



CIVIL AVIATION ADVISORY PUBLICATION CAAP ADMIN-01 v2.0

The background features a navigation chart on the left and a person signing a document on the right, both framed by orange and blue geometric shapes.

Indemnity arrangements for delegates, authorised persons and flight examiner rating holders

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This Civil Aviation Advisory Publication (CAAP) provides guidance, interpretation and explanation on complying with the Civil Aviation Regulations 1988 (CAR) or a Civil Aviation Order (CAO).

This CAAP provides advisory information to the aviation industry in support of a particular CAR or CAO. Ordinarily, the CAAP will provide additional 'how to' information not found in the source CAR, or elsewhere.

Civil Aviation Advisory Publications should always be read in conjunction with the relevant regulations/orders.

Audience

This Civil Aviation Advisory Publication (CAAP) applies to:

- delegates
- authorised persons
- flight examiner rating holders.

Purpose

The purpose of this publication is to explain the legal effect of delegations and authorisations and to provide general information to persons holding delegations and authorisations about their duties and liabilities. It does not purport to be an exhaustive statement of the rights and liabilities of such persons. It is intended only as a summary of the general principles involved.

It also provides details about the Civil Aviation Safety Authority's policy in relation to indemnifying delegates, authorised persons and flight examiner rating holders against certain actions brought against them as a result of the performance of functions and the exercise of powers under a delegation or pursuant to an appointment as an authorised person, and the exercise of privileges to conduct flight tests and grant ratings by flight examiner rating holders, on and from 1 September 2018. This version of the CAAP revokes CAAP Admin (1) and the Special Supplement to CAAP Admin (1).

For further information

For further information on this CAAP, contact CASA's Legal, International and Regulatory Affairs Division (telephone 131 757).

Status

This version of the CAAP is approved by the Executive Manager, Legal, International and Regulatory Affairs Division.

Note: Changes made in the current version are not annotated. The document should be read in full.

| Version | Date | Details |
|---------|--------------|--|
| v2.0 | August 2018 | Provide an indemnity to flight examiner rating holders conducting flight tests and granting ratings, limiting CASA's indemnity to all persons referred to in the CAAP to \$100m, excluding DAMEs and certain persons delegated powers under CAR 288. |
| | July 2018 | Special Supplement to CAAP ADMIN (1) published. |
| (1) | January 1992 | Initial CAAP. |

Contents

| | | |
|----------|---|----------|
| 1 | Reference material | 4 |
| 1.1 | Acronyms | 4 |
| 1.2 | References | 4 |
| 2 | Introduction | 5 |
| 2.1 | Delegations | 5 |
| 2.2 | Authorised persons | 5 |
| 2.3 | Flight examiner ratings | 5 |
| 2.4 | Responsibilities of a delegate/authorised person | 6 |
| 2.5 | Why CASA indemnifies delegates and authorised persons | 6 |
| 2.6 | Why CASA indemnifies flight examiner rating holders | 6 |
| 2.7 | Are delegates/authorised persons/ flight examiners indemnified in all circumstances? | 6 |
| 2.8 | What should a delegate, authorised person or flight examiner do if an action is brought against him or her? | 7 |
| 3 | Indemnity | 8 |
| 3.1 | Indemnity to a maximum of \$100m | 8 |
| 3.2 | Indemnity to CASA officers/employees | 8 |
| 3.3 | Indemnity to delegates and authorised persons who are not CASA officers/ employees | 8 |
| 3.4 | Indemnity to flight examiner rating holders | 8 |
| 4 | Certain persons excluded from indemnity | 9 |
| 4.1 | Designated aviation medical examiner delegates | 9 |
| 4.2 | CAR 288 delegates | 9 |

1 Reference material

1.1 Acronyms

The acronyms and abbreviations used in this CAAP are listed in the table below.

| Acronym | Description |
|---------|---|
| CAAP | Civil Aviation Advisory Publication |
| CAR | <i>Civil Aviation Regulations 1988</i> |
| CASA | Civil Aviation Safety Authority |
| CASR | <i>Civil Aviation Safety Regulations 1998</i> |
| CEO/DAS | CEO/Director of Aviation Safety |
| DAME | Designated aviation medical examiner |

1.2 References

Regulations

Regulations are available on the Federal Register of Legislation website <https://www.legislation.gov.au/>

| Document | Title |
|--------------------|---|
| Regulation 6 | <i>Civil Aviation Regulations 1988</i> |
| Regulation 11.260 | <i>Civil Aviation Safety Regulations 1998</i> |
| Regulation 61.1255 | <i>Civil Aviation Safety Regulations 1998</i> |
| Regulation 67.180 | <i>Civil Aviation Safety Regulations 1998</i> |
| Regulation 201.001 | <i>Civil Aviation Safety Regulations 1998</i> |

