Use of Regulatory Tools

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Document Change History

This Change History log contains a record of changes made to this document:

<table>
<thead>
<tr>
<th>Release Date</th>
<th>Version</th>
<th>Section / Nature of Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>23 September 2011</td>
<td>1.0</td>
<td>New policy created to provide guidance to CAA staff about the use of regulatory tools in discharging their obligations.</td>
</tr>
<tr>
<td>7 May 2012</td>
<td>2.0</td>
<td>Policy updated to reflect the development of the CAA Regulatory Operating Model.</td>
</tr>
<tr>
<td>5 Feb 2014</td>
<td>3.0</td>
<td>P. 5: clarification of the safety performance pyramid, including an updated Figure 3.</td>
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</tbody>
</table>
Use of Regulatory Tools

1. Purpose and Scope

This policy provides direction on the selection and use of the various powers and functions (regulatory tools) available to the CAA when it carries out safety interventions. These tools are applied;

- for the purpose of mitigating safety risk and securing compliance with the civil aviation regulatory requirements; and
- when the CAA detects non-compliance with the Act, rules or the conditions associated with an aviation document; and
- to ensure an acceptable level of safety is maintained in operations conducted by participants in the civil aviation system.

Where this policy applies to the powers of the Director under the Civil Aviation Act 1990, the Director and his/her delegates act as independent decision makers and each case must be considered on its own merits.

2. Application

This policy is informed by the CAA Regulatory Operating Model.

This policy sits above, and informs, the CAA’s Surveillance, Certification, Safety Information and Enforcement policies and procedures in respect to the CAA’s role under the Civil Aviation Act 1990 and the Health and Safety in Employment Act 1992. It does not cover the CAA’s role under the Hazardous Substances and New Organisms Act 1996.

This policy applies to all holders of an aviation document, the staff of organisations holding such a document, and to all persons involved in the civil aviation system.

3. Authority

The Director of Civil Aviation is the owner of this document and is responsible for its regular review and maintenance. The Director is responsible for ensuring that this document follows and meets the Responsibility, Application, Accountability, Monitoring, Approval/Amendments and Availability criteria described in the Development and Control of CAA Policies and Procedures.

4. References

- Civil Aviation Act 1990
- Health and Safety in Employment Act 1992
- CAA Regulatory Operating Model
- CAA Records Management Policy

The key objectives of the Civil Aviation Act are:

- To establish rules of operation and divisions of responsibility within the New Zealand civil aviation system in order to promote aviation safety; and
- To ensure that New Zealand’s obligations under international civil aviation agreements are implemented.

The objective of the Health and Safety in Employment Act 1992 is:
To promote the prevention of harm to all persons at work and other persons in, or in the vicinity of, a place of work.

The CAA Regulatory Operating Model identifies the enduring regulatory principles and approach the CAA adopts in regulating safety in the civil aviation system. This policy needs to be read in association with that document.

5. The Civil Aviation Authority’s regulatory tools

Legislation provides the CAA\(^1\) with a range of functions and powers (regulatory tools) aimed at ensuring desired safety and security outcomes are achieved. A number of interventions exist which can be used to support the deployment of those tools. Tools and associated interventions can be applied at a system level, e.g. safety seminars, training courses, rule development, or at the level of individual participants, e.g. investigation or administrative actions.

<table>
<thead>
<tr>
<th>Regulatory Tools and associated interventions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Education and safety promotion</strong></td>
</tr>
<tr>
<td>Interventions such as:</td>
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<tr>
<td>- development of guidelines;</td>
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<tr>
<td>- safety publications;</td>
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<tr>
<td>- conduct of safety seminars;</td>
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<tr>
<td>- dissemination of safety occurrence trend information and safety reviews;</td>
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<tr>
<td>- promulgation of safety sector risks and engagement with stakeholders to develop safety initiatives;</td>
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<td>- training courses;</td>
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<tr>
<td>- the conduct of safety investigations for the purposes of determining incident and accident causes and improving safety.</td>
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<tr>
<td><strong>Certification, Monitoring and Investigation</strong></td>
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<tr>
<td>Interventions such as:</td>
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<tr>
<td>- certification (including certificate amendment and certification on re-entry after a period of operation in the system);</td>
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<tr>
<td>- safety monitoring activities including audits, inspections, no-notice checks, focused special purpose audits and inspections, with formal findings, corrective actions, and follow up as needed to support risk reduction through a willing return to compliance;</td>
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<tr>
<td>- reactive monitoring by collection of occurrence information and mandatory reports;</td>
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<tr>
<td>- reactive measures including investigations of document holders in response to an identified safety issue or concern to establish levels of safety performance and inform further decision making on the need or otherwise for further interventions;</td>
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<tr>
<td>- proactive risk management and engagement with affected participants.</td>
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<tr>
<td><strong>Administrative Actions</strong></td>
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<tr>
<td>- remove or mitigate unacceptable risks to safety through administrative actions to suspend, revoke, or impose conditions on an aviation document or detain aircraft, seize aeronautical products or impose prohibitions and conditions.</td>
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<tr>
<td><strong>Law Enforcement Action</strong></td>
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<tr>
<td>Interventions such as:</td>
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<tr>
<td>- investigation of alleged offences;</td>
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<td>- issuing of infringement notices;</td>
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<tr>
<td>- prosecutions.</td>
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<tr>
<td><strong>Other</strong></td>
</tr>
<tr>
<td>- Rule development</td>
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</tbody>
</table>

