

FIJI AERONAUTICAL INFORMATION CIRCULAR



Civil Aviation Authority of Fiji
Private Bag (NAP0354), Nadi Airport
Republic of Fiji
Tel: (679) 8923155; Fax (679) 6721 500
Website: www.caaf.org.fj

AIC 04/16
Effective
7 JAN 2016
ADM

IMPROVEMENT AND INFRINGEMENT NOTICES

1. PURPOSE

- 1.1 The purpose of this AIC is to provide information and background on the Authority's decision to fully implement the existing enforcement provisions and tools available to its discretion under the law.
- 1.2 The Authority's decision to exercise this available safety oversight strategy is part of its risk mitigation to maintain the safe health of the aviation industry to a tolerable level under the State Safety Program (SSP).

2. BACKGROUND

- 2.1 The provision of Improvement and infringement Notices was mandated in 2008 (Civil Aviation Promulgation Authority Amendment Promulgation 6 of 2008) to:
 - a) strengthen the enforcement provisions that existed at the time and address the ICAO Universal Safety Oversight Audit Programme (USOAP) Comprehensive System Audit (CSA) findings of Fiji in 2006.
 - b) facilitate the implementation of enforcement provisions in the newly proposed ANR Parts.
- 2.2 Additionally, the requirement for the State Safety Programme, to meet Fiji's international obligation, was promulgated and the requirement for "...establishing and implementing a State Safety Programme (SSP) to achieve an acceptable level of safety in civil aviation-" was added to the authority's functions in 2012 (Civil Aviation Authority of Fiji (Amendment) Decree no. 45 of 2012).
- 2.3 A key element of safety oversight and (SSP) is to have effective enforcement provisions to ensure that the law is enforceable where it is necessary to do so. Under *Section 14* of the *Civil Aviation Authority of Fiji Act 1979*, the CAAF is required to "develop effective enforcement strategies to secure compliance with aviation safety standards..."

3. AUTHORITY ENFORCEMENT POLICY

- 3.1 The Authority's enforcement philosophy recognises the fact that voluntary compliance with the legislations is a better method of achieving safety than by prosecuting the offenders afterwards. Thus, preventative actions are the preferred method of achieving compliance.
- 3.2 Normally, the intention of any Act, Regulation or Standard Document ("legislation") is to protect society from potential harm and people are expected to comply with the legislations voluntarily. When voluntary compliance is not forthcoming with resultant effect to society, enforcement of the legislation becomes necessary.
- 3.3 Voluntary compliance assumes that individuals are rational, responsible and law abiding in their own right and self-interest. Whenever these factors are absent or fails to motivate an individual to comply with the legislation, enforcement action may be necessary.

4. SAFETY MANAGEMENT IMPLEMENTATION

- 4.1 The evolution and maturity of Safety management has been slow but steady under the SMS and SSP performance based approach. CAAF assessment indicates that operators and service providers are at different levels of safety management system (SMS) implementation. As a result, the essential task of on-going hazard identification, risk assessment, risk ownership and mitigation, within the boundaries of existing national regulatory framework and policies, are yet to be fully embraced by the industry.
- 4.2 Similarly, the development of safety "Just" culture across industry, particularly that which encourages free reporting and, the responsible use and integration of safety information in business decisions are also varied. Therefore, the increase in safety information shared between the Operator/Service Providers SMS and CAAF under the State Safety Program is encouraging.
- 4.3 Analysis of safety information provides intelligence to CAAF to identify and prioritise areas where the Authority should focus its safety and security oversight activities. CAAF has been encouraging compliance through education, safety awareness and other means without the need to fully utilise and/or exhaust its enforcement provisions.
- 4.4 However, recent analysis of safety information collected under SMS/SSP information sharing platforms indicate that CAAF can no longer sustain safety risks to an acceptable level without utilising the existing Improvement and Infringement notices. This is so because, it has been observed that on some occasions legislative boundaries appear to have been exploited or violated by business/commercial pressures and decisions without the appropriate SMS risk analysis.
- 4.5 Given this new development, the CAAF management under its SSP risk mitigation is informing the Industry through this AIC that it will fully utilise the legal enforcement provisions currently available to it under the law in the public interest when it is necessary to do so. In this regard, Authorised Officers will exercise the empowerment delegated to them under the existing laws to issue

Improvement and Infringement Notices as and when they consider appropriate to do so.

