



# COMMERCIAL AVIATION ASSOCIATION OF SOUTHERN AFRICA NPC

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30 November 2020

The Chairperson  
Portfolio Committee on Transport  
3<sup>rd</sup> Floor, W/S 3/79  
90 Plein Street  
Cape Town  
8000

Attention: The Secretary to the Portfolio Committee on Transport  
Ms Valerie Carelse  
Email: [vcarelse@parliament.gov.za](mailto:vcarelse@parliament.gov.za)

Dear Chairperson

## COMMENTS ON CIVIL AVIATION AMENDMENT BILL

The Directors, management and members of CAASA have concerns with certain elements of the proposed amendments in the Civil Aviation Amendment Bill. Some of these new amendments proposed have been seen for the first time in this version for which comments have been requested. We hereby make our concerns known and are available to discuss these with the respective proposers or with the portfolio committee should it be necessary.

Please find these comments, suggestions and queries and we trust they will be considered.

Our comments refer to; **CIVIL AVIATION AMENDMENT BILL**

*(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill and prior notice of its introduction published in Government Gazette No. 41962 of 8 October 2018)*

Formulation and amendment of Civil Aviation Regulations require very careful, specialist input with detailed consideration by a number of aviation disciplines sometimes over months.

- (1) The current CIVIL AVIATION REGULATIONS COMMITTEE (CARCom) an important aid to every Minister of transport in regulation development that enables South Africa's Life Blood, business in the modern world, although representative of industry, is weighted against private industry by virtue of the number of members that represent the SACAA and other State enterprises. Removing the current provisions in the Act contained in sections 157, 157, 158, 159, 160, 161 and 162 will strike a severe blow against the level of independence that exists in CARCom. This independence is further supported by the

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Affiliated Associations: AAA-SA, AATOSA, AMOSA, ASAAT, ANSO, HASA, CUAASA and AADO

Directors: M.D. Clark (President), L. Dillman (CEO), C.Z.A. Beek, C. Blanchard, R.F. Botha, M. Buttle, J.A. Earle, T. Eloff, B.L. Frankel, N. Forrester, R.C.H. Garbett, F. Jordaan, G. Kiggen, R.J. Laing, R. Ledlie, S. Ledlie, L. Loosen, M. Mansfield, M.D. Moritz, J. Morrison, Z. Mkhize; S.F. Murphy, A. Phillips, D. Polley, S.M. Ramosa, R. Rammopo, J. Reeves, S. Reitz, V. Sandercock, G.D. Sayce, M. Skenjana, K. Storie, G. van Zyl, C.M. Visser, G. Worthington. C. Zweigenthal

CARCom's Terms of Reference to recommend well debated and consulted upon regulations and amendments. Please consider not removing the institution and requirement of CARcom and its formation and actions.

- (2) The formation of a Civil Aviation Regulations committee (CARCom) is noted in this document, however it states will operate **"as prescribed"**.

This removes stature and importance of this Committee to a lower level and the prescription of how it functions and how it is formed to a lower level. The question also arises in the meaning of "as prescribed"? Where is it or will it be prescribed and what authority will this prescription and its placement have? Surely the content of this prescription should be documented or reference as to where it is prescribed should accompany this amendment. There is not sufficient comfort provided at present that this may now be altered in ways not envisaged.

Section 73 . 12 ( e) (h) and

Formulating **[and approving]** supporting regulations and approving technical standards through a consultative process with the aviation industry **[in terms of section 156 of this Act]** as prescribed;'

Section 163 62 (b)

(b) by the substitution for subsection (2) of the following subsection:

"(2) The Commissioner must, before issuing any technical standard for civil aviation, consult with the civil aviation industry in the manner prescribed."

- (3) The repeal of the current act section wherein the Act states( Section 157) that CARCom is instituted "... to advise the minister on proposals with regard to..', it then lists the types of proposals. The minister is assured by this provision in the Act of a certain level of independent views from private commerce and industry.
- (4) Members of the general aviation Industry that represent private enterprise serve, totally free of charge on CARCom and its sub committees. This has achieved a spirit of cooperation and goodwill, this proposed interference could well cause a negative backlash. This organization has served on CARCom since its inception and is recognized as being a very significant contributor to the regulations and Technical Standards.
- (5) If it is proposed that the provisions for an alternative, in character, CARCom will be placed in the regulations this in not adequately preserving this vital committee that serves the Minister of Transport.
- (6) The very backbone of the vital liaison between industry and the Department of Transport as well as the SACAA covering the introduction, withdrawal or amendment of regulations presently lies with CARCom. This has worked for over twenty five years.
- (7) Certain members of the committee are there by specific provision of the Act, for example ATNS,ACSA, SA Police Service and the SA National Defence Force. By removing this legal requirement from the Act (even if the intention is to place it in the regulations) makes it more likely that attendance by these bodies will wane.