2 Introduction

2.1 Delegations

- 2.1.1 A delegation is a legal mechanism whereby an individual or body possessing legal powers transfers the right to exercise any or all of those powers to another person or body. Regulation 11.260 of the *Civil Aviation Safety Regulations 1998* (CASR) provides that the CEO/Director of Aviation Safety (DAS) may, under this power, delegate a power of CASA to any person and is not restricted to delegating powers to officers or employees of CASA.
- 2.1.2 In general, a delegation of power does not imply parting with authority. The delegating body will retain not only power to revoke the delegation, but also power to act concurrently on matters within the area of delegated authority. This is made clear by section 34AB of the Acts Interpretation Act 1901 (Cth), which provides that a delegation does not prevent the performance or exercise of a function or power by the person or body delegating the power or function. A delegation by CASA of its powers under the *Civil Aviation Regulations 1988* (CAR) or CASR does not automatically create a principal/agent relationship between CASA and the delegate. Nor does a delegation by CASA automatically render CASA legally liable under the general law for the actions of a delegate.

2.2 Authorised persons

- 2.2.1 Regulation 6 of CAR and regulation 201.001 of CASR empower CASA to appoint persons as 'authorised persons' for the purposes of a provision of the Regulations in which the expression 'authorised person' appears.
- 2.2.2 An authorisation is a legal mechanism whereby an individual or body confers upon a person a right to do something which, apart from the authorisation, the person does not possess. Authorisations are made under the provisions of the Regulations mentioned above and are issued in the form of written instruments of authorisation. An authorisation may be issued by the DAS or by a person to whom the DAS has delegated the power of issuing authorisations. Accordingly, a person will only hold a valid authorisation if he or she has a written instrument of authorisation issued by the DAS or by a delegate.

2.3 Flight examiner ratings

- 2.3.1 Regulation 61.1255 of CASR authorises a person who holds a flight crew licence with a flight examiner rating to do various things including:
- a. conducting flight tests for the grant of (i) pilot licences; and (ii) ratings on pilot licences, other than cruise relief flight engineer type ratings; and (iii) endorsements on pilot licences; and

- b. granting to holders of pilot licences: (i) ratings, other than: (A) flight examiner ratings; and (B) cruise relief flight engineer type ratings; and (ii) endorsements, other than flight test endorsements.

2.4 Responsibilities of a delegate/authorised person

- 2.4.1 If a person has been made a delegate or appointed as an authorised person then the person has a responsibility to ensure that any actions they take are undertaken strictly in accordance with the terms of the delegation/authorisation and do not exceed the legislative power delegated to, or conferred upon, the person.

2.5 Why CASA indemnifies delegates and authorised persons

- 2.5.1 At common law, if a delegate/authorised person/ flight examiner rating holder is an employee of CASA, then CASA will normally be vicariously liable for the actions of such persons.
- 2.5.2 At common law, CASA would normally not be vicariously liable for the actions of persons who are not employees of CASA. However, because CASA accepts that such persons are to some extent exercising such powers on behalf of CASA, it indemnifies all delegates/authorised persons against liability or loss arising from the exercise of powers conferred upon them by the delegation/authorisation.

2.6 Why CASA indemnifies flight examiner rating holders

- 2.6.1 Prior to 1 September 2014, CASA delegated to persons the powers to conduct flight tests and grant certain flight crew qualifications to persons. Such delegates were commonly referred to as approved testing officers (ATOs). On and from 1 September 2014, CASA could grant to persons a flight examiner rating to conduct these activities. At the same time, the regulations under which certain powers were delegated to ATOs were withdrawn. While existing ATOs continued to hold those delegations, no new delegations were (or could be) given. On 31 August 2018, the ability of an approved testing officer to transition to a flight examiner rating holder ends.

2.7 Are delegates/authorised persons/ flight examiners indemnified in all circumstances?

- 2.7.1 No. CASA will only indemnify a delegate/authorised person where they exercise a power within the scope of the delegation or authorisation. CASA will only indemnify flight examiner rating holders in relation to the conduct a test and the granting of a rating, where that occurs in the lawful exercise of the privileges of the rating.
- 2.7.2 CASA will not indemnify delegates, authorised persons or flight examiner rating holders against liabilities or losses arising from the exercise of powers or the performance of functions that are outside the range of CASA's legislative functions and outside the limits of the delegation, authorisation or rating of the person concerned.