5. IMPROVEMENT NOTICES

- 5.1 Effective immediately the CAAF Authorised Persons will be issuing Improvement Notices as per the requirements of section 12A (2) (h) & 12C of the Civil Aviation Authority of Fiji Act 1979. The Improvement Notice will be served as per the requirements of sections 12B, 12C and 12E of the Act and the relevant provisions of the ANR and other laws. This enforcement action by the Authority will continue when the new Harmonised ANR Parts are promulgated. The Improvement Notice will be presented in the format below – Form CA 109A.



Civil Aviation Authority of Fiji
CAAF Improvement Notice

Form
CA 109A

Issued to:		Aviation Document Number:	
In relation to:			
At:			
Date Contravention/s Occurred:		Or - In Between What Dates Did the Contravention/s Occur:	From : To:
What consultation has occurred in relation to this issue:			
Improvement Notice Issued On:			
<p>I, (Insert Name) am an Authorised Person of CAAF to inspect this: workplace <input type="checkbox"/> / plant & or equipment <input type="checkbox"/> / aircraft <input type="checkbox"/> / building <input type="checkbox"/> / property <input type="checkbox"/> / aerodrome <input type="checkbox"/> / runway <input type="checkbox"/> / other (specify) <input type="checkbox"/> _____</p> <p>I am qualified under section 12A of the CAAF Act 1979 to issue this notice <input type="checkbox"/></p>			
<p>I have formed the opinion that:</p> <ul style="list-style-type: none"> You are contravening <input type="checkbox"/> OR You have contravened in circumstances that makes it likely that the contravention/s will continue or repeated <input type="checkbox"/> 			
<p>Section (insert the number of the section of the Law) of the (insert the name of the Act, Regulation or Standard Document) Please note only fill in the applicable section of, the Act, Regulation or Standards. If two or more applies, state the higher.</p>			
<p>The reasonable grounds for my opinion are as follows:</p>			
<p>Signature of Authorised Person:</p> <p>Authorised Person No.:</p>			
<p>Corrective Action Date:</p> <p>The above matter must be remedied by no later than _____ at _____ hrs.</p>			
<p>Instructions for correcting the contravention/s:</p> <p><small>Note: This section is to be used by CAAF to suggest measures to resolve the matter. It is not mandatory. Codes of practice may be referred to.</small></p>			
<p>Name of 'Noticed' person: Position:</p> <p>Employer: Signature:</p> <p>Date: Time:</p>			

6. INFRINGEMENT NOTICES.

6.1 Effective immediately the CAAF Authorised Persons will be issuing Infringement Notices as per the requirement of section 12A (2) (h) & 12D of the Civil Aviation Authority of Fiji Act 1979. The Infringement Notices will be served as per the requirements of sections 12B, 12D and 12E of the Act and the relevant provisions of the ANR and other laws. This enforcement action by the Authority will continue

when the new Harmonised ANR Parts are promulgated. The Infringement Notice will be presented in the format below – Form CA 109B.



Civil Aviation Authority of Fiji
CAAF Infringement Notice

Form
CA 109B

To: _____ of _____
The Holder of Aviation Document Number: _____

YOU ARE HEREBY CHARGED as follows:

Statement of Offence: _____

Contrary to _____

_____ (Maximum penalty: _____)

Particulars of Offence _____

TAKE NOTICE that, if not later than 21 days from the date hereof and payment of the fixed penalty of \$_____ is received as specified overleaf, at the Civil Aviation Authority of Fiji Office*, all liability in respect of the offence will be discharged and no further action will be taken. **HOWEVER**, if that fixed penalty is not so paid in full, you are hereby required to attend _____ Magistrates Court on _____ 20____ at _____ to answer the charge set out above, **UNLESS** -

- (a) You admit to the offence and plead guilty in writing as specified at the back of this page; OR
- (b) An appearance is made by you or on your behalf by a Barrister & Solicitor, in which case your personal attendance will be excused and the case will be disposed off in your absence.

