

Rural and Regional Affairs and Transport

QUESTION ON NOTICE

Supplementary Budget Estimates 2023 - 2024

Infrastructure, Transport, Regional Development, Communications and the Arts

Committee Question Number: 303

Departmental Question Number: SQ23-005057

Division/Agency Name: Agency - Civil Aviation Safety Authority

Hansard Reference: Written (02 November 2023)

Topic: CASA - Emergency service agency personnel allowed on ex-military aircraft

Senator Bridget McKenzie asked:

1. Does the regulation authorise the carriage of emergency service agency personnel on the aircraft?
2. The people of New South Wales effectively own an ex-military Chinook helicopter along with the 737 Fireliner, Marie Bashir and several smaller aircraft to respond to emergencies within the state. During the 2022 floods impacting a wide area of Northern NSW, the NSW Rural Fire Service requested the operator of their contracted Chinook at the time to support uplift and delivery of vital supplies to members of the public stranded by flood waters. This request was made to CASA under the relevant regulation available to authorise ex-military aircraft to carry emergency response cargo. In order to reduce increased stress during times of emergency response, would CASA consider pre-approval of the relevant authorisation rather than waiting until a crisis has developed?
3. In overseas jurisdictions, and here in Australia, ex-military aircraft are a very important element of the aerial firefighting capability required to protect the public during heightened risk fire seasons over the coming years. Significantly, in the USA specialist support and direct firefighting personnel are able to be carried on ex-military aircraft – why is this key capability not allowed in Australia, yet I can go out today and book an adventure flight in an ex-military jet that is up to 65 years old?

Answer:

1. The majority of the civil firefighting fleet are certified to civil airworthiness standards and are approved to operate under Part 133 or 135 of the Civil Aviation Safety Regulations. These aircraft can carry passengers including firefighters.

Highly modified aircraft that do not meet civil certification requirements, and ex-military aircraft that are not designed to meet civil certification standards can be permitted to operate for a particular special purpose operation, such as firebombing via a Restricted Category Type Certificate (RTC).

All civil aviation regulators impose additional controls to mitigate inherent risk when aircraft, including military surplus aircraft, are operated in a civil role. This includes restricting people who can be carried on the aircraft to crew members, or a person who performs an essential function in connection with the special purpose operation for

which the aircraft is certificated. Carriage of emergency service personnel purely for the purposes of transportation is not permitted.

The Civil Aviation Safety Authority (CASA) utilises the same assessment criteria as the FAA to certify military surplus aircraft in Restricted Category. This assessment criteria applies internationally aligned controls to mitigate the risks associated with operating these aircraft. The United States, Canada, and New Zealand all restrict the carriage of people on military surplus aircraft.

CASA is reviewing the carriage of persons by non-air transport operators and is actively consulting with stakeholders on this issue. This will include consideration of carriage of persons on a restricted category aircraft. CASA needs to determine what alleviations from the current rules can be applied whilst maintaining a level of risk that is acceptable to all stakeholders, including firefighters.

2. In the case of the Chinook operated by NSW Rural Fire Service, this aircraft has been certified by the FAA in Restricted Category to include transportation of cargo under certain conditions. CASA would consider this cargo transportation role in any future application received from NSW Rural Fire Service for CASA to approve operations using the Chinook. CASA has powers to grant exemptions from compliance with requirements of the regulations in exceptional circumstances, including emergency response. CASA is confident that it has the ability to respond swiftly to facilitate such exemptions for operators as the need arises, as it did with the Chinook operated by the NSW Rural Fire Service.
3. Unlike Australia, in the United States an aircraft may be operated for certain purposes by or on behalf of a state government entity as a public aircraft. Although public aircraft operations must comply with certain general operating rules, including those applicable to all aircraft in the National Airspace System, most other civil certification and safety oversight regulations do not apply to their operation. Accordingly, many aspects of public aircraft operations are not subject to FAA oversight. Under these arrangements, oversight of the safe operation of a public aircraft operation is the responsibility of the state government entity under whose auspices those operations are conducted, not the FAA.

Without a public use declaration and the assumption of liability by the state government entity, ground based firefighters are not able to be carried in Restricted Category aircraft under the Federal Aviation Regulations (FARs) in the USA¹.

An amendment to the Civil Aviation Act would be required to introduce a comparable system in Australia, subject to identifying an appropriate constitutional basis.

As noted in the answer to question 1 above, CASA is currently consulting with stakeholders on the possibility of allowing firefighters to be carried on Restricted Category aircraft in certain circumstances.

¹ In the United States a bill has recently passed the house, that directs the FAA to within 18 months to produce a rule that requires ground-based firefighters being transported to and from the base of a "wildfire" for wildfire suppression to be categorised as "essential crewmembers", thereby permitting their carriage in Restricted Category aircraft. Notably this bill does not permit the carriage of ground-based firefighters in ex-military aircraft that have been modified for firefighting. This Bill is now before the US Senate for review and debate.