\(^1\) Including the Director of Civil Aviation
The CAA is committed to ensuring that these tools and associated interventions are not used in isolation, but rather are part of a wider, integrated safety management strategy.

6. Identifying appropriate tools and deploying interventions

At the level of identifying an appropriate tool or combination of tools, and deploying corresponding appropriate intervention(s), the cycle of CAA activity comprises five stages as shown in the figure below.

Figure 1: Cycle of CAA activity

1. Act on a trigger for our intervention activity

A decision is made to deploy an intervention through an operational or planned trigger for activity.

For example, there is a need to certificate an operator or aircraft; or engage in a planned education programme or arranged visit to an operation; or there is a requirement to develop a new or amended rule,

OR, an intervention is deployed through a response to a presenting issue or risk to achieve a change in attitudes, behaviours or systems, as a result of information received from the public, the CAA’s own regulatory activity, the industry, other regulators or ICAO.

For example, through reported information or surveillance, it is decided to complete a spot check of an operation; or safety information analysis reveals a trend in a particular sector requiring some action such as the development of advisory material or increased surveillance/investigation activity.

2. Assess and understand the context for intervention

The activity in question is assessed with respect to the nature of the presenting risk or issue, and the attitudes and behaviours of the participant(s) involved.

For example, if the operation is a passenger carrying one, with significant impact of safety failure on 3rd parties, the CAA will have a level of engagement with the operator commensurate with public expectations. In this regard the principle of public interest being paramount is a key consideration.

The nature of the presenting risk or issue is assessed, to understand the specific problem that needs to be addressed, and therefore the implications for choice of intervention. The CAA will act to ensure that it has the relevant facts before making a choice of interventions.
Figure 2 below, which is taken from the CAA Regulatory Operating Model, shows the relationship between the nature of the activity conducted, the consequences of any safety failure associated with it and the priority for CAA resource allocation.

The Regulatory Operating Model should be referred to for further background on this subject.

**Figure 2: Nature of Activity Conducted and CAA Resource Allocation**

It is also necessary to understand the attitudes and behaviours of the participants involved. The status of the participants with respect to their orientation to safety management needs to be determined. Figure 3 below, which is also taken from the CAA Regulatory Operating Model summarises this general approach. It demonstrates a set of graduated interventions that can be selected from the CAA “toolkit” against the assessed position of a participant in the pyramid. It is important to note that attitude and behaviour may not be the only consideration taken into account when making decisions on interventions. The nature of the operation and the CAA’s assessment of the aviation safety risk presented by the operation will also be considered, as outlined above.

It also remains important to ensure that regulatory interventions and decisions are made based on the circumstances of the individual case, with full consideration of all relevant factors and application of the processes for decision making in accordance with relevant legislation.

**Figure 3: Civil Aviation Safety Performance Pyramid**
It is also important to ensure clarity about the goals the CAA wishes to achieve through interventions.

For example, clear goals exist for the compliance requirements of CAA certification activity; or there is a need to change the behaviours of a specific participant through the findings and corrective actions process; or an aim to influence an entire industry sector through development of a rule or conduct of a promotional campaign.

3. Choose an intervention response

The context understandings from steps 1 and 2 (activity required, the nature of the activity involved, risks, attitudes and behaviours, objectives etc) are then matched with the available interventions in the CAA “toolkit” to craft an appropriate and proportionate response. A significant safety risk may require an intervention to prevent ongoing operations to mitigate that risk, whereas another issue might be addressed through provision of information or a spot check to determine appropriate corrective actions for the participant.

