

Expectation Statement: Drugs and Alcohol in Adventure Aviation

For clarity, this Expectation Statement applies to the adventure aviation industry, Part 115 certificated operators.

The CAA aims for zero tolerance for impaired performance at work as a result of drug, alcohol and substance use; the adventure aviation industry is expected to share that aim. Any inappropriate use of drugs, alcohol or substances will cause some degree of impairment, and no level of impairment is acceptable.

The CAA's expectation statement is based on the requirements of the Health and Safety in Employment Act 1992 (HSE Act), the Civil Aviation Act 1990 (the CA Act), and the Civil Aviation Rules. The HSE Act is not prescriptive on the matter of drugs, alcohol and other substances however the CAA's expectation is fully aligned with the HSE Act's meaning and intent.

The CAA expects that adventure aviation employers and principals will manage drug, alcohol and substance impairment as a significant hazard, and develop and implement policies and procedures that give assurance that, while performing work in a key role, neither themselves, their employees, contractors nor sub-contractors are impaired by drugs, alcohol or substances. The CAA expects assurances to be evidenced by data derived from testing.

In this document, the CAA explains and clarifies this application of the HSE Act. Please note that CAA is developing guidance material on drugs, alcohol and other substances that will, in due course, be available from the CAA web site [What's New](#).

Administration of the HSE Act

The CAA is one of a few agencies, including the Department of Labour, and Maritime New Zealand, that employ health and safety inspectors to advise on and enforce the provisions of the HSE Act.

The CAA administers the HSE Act for aviation under a Prime Ministerial Designation of 2003. A copy of the designation can be found at this link:

http://www.caa.govt.nz/HSE-CAA/gazette_notice.pdf.

The HSE Act imposes obligations on employers and principals to identify hazards in the workplace and to manage those hazards that can cause serious harm.

Section 3A (1) of the HSE Act sets out the provisions relating to aircraft as follows:

(1) This Act applies to-

- (a) a person employed or engaged to work on board an aircraft; and
- (b) the person who employs or engages the person specified in paragraph (a); and
- (c) the aircraft as a place of work.

Definitions

- Key role: for the purposes of this Expectation Statement, **key role** means a person with primary safety responsibilities performing a role, for example, as a pilot when piloting an aircraft, and a tandem master when acting as a tandem master. In hang gliding operations this may also include the role of the launch assistant. Other roles may be the onsite packing of parachutes and the performance of safety critical maintenance by the operator.

- A person employed means an employee. A person engaged means a contractor.
- A person who employs means the employer. A person who engages means the principal.
- **Contractors and sub-contractors**, in turn, may be employers in that they may employ others. Alternatively they may be self-employed. Regardless, relevant sections of the HSE Act apply.
- **Hazard**: means an activity, arrangement, circumstance, event, occurrence, phenomenon, process, situation, or **substance** (whether arising or caused within or outside a place of work) that is an actual or potential cause or source of harm; and includes:
 - (i) a situation where a person's behaviour may be an **actual or potential cause** or source of harm to the person or another person; and
 - (ii) without limitation, a situation described in subparagraph (i) resulting from physical or mental fatigue, **drugs, alcohol**, traumatic shock, or another temporary condition that affects a person's behaviour.
- **Significant Hazard** means a hazard that is an actual or potential cause or source of—
 - a) serious harm; or
 - b) harm (being harm that is more than trivial) the severity of whose effects on any person depend (entirely or among other things) on the extent or frequency of the person's exposure to the hazard; or
 - c) harm that does not usually occur, or usually is not easily detectable, until a significant time after exposure to the hazard
- **Serious Harm** means:
 - Any of the following conditions that amounts to or results in permanent loss of bodily function, or temporary severe loss of bodily function: respiratory disease, noise-induced hearing loss, neurological disease, cancer, dermatological disease, communicable disease, musculoskeletal disease, illness caused by exposure to infected material, decompression sickness, poisoning, vision impairment, chemical or hot-metal burn of eye, penetrating wound of eye, bone fracture, laceration, crushing.
 - Amputation of body part.
 - Burns requiring referral to a specialist medical practitioner or specialist outpatient clinic.
 - Loss of consciousness from lack of oxygen.
 - Loss of consciousness, or acute illness requiring treatment by a medical practitioner, from absorption, inhalation, or ingestion, of any substance.
 - Any harm that causes the person harmed to be hospitalised for a period of 48 hours or more commencing within 7 days of the harm's occurrence.
 - Death.

Duties

Within the definitions of the HSE Act, a person's behaviour may be a hazard due to drug, alcohol or substance impairment because there is potential for accidents to occur that can cause serious harm. Hazards that can cause serious harm are defined as significant hazards and are subject to management controls for elimination, isolation or minimisation using the hazard management principles of the HSE Act. Under sections 6 to 13 of the HSE Act, the 'employer' has the duty for that management.