- (8) We must all understand that the lives of people are effected by what takes place at CARCom. It would be irresponsible to deviate from any practice that currently provides a high level of industry wide care and involvement.
- (9) In our view States in Southern Africa to a large, but often not admitted, extent take their lead from South Africa. Removing the influence of private enterprise, so it could be perceived, may encourage a similar shift in emphasis by those states.
- (10) Section 74 13 has a concern where the words “**civil aviation**” are removed hence making it possible for the civil aviation authority to receive fees and fines from other ACTs and legislation. For example Road transport fees such as E tolls and DEFF fines and ICASA fines etc.

This ACT is specific to aviation and should remain focused on civil aviation legislation only. This also will result in possible via this legislation for SKA issues to be dealt with by the authority. It is a dangerous door to open and we request that the words [**civil aviation**] are not removed.

This may set precedence that other similar acts may change accordingly make duplication a real possibility.

(b) by the substitution in subsection (1) for paragraph (f) of the following paragraph:

“(f) any other money received in terms of the South African Civil Aviation Authority Levies Act, 1998 (Act No. 41 of 1998), or any other [**civil aviation**] legislation, including the income derived from the fees and fines contemplated in this Act;”

- (11) Section 72. 11. This addition will bring about the concerning of the department of transport and hence the civil aviation authority to ensure all laws, many not pertaining to Civil Aviation and accept further powers and duties. This would undermine other areas of law and make the possibility that the regulator would have to capacitate and ensure staffing to ensure other regulations and acts are also empowered. This is normally dealt with via concurrence and set further opportunities for conflict. It is also not clear if this law can be laws from other countries or states which we believe is not specific enough.

(e) by the addition of the following paragraph:

“(g) exercise any power or perform any duty conferred or imposed on it under any law.”.

- (12) The absolving the state over and above employees of the regulator or the department or transport, of possibly of anything and the act whether it be legislation or performing functions, that could possibly harm the operators, companies and citizens and absolve the state of liability we believe is unconstitutional. This needs to be checked against the constitution of the country.

#### **Substitution of section 99 of Act 13 of 2009**

**24.** The following section is hereby substituted for section 99 of the principal Act:

#### **“Limitation of liability**

**99.** No person, including the State, [**employee of the Civil Aviation**

**Authority**] is liable in respect of anything done or omitted in good faith in

the exercise of a power or the performance of a duty in terms of or by virtue of this Act, or in respect of anything that may result therefrom.”.

- (13) We suggest an addition to allow the creation of NON ICAO structures that perform functions in areas that the Civil Aviation does not have expertise, capacity and funding and that internationally are separately funded and driven by Volunteer organisations by the inclusion of a (zz) after (yy)

Amendment of section 155 of Act 13 of 2009

Section 155 60

- (i) by the addition in subsection (1) of the following paragraphs:

(yy) the establishment of a structure that brings together aviation role players to pursue transformation of the aviation industry.”; and

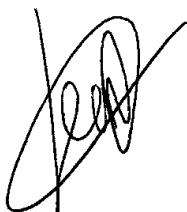
(zz) the establishment of structures for the regulation and control of recreational aviation disciplines not contemplated by ICAO ”;and

- (14) “CLAUSE 13 1. On page 28, from line 17, to omit paragraph (d) and to substitute the following paragraph: “(d) by the addition of the following subsections: 3 ‘(4) The charges, fees and levies contemplated in subsection (1) or any amendment thereto must be published in the Gazette at least four months prior to their coming into operation. (5) In instances where a person who has collected any money, fee, charge or levy on behalf of the Civil Aviation Authority is liquidated, placed under business rescue or is placed under administration, the Civil Aviation Authority is entitled, as a **preferential creditor, to recover any such money, fee, charge or levy so collected by such a person.**”

CAASA with its members has concerns on this above clause where the Regulator seeks to become a preferential creditor. This is problematic where the regulator seeks to get access to fees or levies etc. owed before other organisations. The reality in the current Covid Climate where there are many possible insolvencies and liquidations, this would prejudice many other organisations such as ATNS etc. that have equal rights to fees etc. This we believe requires further consultation and seem to be a new inclusion.

We trust the matter raised and concerns will be deliberated upon and considered in the best interest of regulation, managing and growing civil aviation in South Africa for the benefit of all its inhabitants while protecting the interest of aviation and all those that work in aviation and associated areas. All areas of governance should be equal and participate in true consultation and concurrence between Ministers, ensuring equitable use of South Africa’s assets and opportunities for operation, for all.

Many thanks in advance



**L. DILLMAN**  
**CHIEF EXECUTIVE OFFICER**