An intervention(s) is chosen, depending on the circumstances of each case, which will enable the participant to remain safe, or return to an acceptable level of safety willingly, or through compliance enforcement if necessary.

For example, where a participant is observed during an audit as not meeting standards and there is no significant immediate safety risk, and the participant is willing to comply, a specific corrective action requirement may be more appropriate than an administrative and/or compliance enforcement intervention. On the other hand, where the safety risk is unacceptable, intervention may be necessary to remove the risk, including the possible removal of the participant’s ability to operate within the civil aviation system.

Note: For further guidance on the matter of significant safety risks see section 7 below.

4. Deploy and implement the intervention

The chosen intervention(s) are then deployed and implemented in accordance with CAA policies and procedures, New Zealand law, and applying the CAA regulatory principles as expressed in the Regulatory Operating Model.

For example, certification activity will be guided by the CAA Certification Policy, surveillance activity will be guided by the CAA Surveillance Policy.

In particular, this means that interventions will be proportionate, fair, and consistent and in accordance with the requirements of New Zealand law. CAA interactions will be transparent, supportive and collaborative with industry without compromising its independent role for representing the public safety interest.

5. Assess whether the desired results have been achieved by the deployment of the intervention

Subsequent to intervening it is necessary to monitor the results of the intervention and review for any necessary further action.

This involves reviewing the need for further intervention from the toolkit of possible interventions, and if necessary trigger additional CAA action.

For example, the participant has implemented the required corrective actions to restore an acceptable level of safety; or it is observed that attitudes and behaviours have changed as a result of an education programme; or the requirements for certification have been met by an applicant.

Alternatively for example, the participant has not followed up on corrective actions resulting from a safety audit, and a stronger form of intervention is required.
7. Dealing with significant risks

A significant risk to public safety occurs when there is a considerable deviation from regulatory requirements or accepted risk management practice which results in a large reduction in safety margins which has the potential to cause serious injury or loss of life. Such a risk may or may not be associated with deliberate action or failure to comply.

Irrespective of how it comes to their attention, when faced with a significant risk to public safety, the CAA will take swift and decisive action to ensure the risk is eliminated or reduced to an acceptable level. CAA personnel will utilise a regulatory tool (or combination of tools) aimed at ensuring an acceptable level of safety, while being proportionate to the safety risk involved.

The choice of tool(s) utilised will take account of specific legislative requirements relevant to the use of powers being considered, the nature of the failure, its causes, previous compliance history, and the attitude to safety of the person(s) and/or organisation involved. Depending on the circumstances, the most likely response to a significant risk to public safety will be either to:

- seek voluntary (or mutually agreed) corrective action to reduce risk, or return to compliance; or
- take administrative action to suspend, revoke, or impose conditions on an aviation document or detain aircraft, seize aeronautical products or impose prohibitions and conditions.

7.1 Willing or mutually agreed corrective action to address significant risk

Willing action on the part of a participant to mitigate a significant risk to public safety or to return to compliance reflects the principle that participants are responsible for good safety management, and supports a better long term safety outcome. Accepting that the public interest is paramount in its decision making, in appropriate cases (refer criteria identified below) the CAA will identify areas of non-compliance via a finding notice and the return to compliance or an acceptable level of risk is managed via corrective actions and follow-up.

Criteria for using this tool:

The CAA will utilise the finding and corrective action process to address a significant safety risk or non-compliance where:

- the significant safety risk or non-compliance relates to the privileges of an existing aviation document;
- the reduction in normal safety margins is not the result of reckless action;
- the participant has openly and accurately reported the risk event or non-compliance to the CAA in a timely manner;
- the required corrective action mitigates the risk and the person or organisation involved understands the action required;
- the person or organisation involved has a constructive attitude to safety, is willing and able to take the required corrective action and the CAA has reasonable grounds to believe they will do so; and
- there is no consistent history of similar breaches by those involved.

Principles:

- Designed to achieve the required safety outcome with the minimum degree of regulatory intervention by the CAA.
- Reinforces a document holder’s primary responsibility for the safe exercise of the privileges of their document.
Outcomes:

- Compliance and normal risk control measures are restored.
- Participant’s safety and risk management systems may benefit from the corrective action required.
- The finding and corrective action process informs the CAA’s risk profiling system and provides an input to its safety data system.
- There is an understanding that similar non-compliance or failure of risk control measures will not be accepted and could result in the escalation in the severity of the regulatory tool applied.

In the case of a finding and corrective action(s) relating to a significant risk to public safety the CAA will closely monitor the corrective action taken to ensure it provides a return to compliance and restores normal safety margins.

