



Australian Government
Civil Aviation Safety Authority

OFFICE OF THE DIRECTOR OF AVIATION SAFETY

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Senator Helen Kroger
Chair
Senate Standing Committee on Foreign Affairs Defence and Trade
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Senator Kroger

Inquiry into Department of Defence's Request for Tender (AO/014/09) for the provision of air support to the Middle East Area of Operations

Thank you for the invitation to make a submission to this Inquiry. The Director of Aviation Safety, Mr John McCormick, has asked me to respond on his behalf.

In the view of the Civil Aviation Safety Authority (CASA), it is only in relation to subparagraph (b)(ii) of the Terms of Reference that CASA might properly offer a responsive comment. Having regard to 'the adequateness and appropriateness' of the tender process referred to in paragraph (a) of the Terms of Reference, subparagraph (b)(ii) raises a question as to whether the respondents to the Request for Tender:

have the capacity to deliver the services submitted in their responses to a quality and standard that meets the requirements of the Commonwealth and its regulatory authorities and, if so, whether the department was fully satisfied with the services provided by their appointed foreign carrier when they last provided such services

Pursuant to subsection 9(1) of the *Civil Aviation Act 1988*, CASA has the function of conducting the safety regulation of all civil air operations in Australian territory, whether operated by domestically or foreign-based operators. CASA's regulatory authority extends to the operation of Australian aircraft outside Australian territory.

On this basis, CASA administers the legislative requirements specified in the *Civil Aviation Act*, the *Civil Aviation Regulations 1988*, the *Civil Aviation Safety Regulations 1998* (the regulations) and the Civil Aviation Orders, governing the conduct of air service operations, presumably including services of the kind contemplated by subparagraph (b)(ii) of the Terms of Reference.

Air carriers conducting such operations may do so lawfully only under the authority of an Air Operator's Certificate (AOC)¹ or a permission² issued by CASA, and in accordance with the terms of the AOC or permission. Amongst other things, it is a continuing condition of every AOC that the holder must comply with the **safety rules**,³ and with all other applicable provisions of the Civil Aviation Act, the regulations and the Civil Aviation Orders.⁴

When assessing an application for an AOC or a permission, and in determining whether the holder of an AOC or a permission continues to satisfy the applicable requirements, CASA may (and in some cases must) take a range of safety-related and associated considerations into account,⁵ including, *inter alia*, whether the operator holds a contract of insurance or has other arrangements in place that satisfy the requirements of the *Civil Aviation (Carriers' Liability) Act 1959*.⁶

In addition to these considerations, where an AOC or a permission will cover the operation of a foreign registered aircraft, CASA may also have regard to:

- evidence of any serious safety deficiencies in relation to the carrier's operations in another country;
- evidence of the operator's ability and willingness to address those deficiencies; and
- evidence relating to the authority or authorities responsible for:
 - the safety-oversight of the aircraft used by the operator; and
 - the registration, certification and airworthiness of aircraft used by the operator.⁷

A Foreign Aircraft AOC (FAAOC), is an AOC covering the operation of foreign registered on flights that are *not* undertaken wholly within Australia, and *are* undertaken as part of a flight into or out of Australian territory.⁸ FAAOCs are normally issued for a period not longer than 12 months. Permissions for the operation of foreign registered aircraft are normally granted on an *ad hoc* basis and for much shorter periods of time. In certain cases, permissions for the operation of foreign registered aircraft on flights that *are* undertaken wholly within Australia and

¹ Civil Aviation Act, s. 27.

² See Civil Aviation Act, ss. 25, 26 and s. 27A.

³ In relation to a permission or an AOC, **safety rules** means the provisions of the Civil Aviation Act, the regulations and the Civil Aviation Orders that relate to safety (including rules about the competence of persons to do anything that would be covered by the permission or the AOC. Civil Aviation Act, s. 3.

⁴ Civil Aviation Act, s. 28BD.

⁵ See Civil Aviation Act, ss. 28, 28A.

⁶ Civil Aviation Act, s. 28BI.

⁷ Civil Aviation Act, s. 28AA.

⁸ Civil Aviation Act, s. 27AE.

not as part of a flight into or out of Australian territory may only be issued for a period of not more than 7 days.⁹

If CASA become aware of any safety-related concerns with an operator, it has a range of options available to address those concerns, including the power to vary, suspend or cancel an AOC, FAAOC or a permission.

CASA is not in a position to comment on whether respondents to the tenders of concern in relation to the instant inquiry have the capacity to deliver the services submitted in their responses to a quality and standard that meets the requirements of the civil aviation legislation.

We do, however, draw the committee's attention to the fact that aircraft charter brokers may be involved in the organisation of arrangements whereby a foreign operator, or an operator utilising foreign registered aircraft, is engaged to carry out air service operations for the Department of Defence. Charter brokers generally do not hold of an AOC (or a FAAOC), and may not have any operational control whatsoever over the organisation conducting the air service operations contemplated by the contract, the aircraft used in those operations, the crew members involved in those operations and/or the maintenance organisations responsible for carrying out maintenance on those aircraft. Such charter brokers have no regulatory obligations to CASA, and CASA has no authority to regulate the conduct of those charter brokers. It is only operators—AOC, FAAOC and permission holders—who must comply with the applicable safety requirements and over whose conduct CASA has any regulatory authority.

Depending on the nature of the arrangements involved in any given case, it is possible that the Department of Defence may not have a clear or complete understanding about the *operator* that will actually be performing the air services contemplated by the contract, as opposed to the charter broker with whom the Department will have dealt.

Responsible charter brokers should take reasonable and appropriate steps to ensure that:

- *operators*, whose services they engage for their clients, are aware of the operator's responsibility to comply with applicable Australian civil aviation safety requirements; and
- *clients* with whom they have contracted to organise for the provision of air services understand that it is the operator, not the broker, who is responsible for satisfying those requirements.


CASA would welcome the opportunity to provide the Committee with further information and advice about the nature and extent of the regulatory regime governing the safety of air service operations involving the use of foreign registered

⁹ Civil Aviation Act, s. 27A.

aircraft, and the importance of ensuring that hirers of such services have a clear understanding about:

- the nature and extent of the *operational control* exercised by the operator conducting such air services;
- the responsibilities of the foreign national aviation authorities exercising primary regulatory authority in respect of operators engaged in the provision of such air services, and the aircraft and crew members involved in those operations; and
- the extent of, and limitations on, CASA's authority and jurisdiction in relation to these matters.

Yours sincerely

 Dr Jonathan Aleck
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