Principals, self-employed people (generally contractors) and employees have duties imposed by the HSE Act to take all practicable steps to ensure that their actions, and inactions, do not cause harm to themselves and other people while they are performing their work. These duties are imposed by various sections of the HSE Act and include section 15, section 17, section 18 and section 19.

In adventure aviation, practicable steps that can be taken by principals for drug, alcohol and substance impairment are the same as those for employers. Employers, Principals, Self-employed people (generally contractors) and employees have a clear duty to take reasonably practicable steps to manage drugs, alcohol and substance impairment as a significant hazard.

All practicable steps,

For the purposes of the HSE Act, **all practicable steps**, in relation to achieving any result in any circumstances, means all steps to achieve the result that it is reasonably practicable to take in the circumstances, having regard to—

- (a) the nature and severity of the harm that may be suffered if the result is not achieved; and
- (b) the current state of knowledge about the likelihood that harm of that nature and severity will be suffered if the result is not achieved; and
- (c) the current state of knowledge about harm of that nature; and
- (d) the current state of knowledge about the means available to achieve the result, and about the likely efficacy of each of those means; and
- (e) the availability and cost of each of those means.

To avoid doubt, a person required to take all practicable steps is required to take those steps only in respect of circumstances that the person knows or ought reasonably to know about.

Part of taking all practicable steps involves **monitoring** significant hazards. Where there is a significant hazard to employees at work; and the significant hazard cannot be eliminated or isolated, the employer must take all practicable steps to minimise the likelihood that the hazard will be a cause or source of harm to the employees; and monitor the employees' exposure to the hazard.

The Civil Aviation Act and Civil Aviation Rules

Participants in the civil aviation system have obligations to conduct activities responsibly, safely and in accordance with relevant standards and practices (s12 of the CA Act).

Civil Aviation Rule 19.7 *Intoxicating liquor and drugs*, prohibits pilots from being impaired when carrying out their privileges under the CA Act. 'Impairment' means any loss or abnormality of a psychological, physiological or physical function.¹

¹ Management of alcohol and drug-related issues in the workplace. International Labour Organization 1996. First published 1996.

Part 67 *Medical Standards and Certification* requires that applicants for medical certificates for a pilot licence do not have a history or diagnosis of the use of alcohol or drugs, or be taking any psychoactive substance that interferes or is likely to interfere with the safe exercise of the privileges or the safe performance of their duties.

The CAA has published two [Medical Information Sheets](#) that give detailed information about drug and alcohol use and impairment in aviation.

Hazard Management Validation

The CAA expects that the assurances that drug, alcohol or substance impairment is not present in adventure aviation workplaces will be evidenced by data. This requires a testing regime for the presence of drug, alcohol and substance use. The HSE Act is clear that the management and assurance required are normal functions of the employer and principal duties under that Act. These are steps that would fall within 'all practicable steps'.

1) Employers and Principals

- a) The CAA expects that the hazard will be managed by an acceptable means of compliance, such as the establishment and implementation of a drug, alcohol and substance policy and procedure that includes provisions for evidence-based testing.
- b) Employers and principals will actively apply and enforce their policies, including taking appropriate action when an employee, contractor or sub-contractor, or other person who acts in a key role, has a positive drug, alcohol or substance test result.
- c) Employers and principals will notify the CAA of any positive result for the presence of drugs, alcohol or substances.

2) CAA audit requirements:

- a) The CAA will require evidence that any potential impairment hazards associated with drugs, alcohol or substances are being managed. Evidence must be produced that employers and principals themselves, employees, contractors and sub-contractors have been appropriately tested to ascertain that they are not working while under the influence of drugs, alcohol or other substances that are likely to cause impairment. The CAA expects that employers and principals will demonstrate the effectiveness of their policy and procedure by evidential data from a testing regime.
- b) The employers' and principals' testing regime should be robust, reliable, and, if not randomly, applied at appropriate times, such as before a new employee, contractor or sub-contractor begins employment, whenever an incident or accident occurs, and at sufficient frequency to permit the detection of drugs, alcohol or substances. The regime should be credible and stand-up to third party scrutiny.

Summary

The HSE Act identifies drugs, alcohol and substance use as a potential hazard. In adventure aviation, impairment because of the use of drugs, alcohol or substances is a significant hazard that must be managed.

Employers and principals must manage drug, alcohol or substance impairment by establishing a management regime that includes the testing of personnel in key roles. This will allow employers and principals to demonstrate acceptable means of compliance with the HSE Act.

If positive results are found, appropriate action must be taken, and complete records must be kept.