- 2.7.3 CASA will not indemnify delegates, authorised persons or flight examiners who exercise their authority or privileges with reckless disregard, or where their conduct involves fraud or dishonesty.
- 2.7.4 Delegates, authorised persons and flight examiners are encouraged to carry their own insurance for any liabilities above \$100m or which are otherwise excluded by this CAAP.
- 2.7.5 Delegates, authorised persons and flight examiners are indemnified up to the limit mentioned above for negligent conduct involving a failure to exercise reasonable care. However, all delegates, authorised persons and flight examiners are expected to exercise their powers or privileges using reasonable care at all times.

2.8 What should a delegate, authorised person or flight examiner do if an action is brought against him or her?

- 2.8.1 If an action is brought, or it appears that an action may be brought, against a delegate, authorised person or flight examiner because of actions taken by them under a delegation, authorisation or flight examiner rating, then the person should contact the Manager Litigation and Enforcement as soon as possible after the person receives notice or advice of a such action or possible action. Telephone 131757 or legal@casa.gov.au. CASA and Comcover have the sole discretion as to what, if any, legal representation will be provided in relation to the action.

3 Indemnity

3.1 Indemnity to a maximum of \$100m

- 3.1.1 The indemnity provided by CASA under this CAAP is, (a) for a maximum amount of \$100 million (the liability limit), and (b) subject to any exclusions or limitations expressed in this CAAP or in Comcover's Statement of Cover, which can be accessed at <https://www.finance.gov.au/comcover/insurance/>.
- 3.1.2 The liability limit is the total limit of CASAs liability in respect of all loss directly or indirectly arising out of or in connection with any single claim. For the purposes of the application of the liability limit, all claims arising out of multiple related sources or originating causes and all losses arising from each source or originating cause, will be deemed to be a single claim.

3.2 Indemnity to CASA officers/employees

- 3.2.1 CASA's practice in relation to its officers/employees is that it will indemnify its officers and employees who are holders of delegations, authorised persons, or flight examiner rating holders against any liability or loss arising from the exercise of powers or the performance of functions carried out on behalf of CASA, where those powers or functions are within the scope of the delegation, authorisation or rating and the function is carried out in the course of the employee's duties.
- 3.2.2 However, CASA will not indemnify such persons against liabilities or losses arising from the exercise of powers or the performance of functions which are outside the scope of the delegation, authorisation or rating or which are exercised or performed with reckless disregard.

3.3 Indemnity to delegates and authorised persons who are not CASA officers/ employees

- 3.3.1 CASA will indemnify non-CASA persons who are holders of delegations against any liability or loss arising from the exercise of powers or the performance of functions carried out on behalf of CASA, subject to any limitations or exclusions expressed in this CAAP.
- 3.3.2 CASA will also indemnify non-CASA persons who are authorised persons against any liability or loss arising from the exercise of powers or the performance of functions carried out on behalf of CASA, subject to any limitations or exclusions expressed in this CAAP.

3.4 Indemnity to flight examiner rating holders

- 3.4.1 CASA will indemnify flight examiner rating holders against any liability or loss arising from the exercise of the privileges of the rating in relation to the conduct of flight tests or the grant of ratings, subject to the limitations and exclusions expressed in this CAAP.

4 Certain persons excluded from indemnity

4.1 Designated aviation medical examiner delegates

- 4.1.1 CASA has granted delegations to designated aviation medical examiner (DAMEs) to issue medical certificates under Part 67 of CASR. As a condition of their authorisation to practice as a medical practitioner, DAMEs are required to hold professional indemnity insurance. On this basis, CASA considers it is neither necessary nor appropriate to provide an indemnity to such persons.
- 4.1.2 It is also a condition of the delegation to DAMEs to issue class 2 medical certificates that they must have and maintain personal indemnity insurance of at least \$20 million per occurrence and in the aggregate, inclusive of legal costs, for the doing of any act, or the omission to do any act, under this instrument of delegation in the capacity of a DAME delegate.
- 4.1.3 An indemnity is not provided to a DAME who is delegated CASA's powers under Part 67 of CASR.

4.2 CAR 288 delegates

- 4.2.1 An indemnity is not provided to a person who is delegated CASA's powers under regulation 288 of CAR [detention of aircraft], who is employed by the Commonwealth, a State or Territory. Such persons hold the delegation for law enforcement or national security purposes and are expected to rely on their own insurance or liability arrangements.