

# FACTSHEET - RESPONSIBILITY FOR THE DESIGN AND CONSTRUCTION OF SAFE AERODROMES

## AIM

The design and construction of a safe aerodrome requires the expert and complete contribution of a range of stakeholders. These contributions are not only a professional obligation, but also statutory obligations under Australia's *WHS Act 2011*. Contravention of the duties under this Act can incur civil and criminal penalties to individuals, including Defence members.

This Factsheet aims to identify some of the WHS Act duties of relevance to the design and construction of a safe aerodrome. The Factsheet also dispels a common misconception that responsibility for safe aerodrome design is somehow transferred to the DASA through the process of aerodrome certification.

## WHO HAS A DUTY FOR SAFETY?

Who is responsible for the safe design and construction of an aerodrome? A common reaction may be to point to the person/organisation with the greatest control and influence over the design and/or construction. In turn, that person/organisation may contend that they've contracted out the responsibility, or that someone else is impeding their ability to succeed (e.g. lack of funds), and on it goes. However, these reactions do not accurately reflect the obligations imposed by the *WHS Act 2011*.

The *WHS Act 2011* imposes duties on a wide range of persons, and makes provision for substantial penalties for those persons - including fines and/or imprisonment - for offences committed under the Act. It should be noted that all workers have certain duties under the Act. Some of the specific duties imposed that may have relevance to the design and construction of aerodromes include the following:

- Section 20 defines the safety duties of a person with management or control of a workplace<sup>1</sup>.
- Section 21 defines the safety duties of a person with management or control of fixtures, fittings or plant at a workplace.
- Section 22 defines the safety duties of a person who designs plant/structure that is to be used as/at a workplace.
- Section 23 defines the safety duties of a person who manufactures plant/structure that is to be used as/at a workplace.
- Section 24 defines the safety duties of a person who imports plant/structure that is to be used as/at a workplace.
- Section 25 defines the safety duties of a person who supplies plant/structure that is to be used as/at a workplace.
- Section 26 defines the safety duties of a person who install, construct or commission plant/structure that is to be used as/at a workplace.

If your role aligns with one or more of these categories (a person can have more than one duty under the Act, concurrently – section 15 WHS Act), or you have some capacity to influence and control these matters, then you may have a WHS Act duty for ensuring the safe design and/or construction and/or operation of an aerodrome - noting, of course, that a court would make the ultimate determination<sup>2</sup>.

This includes, but is not limited to, the following persons:

- engineers who create the aerodrome design
- organisations that construct the aerodrome (including site managers and supervisors)

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<sup>1</sup> An aerodrome is ultimately a workplace for the Defence aircraft occupants landing at that aerodrome. Of course, it is also a workplace for the people maintaining and operating the aerodrome.

<sup>2</sup> If you have a duty under the WHS Act, Section 17 is quite clear on your obligation: "A duty imposed on a person to ensure health and safety requires the person (a) to eliminate risks to health and safety, so far as is reasonably practicable; and (b) if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable".



- suppliers of equipment and materials; and
- the aerodrome operator.

Notwithstanding the above list, it should also be noted that all workers have a duty to ensure that their acts (or omissions) do not adversely affect the health and safety of others. This duty extends to staff that facilitate the funding of projects, or who create and steward contracts.

## HOW CAN MULTIPLE PEOPLE SHARE THE SAME SAFETY DUTY?

The previous section shows that various people could potentially have a duty for ensuring the safe design and/or construction of an aerodrome. How does this work?

Where multiple persons have a duty under the Act, each of those duty holders must discharge that duty to the extent to which they have the capacity to control the matter. This means that, even where there are multiple duty holders, each duty holder must comply with their duties to the same standard as if they were the sole duty holder under the Act.<sup>3</sup>

Further to this, those duty holders each have an obligation to consult, co-operate and co-ordinate activities with other duty holders.<sup>4</sup>

Pulling this together in the context of aerodrome design and/or construction, if an aerodrome design and/or construction deficiency or hazard is identified, it means all duty holders must work together to eliminate or, if that is not possible, to minimise the risk, SFARP. If the risk cannot practicably be eliminated, any residual risk after minimisation SFARP<sup>5</sup> must be either avoided or be retained by the relevant Risk Management Authority (RMA). In many cases this RMA will be the relevant aircraft MAO(s), since it will often be their aircraft and occupants that are exposed to the risk<sup>6</sup>.