7.2 Administrative action to address significant risk

An administrative response will generally be applied where the safety risk merits an immediate regulatory response but the criteria required for the use of voluntary or mutually agreed corrective action (refer to section 7.1 above) are not satisfied.

Where there is reason to believe a significant risk to safety exists and the CAA has no confidence that the document holder(s) involved will voluntarily take action to mitigate that risk, and consistent with the criteria contained in sections 17 and 18 of the Civil Aviation Act 1990, an aviation document may be suspended, revoked or have conditions imposed upon it where the facts of a particular case support such action.

Criteria for using this tool:

The CAA will look to use administrative action as a regulatory tool where:

- such action is assessed to be the most appropriate means to remove or adequately mitigate risk and restore an acceptable level of safety where voluntary corrective action has failed to do so; and/or
- an immediate response is required to mitigate a significant safety risk and the CAA does not have confidence in the willingness or capability of the persons or organisations involved to voluntarily provide adequate mitigation.

Principles:

- Administrative action is taken to manage risk; it does not have a punitive intent.
- Where it is necessary to take administrative action to manage risk, the action chosen will be the least disruptive to the exercise of the privileges of an aviation document while adequately addressing the risk in question.
- When considered necessary in the interests of safety, an aviation document may be suspended or have conditions imposed upon it while it is determined what longer term action to take.

Outcomes:

- Safety risk is managed by the suspension or revocation of an aviation document or the imposition of conditions on its exercise.
8. **Documenting decision making**

The CAA's Records Management Policy provides a framework and assigns responsibility for ensuring that full and accurate records of business activities are created and maintained – and to ensure the integrity of the institutional memory of the CAA business. The policy states that all staff are responsible for creating full and accurate records of business activities, transactions, and decisions carried out during the course of daily business activity.

In the case of decisions regarding the choice of regulatory tools it is critical that these decisions are documented and recorded. This is necessary to ensure:

- transparency of decision making and demonstrate that CAA decisions are made impartially and with fairness and consistency, and in a timely and responsive manner;
- informed and evidence based decisions.

All records shall be objective, informed and evidence based. Documentation should also be sufficient and appropriate.

- Sufficiency is a measure of the quantity of evidence used to support conclusions reached related to the original information supplied. In assessing sufficiency consideration needs to be given to whether enough evidence has been obtained to persuade a knowledgeable person that any decisions arrived at are reasonable.
- Appropriateness is the measure of the quality of evidence that encompasses its relevance, validity, and reliability in providing support to the conclusions arrived at. In assessing the overall appropriateness of evidence, consideration needs to be given to whether the evidence is relevant, valid, and reliable.

The following guidance is provided to assist in this process:

- There should be clear evidence on the process used to arrive at a particular decision. The information recorded should be capable of replicating the decision at a later date.
- The decision itself and its potential risk will guide the amount and quality of information required. For high risk issues, involving increasing consequences of safety failure, a higher level of documentation would be reasonably expected by an objective reviewer.

Information recorded should not contain any language that predetermines any decision making on the part of the CAA or the Director where the process in question results in a recommendation for the consideration of such decision making.

9. **Periodic targets for zero tolerance**

As part of its willing compliance objective and in an effort to appropriately deploy limited resources, the CAA may not resort to specific enforcement activity for every technical breach of the law (this does not mean that finding notices will not be issued where non-compliance is found). However, the CAA may, from time to time, vigorously enforce a particular regulatory requirement or piece of legislation where it finds that other interventions have not worked.

10. **Promoting a Report Culture**

The CAA’s efforts are partially dependent on the availability of quality safety information. Accidents and incidents must be reported to the CAA by those involved.

The CAA actively encourages the reporting of accident and incident information. It acknowledges that if persons participating in the system have confidence that the CAA will use the information appropriately, reporting rates and accuracy of reporting is likely to improve. This depends upon mutual confidence and trust.
To build trust, the CAA’s regulatory activity and approach must be characterised by the attributes outlined in the CAA Regulatory Operating Model and it must act with clarity about what it will do with information provided in accident and incident reports.

Consequently, the CAA prefers not to take enforcement action against those who fully report details of accidents and incidents, but may well do so in circumstances in which reporting is patently incomplete or reveals reckless or repetitive at-risk behaviours.

Where accidents and incidents are fully reported, appropriate regulatory tools may be used to provide immediate protection of the public, aircraft and participants in the aviation system and, where applicable, to address any likely future non-compliance.