Signed: _____ Designation _____
CAAF Authorised Person / Police Officer Date: _____ 20____
Authorised Person Number: _____ Expiry Date: _____
*See back of Form

AFFIDAVIT OF SERVICE

(To be completed in all cases)

I, _____ the Authorised Person or Police Officer whose signature appears at the foot of the Infringement Notice above, make oath and say that, on the _____ day of _____ 20____ at _____ *I did - serve upon the Offender specified therein.

OR

Affixed in a conspicuous position, at the work station of the Offender a true copy of that Infringement Notice.

Sworn by the above named Authorised Person/Police Officer at this _____ day of _____ 20____
Before _____ (Magistrate or Justice of the Peace or Commissioner for Oaths).

SUPPLEMENTARY AFFIDAVIT OF SERVICE

(To be completed when service is effected on a person or operator or a relevant party for the purpose of section 12 (E) of the CAAF Act 1979)

I, _____, an Authorised Person or Police Officer stationed at _____, _____ make oath and say that, on this _____ day of _____ 20____ I did serve upon _____ a true copy of the CAAF Infringement Notice above by _____

Sworn by the above named Authorised Person or Police Officer at this _____ day of _____ 20____
Before _____
Magistrate or Justice of the Peace or Commissioner for Oaths Authorised Person/Police Officer

WRITTEN PLEA OF GUILTY

I, _____ being the person named in this Notice hereby voluntarily enter a **GUILTY** plea to the Charge specified.

(Signed) _____ Date: _____

If you pay on time

For all the persons, the matter is finished and will not go to court except a person who-

- a) Has not paid the fine in full.
- b) Has opted to have the matter dealt with by the Court.

Effect on Aviation Document Holders

If you are the holder of an Aviation Document, your offence may result in you being disqualified from holding or obtaining such an Aviation Document for 06 months

Fixed Penalties Table

1) *Fine not exceeding \$1,000 or 06 months imprisonment or both,*

<u>Offence Against the Following Provisions of the Air Navigation Regulation (ANR) 1981</u>	<u>Offence Against the Following Provisions of the Air Navigation Regulation (ANR) 1981</u>
Section 12	section 43 (6)
section13(7)	section 44 (1)
section 15 (1)	section 49
section 16 (1)	section 50
section 16 (2)	section 51 (1)
section 17 (2)	section 52
section 17 (3)	section 68
section 17 (5)	section 70 (1)
section 18 (1)	section 70 (2)
section 18 (2)	section 70 (3)
section 20	section 71
section 22 (1)	section 72
section 28	section 74
section 29 (1)	section 75
section 30	section 78
section 31	section 79
section 34 (1)	section 80 (1)
section 35	section 84
section 36	section 86(3)
section 37	section 86(5)
section 38	section 114 (2)
section 41 (1)	section 125(1)
section 41 (3)	section 126
section 41 (4)	section 128
section 41 (6)	-
section 42 (1)	section 138
section 43 (2)	section 139
section 43 (5)	section 148

Any Other ANR Provision Not Listed (in 01) Above, upon Conviction

2) *Fine not exceeding \$2,000 or 12 months imprisonment.*

7. TABLE OF FINES AND PENALTIES

7.1 Sections 157(3) & (4) of the Air Navigation Regulation 1981 lists the fine and/or penalty for contravening the specific regulations contained therein. However, where a specific fine or other penalty is listed for a specific provision in any of the Act and/or Regulation for Civil Aviation, the fine and/or penalty listed in that provision shall apply.