## EXECUTING A SAFETY DUTY

Sections 20 – 26 of the WHS Act all share a common theme; they require duty holders to ENSURE, so far as is reasonably practicable, that the workplace (including its equipment and design) is free of risks to the health and safety of any person who uses it for its intended purpose.

These duties are non-transferrable, including through contract. This means that any term in an agreement or contract that seeks to exclude, limit or modify a duty owed under the WHS Act is void.<sup>7</sup>

Quite clearly, if a person has a duty under the WHS Act, it is theirs to execute<sup>8</sup>. If they are impeded in executing that duty by another duty holder, they must first seek to resolve the issue through consulting, cooperating and coordinating with those shared duty holders.

## WHAT IS THE DASA'S ROLE?

The previous sections have purposely not mentioned the DASA. DASA is the assure entity, the regulator, and not the decision-maker from situation to situation. Thus, the DASA is unlikely to have a direct obligation under the WHS

<sup>3</sup> Section 16 of the *WHS Act 2011* states that “*more than 1 person can concurrently have the same duty*”, and furthermore that each person “*must discharge the person’s duty to the extent to which the person has the capacity to influence and control the matter*”.

<sup>4</sup> Section 46 of the *WHS Act 2011* states that “*If more than one person has a duty in relation to the same matter under this Act, each person with the duty must, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with all other persons who have a duty in relation to the same matter*”.

<sup>5</sup> Note regulation 36 of the WHS Regulations and the hierarchy of control (HOC) – also note the Air Force Safety Manual e.g. para 9.17, 9.29, 9.30 etc.

<sup>6</sup> An aircraft is a workplace, and Sect 20 of the WHS Act levies a duty on managers of a workplace to ensure that it’s free from risks SFARP. If an aerodrome deficiency presents an elevated risk to aircraft operations, the MAO is retaining risk on behalf of the aircraft occupants. Hence, a proposed ‘Military Aerodrome Certification Review Item’ (MACRI) (see certification Factsheet) will normally require endorsement by the relevant MAO(s).

<sup>7</sup> See *WHS Act 2011*, ss 14 and 272.

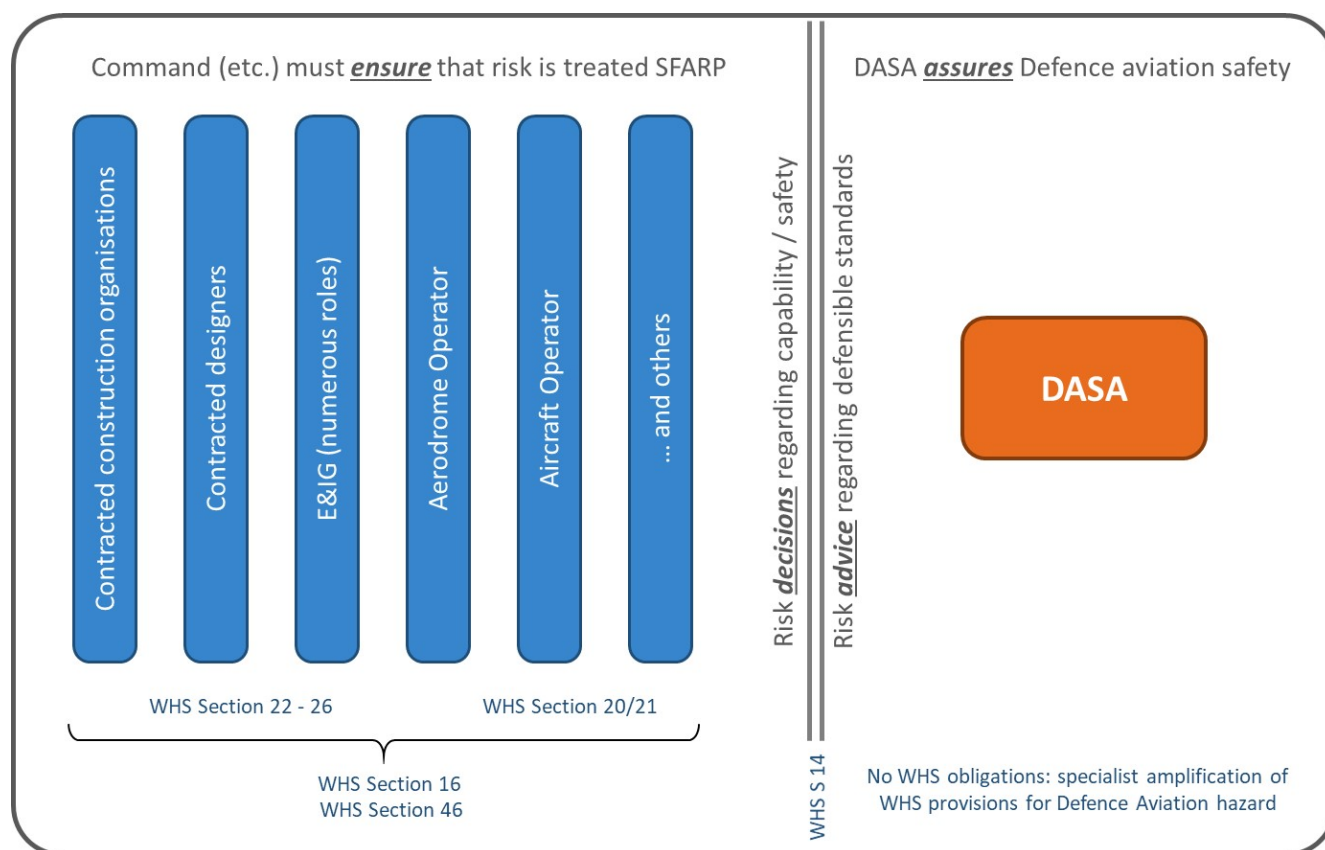
<sup>8</sup> Noting a court will determine whether a person had a particular ‘duty’ under the Act. If you are unsure whether you have a duty under the WHS Act, you should seek legal advice.

