and departments, and to publish safety related guidance material rather than generating new regulation.

Principle 6: To provide information and to encourage the adoption by industry of safety-related practices and responsibilities.

SPECIFIC OBJECTIVES

The project has three key components:

1. **Regulation model.** The primary focus of this amendment is to align with ICAO Annex 18 standards and recommended practises (SARPs) using a model that most closely meets the key principles for the amendment.
2. **Legislation.** Improve existing legislation and address broader industry issues whilst maintaining support of government initiatives, such as the whole of government “cutting red tape” initiative. This will be achieved by reviewing the existing Part 92 against selected domestic and international legislation to determine:
 - a. Any differences from the selected international legislation that are essential to address unique Australian conditions;
 - b. Transitional strategies to minimise the disruption to current industry.
3. **Detailed policy development.** Prepare a comprehensive document setting out the detailed policy settings required for provision of drafting instructions.

Timelines for specific outputs are:

- Project launch and initiation: July 2018 (approval 21 November 2018)
- **TWG meeting (face-to-face): March 2019**
- Public consultation on detailed policy: March/April 2019
- **TWG meeting (vid con): April 2019**
- Policy finalisation: May 2019
- Legislation drafting: June 2019 – April 2020
- **TWG meeting (face-to-face): February 2020**
- Public consultation of legislation and guidance material: April 2020
- **TWG meeting (vid con – if necessary): Late April 2020**
- Regulatory package to Department: June 2020

ROLES AND RESPONSIBILITIES

CASA	TWG Members
<ul style="list-style-type: none">• Organise meetings and workshops, and produce agendas, papers and supporting materials• Facilitate meetings and workshops• Record insights and findings• Communicate openly and consistently with TWG members about project status and issues• Respect the time of all TWG members by minimising work required to achieve outcomes	<ul style="list-style-type: none">• Commit to supporting the project objectives and timeline• Engage and collaborate constructively at all times• Prepare for working group activities by reviewing agendas, papers and supporting materials• Provide timely and considered advice in meetings, and between meetings as required• Respond to requests for feedback on draft materials within agreed timeframes

CONSENSUS

A key aim of the TWG is that a consensus be reached, wherever possible, in the finalisation and preparation of advice for the Aviation Safety Advisory Panel and CASA.

The TWG will be guided by the ASAP Terms of Reference (Section 6 - attached) with respect to determining and documenting consensus.

MEMBERSHIP

Members of the TWG have been appointed by the ASAP Chair, following ASAP processes.

The Part 92 TWG consists of the following members:

*David Chitty – Qantas Group	Paul Robertson – Virgin Australia
Toni Farquharson – Qantas Group	*Warren Beresford
*Stuart Burns – Complete Aviation	*Shannon Wells – Par Avion, <i>represented by Luuk Veltkamp on 10 October 2019</i>
*Anthony Gibara – Regional Express	*Helen Barton – Regional Express
Stuart Richter – Toll Aviation	

** Unable to attend the TWG videoconference on 10 October 2019.*

The TWG CASA Lead, Sam Bitossi, was supported by Adrian Tusek during the meeting.

The ASAP Secretariat was represented by Matthew Di Toro.

PROCESS FOR ACHIEVING CONSENSUS

As required by the ASAP (& TWG) Terms of reference, there must be agreement by all participants on the method used for obtaining consensus.

To obtain consensus, the TWG came to an agreement on whether consensus (or otherwise) has been met on the outcomes discussed at the TWG meeting (or out of session). This result has been recorded under Outcomes A and B with additional commentary captured in C.

The CASA Lead has also provided commentary of the effectiveness of the TWG and whether it's believed that the recorded outcomes are a fair representation of the TWG from a CASA perspective.

SUMMARY OF OUTCOMES – TWG Videoconference – 10 October 2019

This meeting of the TWG worked towards achieving the overall TWG outcomes as described in the ASAP TWG Tasking Instructions.

The below questions seek to ascertain the views of the TWG at this time, so their advice can be provided to the ASAP. Importantly, the TWG may determine that the outcomes are not yet met and therefore provide advice to the ASAP that this is the case. The TWG would, however, also need to qualify and outline why this is the case along with recommendations as to what needs to occur for it to achieve the outcomes.

In addition to the below commentary, any issues raised in the TWG meeting will be provided to the TWG members, ASAP and CASA to ensure there is a common understanding of the areas where rework or investigation is required.

Note: At this meeting, the TWG did not meet quorum, however members present provided their views. It was agreed that the CASA Lead will brief the TWG members who were not present. Any additional comments will be captured by the CASA Lead.

- A. Was there consensus achieved among the TWG members that responses received during public consultation have been satisfactorily addressed?

FULL CONSENSUS / GENERAL CONSENSUS / DISSENT

Comments:

After reviewing the responses to the consultation and considering CASA's intentions, the TWG are in full consensus that these responses have been satisfactorily addressed.

- B. Does the TWG recommend that the ASAP endorse the proposed policy amendments for CASR Part 92?

SUPPORTED / UNSUPPORTED

FULL CONSENSUS / GENERAL CONSENSUS / DISSENT

Comments:

The TWG are in full consensus that the ASAP endorse the proposed policy amendments for CASR Part 92.