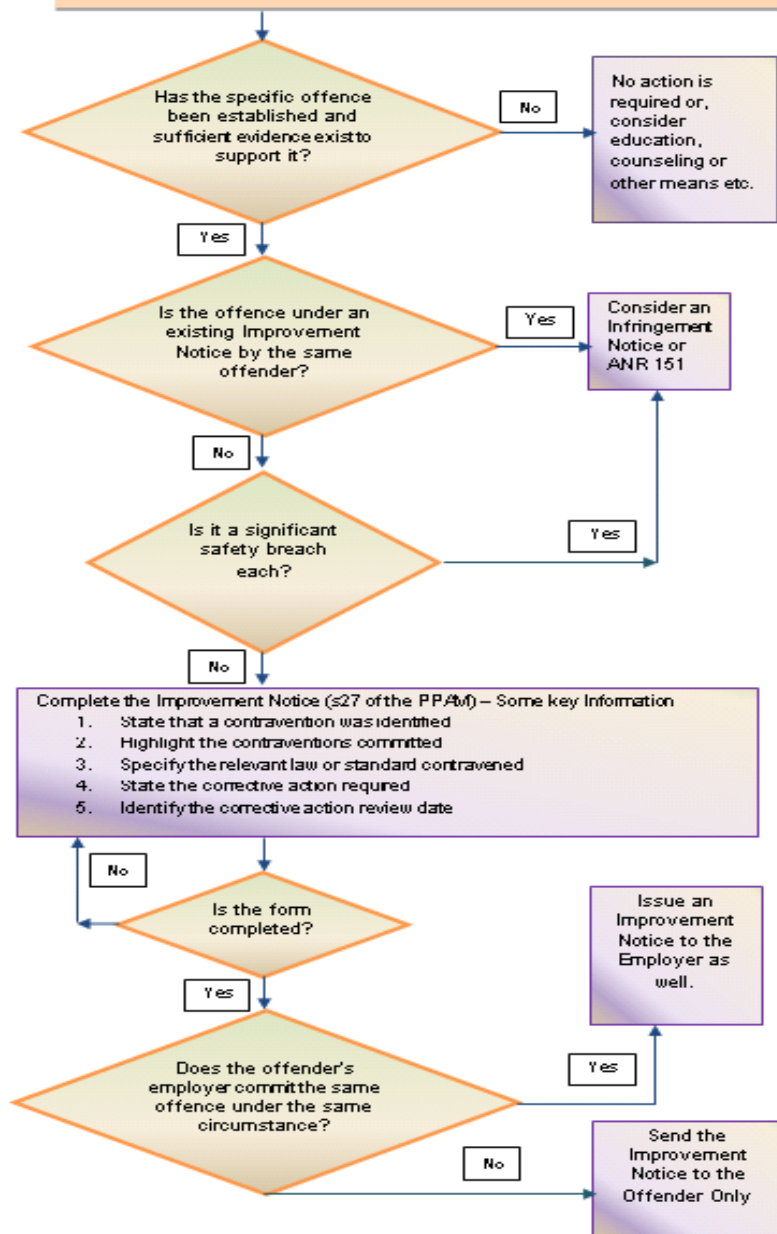
Contravention and penalties

157.-(3) Any person who contravenes the provisions of any regulation specified hereunder shall be liable to a fine not exceeding \$1,000 or imprisonment for a term not exceeding 6 months or to both such fine and imprisonment.

Regulation 12	Regulation 43 (6)
Regulation 13 (7)	Regulation 44 (1)
Regulation 15 (1)	Regulation 49
Regulation 16 (1)	Regulation 50
Regulation 16 (2)	Regulation 51 (1)
Regulation 17 (2)	Regulation 52
Regulation 17 (3)	Regulation 68
Regulation 17 (5)	Regulation 70 (1)
Regulation 18 (1)	Regulation 70 (2)
Regulation 18 (2)	Regulation 70 (3)
Regulation 20	Regulation 71
Regulation 22 (1)	Regulation 72
Regulation 28	Regulation 74
Regulation 29 (1)	Regulation 75
Regulation 30	Regulation 78
Regulation 31	Regulation 79
Regulation 34 (1)	Regulation 80 (1)
Regulation 35	Regulation 84
Regulation 36	Regulation 86(3)
Regulation 37	Regulation 86(5)
Regulation 38	Regulation 114 (2)
Regulation 41 (1)	Regulation 125(1)
Regulation 41 (3)	Regulation 126
Regulation 41 (4)	Regulation 128
Regulation 41 (6)	
Regulation 42 (1)	Regulation 138
Regulation 43 (2)	Regulation 139
Regulation 43 (5)	Regulation 148

(4) A person who contravenes any provision of these Regulations, not being a provision specified in sub-regulation (3) commits an offence and is liable on conviction to a fine \$2 000 and imprisonment for 12 months.

IMPROVEMENT NOTICE FLOW CHART



INFRINGEMENT NOTICE FLOW CHART