Act for the safe design/construction of aerodromes. The DASA is, however, still responsible under Joint Directive 04/2018 for implementing the Defence Aviation Safety Program (DASP) that assures the effective management of aviation safety risks. The DASA does this through, amongst other things:

- Issuing regulations that help the community to meet the requirements of the *WHS Act 2011*.
- Prescribing aerodrome design requirements that represent international 'good practice'.
- Gaining assurance, through non-exhaustive inspections of evidence, that the aerodrome design/construction meets the prescribed design requirements.
- Providing independent assurance that risk management decisions related to design and construction deficiencies are credible and defensible.
- Issuing an aerodrome certification if assured that compliance to 'good practice' standards and regulations has been demonstrated, and any risk management decisions related to non-compliances are credible and defensible.

Note the emphasis on 'assurance' of safety in this list reflecting DASA's assure role, whereas the previous sections focused on 'ensuring' safety. This distinction is critical. The former relates to regulating a credible and defensible construct for aviation safety, while the latter relates to risk-based decision making on aspects of 'making certain' that the aerodrome design and construction and use is safe.

The following diagram identifies some of the organisations with a role in ensuring the safe design/construction of aerodromes, and emphasises the separation of the DASA's assurance roles.



## CONCLUSION

Ensuring the safe design and construction of an aerodrome is complex and requires the expert and complete contribution of a range of stakeholders. This factsheet aims to clarify how multiple people can have a shared duty for ensuring the safe design and construction of an aerodrome. While the DASA does not ensure safety, it is still responsible under Joint Directive 04/2018 for implementing the DASP that assures the effective management of aviation safety risks. This assure function does not mean that the responsibility for safe aerodrome design and construction is transferred to the DASA. In fact, through carrying out their ensure functions in the design, and

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construction of aerodromes, the community designing and providing the aerodrome will always have WHS obligations under the Act that are non-transferable and can be held concurrently by multiple parties.

If there is any concern or question, always seek subject matter expert guidance including from legal resources.

## USEFUL INFORMATION

- AC 002/2016  
[https://www.defence.gov.au/DASP/Docs/DASR-Documents/AA-Circulars/160905AdvisoryCircular002\\_16AviationCommandResponsibilitiesunderDASR.pdf](https://www.defence.gov.au/DASP/Docs/DASR-Documents/AA-Circulars/160905AdvisoryCircular002_16AviationCommandResponsibilitiesunderDASR.pdf)
- DASR.139 Regulations:  
<https://www.defence.gov.au/DASP/Docs/Manuals/8000-011/DASRWeb/index.htm#15303.htm>
- ADRM, Section 6:  
<https://www.defence.gov.au/DASP/Docs/Manuals/7001054/ADRMWeb/index.htm#25288.htm>
- Work Health and Safety Act 2011:  
[Work Health and Safety Act 2011 \(legislation.gov.au\)](http://www.legislation.gov.au/View/WorkHealthAndSafetyAct2011)
- DASA Aerodrome Group Mailbox:  
[dasa.aerodrome@defence.gov.au](mailto:dasa.aerodrome@defence.gov.au)