- C. Does the TWG have any other feedback or advice that should be considered by the ASAP?

Comments:

The TWG noted the absence of a Dangerous Goods training specialist in the membership and requests the ASAP to appoint a member with this expertise for future TWG meetings.

CASA Lead Summary

SAM BITOSSI

Comment:

On behalf of CASA and the DG team, we would like to thank the TWG for all your time and effort in reviewing the feedback from the public consultation of Part 92. Again, such a positive and engaged TWG, assisting us with discussing the feedback and providing a balanced approach when considering the concepts brought forward from the public consultation.

Following a technical edit, the Summary of Consultation (SOC) report will be published on the CASA Consultation Hub to close out this consultation period.

The Part 92 Policy Determination Document and Drafting Instructions (PDD DI) is in the final stages of editing and will be sent to the Office of Parliamentary Council (OPC) once cleared internally by CASA management. The final copy of the PDD DIs will be distributed to the Part 92 TWG once the document is approved for release to OPC.

The TWG will be informed when the drafting commences with OPC and kept abreast of the progress of the amendments. The next TWG meeting will be conducted face-to-face to review the drafted amendments to Part 92.

Appendix

1. Extract from ASAP Terms of Reference
2. Part 92 TWG Agenda – 10 October 2019
3. Part 92 TWG - Issues register
4. Draft Summary of Consultation (SOC) on PP 1902OS

(extract) From ASAP and TWG Terms of Reference regarding Consensus

- 6.1** A key aim of the ASAP is that a consensus be reached, wherever possible, in the finalisation and preparation of advice to the CEO/DAS.
- 6.2** For present purposes, 'consensus' is understood to mean agreement by all parties that a specific course of action is acceptable.
- 6.3** Achieving consensus may require debate and deliberation between divergent segments of the aviation community and individual members of the ASAP or its Technical Working Groups.
- 6.4** Consensus does not mean that the 'majority rules'. Consensus can be unanimous or near unanimous. Consensual outcomes include:
 - 6.4.1 Full consensus**, where all members agree fully in context and principle and fully support the specific course of action.
 - 6.4.2 General consensus**, where there may well be disagreement, but the group has heard, recognised, acknowledged and reconciled the concerns or objections to the general acceptance of the group. Although not every member may fully agree in context and principle, all members support the overall position and agree not to object to the proposed recommendation.
 - 6.4.3 Dissent**, where differing in opinions about the specific course of action are maintained. There may be times when one, some, or all members do not agree with the recommendation or cannot reach agreement on a recommendation.

Determining and Documenting Consensus

- 6.5** The ASAP (and Technical Working Groups) should establish a process by which it determines if consensus has been reached. The way in which the level of consensus is to be measured should be determined before substantive matters are considered. This may be by way of voting or by polling members. Consensus is desirable, but where it is not possible, it is important that information and analysis that supports differing perspectives is presented.
- 6.6** Where there is full consensus, the report, recommendation or advice should expressly state that every member of the ASAP (or Technical Working Group) was in full agreement with the advice.
- 6.7** Where there is general consensus, the nature and reasons for any concern by members that do not fully agree with the majority recommendation should be included with the advice.
- 6.8** Where there is dissent, the advice should explain the issues and concerns and why an agreement was not reached. If a member does not concur with one or more of the recommendations, that person's dissenting position should be clearly reflected.
- 6.9** If there is an opportunity to do so, the ASAP (or Technical Working Group) should re-consider the report or advice, along with any dissenting views, to see if there might be scope for further reconciliation, on which basis some, if not all, disagreements may be resolved by compromise.

Part 92 TWG - Issues Register (as of 29 October 2019)

Issue No.	Policy Item	Status	Description	Raised By	Date Raised	Responsible Officer	Actions & Progress Notes	Date Resolved
1	3.6	Open	<p>3.6 - Raise comments for review by CASA legal prior to technical working group. TWG to consider the concept of raising a second DGD. This would require the person who restores the package to have Group F training, which creates additional complexity to what is proposed in this amendment. ACTION: Send to CASA legal for review and comment.</p> <p>TWG DISCUSSION: Email sent to LARA, comments to be reviewed once received. Refer comments in cell B8. If changes to DIs are required, TWG will be advised. TWG would like it noted that they want to be reminded to review the definition of "qualified person" when drafted into the regs. This has been added to the Issues register in the TWG Notes section.</p>	TWG	29-Oct-19	S Bitossi	<p>TWG to:</p> <ol style="list-style-type: none"> 1. Review draft regulations for policy item 3.6, with specific focus on the defining of a "qualified person" who is authorised to undertake the restoration of the package. 2. Provide comments feedback or outcome. <p>SB to:</p> <ol style="list-style-type: none"> 3. Note outcome of discussion 4. Make changes to the policy (if required) 5. Advise TWG of changes etc. 	
2								
3								
4								



Australian Government
Civil Aviation Safety Authority

The background features a collage of three black and white photographs of aviation professionals. The top photo shows a man in a flight suit and glasses. The middle photo shows two men in flight suits shaking hands. The bottom photo shows two men in flight suits looking at a document. The collage is overlaid with large, diagonal geometric shapes in orange and blue.

SUMMARY OF CONSULTATION

Proposed changes to the dangerous goods rules – amendment to CASR Part 92

Civil Aviation Legislation Amendment (Part 92) Regulation 2019

Date	November 2019
Project number	OS 5/01
File ref	F19/9293-1

Overview

Part 92 – Carriage and Consignment of Dangerous Goods – came into effect on 1 January 2004. CASA conducted a Post Implementation Review (PIR) after the introduction of new legislation which concluded in early 2018. The Part 92 Project commenced in October 2018, capturing the work already conducted under the PIR and consolidating additional regulatory change requirements which have been identified since consultation as part of the PIR occurred.

The consultation proposed policy changes that would be captured in an amended Part 92 and which sought to address industry issues with the current legislation, comply with the broader government "cutting red tape" initiative and align the regulations with the current ICAO Standards and Recommended Practices (SARPs) contained within Annex 18.

The changes proposed in the public consultation were reviewed by the Part 92 Technical Working Group (TWG) prior to release for public consultation. The consultation has now closed, and a summary of the feedback is provided below.

Respondents

CASA received a total of seven submissions, of which six respondents consented to having their comments published on the CASA consultation hub. The seventh respondent (who requested anonymity) did not provide any comment to the proposed policy items.

Consultation feedback and CASA responses

The majority of respondents indicated a strong support for the overarching policies proposed and the amendments to be made to Part 92.

The feedback provided was reviewed by CASA and is summarised below with CASA's response.

Theme 1 - clarification around offences

Multiple respondents requested further clarification regarding specific offences and exactly who they would apply to (i.e. Shipper, passenger, operator or freight forwarder etc.).

CASA response

CASA notes this feedback and will ensure the drafted amendments provide the necessary clarity.

Theme 2 - certain training or qualifications

Multiple respondents requested consideration be given to what training or qualifications are required for persons authorised to "restore" packaging.

CASA response

CASA will place a definition of a "qualified person" in the drafted legislation amendment.

Theme 3 - limited / experimental category aircraft

One participant asked CASA to consider limited/experimental category aircraft for inclusion into the provisions for dangerous goods carried by a private operation under CASR 92.175.

CASA response

CASA reviewed the request and discussed it with the TWG, deciding that the carriage of dangerous goods in the specified situation is best managed outside of a regulatory amendment.

Theme 4 - mandatory DG challenge for passengers

There was one objection from a small commercial operator regarding the mandatory DG challenge of passengers.

CASA response

This suggestion for a change to the policy was not supported by the TWG and therefore CASA has decided to continue to legal drafting based on the consulted policy.

Theme 5 - freight forwarder reporting requirements

One participant raised the issue of reporting requirements for freight forwarders who may handle freight up/down stream of the air transport system.

CASA response

CASA will include a note in the drafted legislation to clarify the recommended level of reporting for freight forwarders. Prior to CASA making any changes to the formal policy, a change is required at the ICAO level before incorporating this requirement into the Part 92.

Theme 6 - DG training course approval validity period

An industry representative suggested that the validity of dangerous goods training course approvals issued by CASA to industry should be extended from 3 years to 5 years.

CASA response

This matter was discussed in the last TWG meeting and it was explained by CASA that the current CASA policy is to issue approvals with a maximum validity period of 3 years. Taking into consideration that the ICAO Technical Instructions are revised every 2 years and updated regularly by corrigendum/addendum, 3 years is the current period of time before a review of course content is conducted prior to renewing a dangerous goods training course approval.

Theme 7 - Management of DG training course failures

Several industry participants provided comments on dangerous goods training requirements, in particular, comments regarding the management of training failures by an employee and the ability to re-sit a dangerous goods exam. One industry person expressing that a failed participant should be able permanently removed from handling dangerous goods.

CASA response

This suggestion was not supported by the TWG or CASA. Under the current training framework, an employee should be given the opportunity to demonstrate competency, and if unable to demonstrate the level of competency required, the employee should be retrained and given the opportunity to recertify.

Theme 8 - Management of DG training course failures

Two separate items of feedback were received regarding the validity period for dangerous goods training. One industry participant was not supportive of alignment with ICAO's 24-monthly training period. The other industry participant suggested that the validity of dangerous goods training could be extended out to 5 years, instead of the current 2 yearly recurrency period.

CASA response

Both suggestions were discussed with the TWG, who were in support of CASA aligning with the ICAO dangerous goods training validity period of 24 months.

Future direction

In addition to the specific feedback provided, the respondents expressed strong support for the proposed policies and the overall desire to see Part 92 progress with these amendments. This feedback has also been reviewed by the Part 92 TWG.

The next step is for a draft of the actual legislation to be produced that reflects the proposed changes, as adjusted by this summary of consultation.

Once the draft legislation is complete, CASA will initially seek feedback on the draft legislation from the Part 92 TWG. Feedback received from the TWG will be incorporated into the draft legislation prior to a second round of public consultation.