Proposed changes to 'not a related party' provisions

Proposed changes

The Agency proposes to remove requirements in the *Space (Launches and Returns) (General) Rules 2019* ('General Rules') and *Space (Launches and Returns) (High Power Rocket) Rules 2019* ('HPR Rules') that a suitably qualified expert (SQE), or person with suitable qualifications and experience, must not be a related party of an applicant. The 'not a related party' provisions currently apply to certain risk hazard analyses, flight safety plans, return safety plans, cybersecurity strategies and certain environmental plans. These provisions are discussed in more detail below.

The requirement that a person must be 'independent' to assess the adequacy of a cybersecurity strategy submitted as part of a launch facility licence application is also proposed to be removed.

These changes are intended to remove barriers to participation in the industry and reduce regulatory burden. They will enable organisations to develop and use in-house capability, should they decide to do so and where suitably qualified, rather than requiring external expertise for applications.

These changes are consistent with evidence heard during the inquiry by the House of Representatives Standing Committee on Industry, Innovation, Science and Resources into *Developing Australia's Space Industry.* The Committee heard evidence that, in relation to launch, the provisions were counterproductive because:

- …flight safety tasks on vehicles in Australia must be undertaken by third parties. This increases the risk to safety where entities unfamiliar with the launch vehicle, its development history and technology inputs are performing risk hazard analyses
- contracting risk hazard analyses to third parties raises commercial concerns for domestic and international launch vehicle operators
- there are no equivalent requirements in other commercial launch legislation internationally, including the United States and New Zealand

The Agency acknowledges these concerns.

Potential impact of changes

The purpose of this consultation is to explore any unintended consequences of these changes.

There is no change to the requirement that the Minister, or their delegate, must approve SQEs for flight safety plans, return safety plans and certain risk hazard analyses. Furthermore applicants must continue to submit to the Minister, or their delegate, flight safety plans, return safety plans and risk hazard analyses as required as part of the relevant permit, licence or authorisation application process.

We propose to maintain the safety of space and high power rocket activities by updating and clearly outlining the expectations of an SQE. We expect that where an SQE is a related party to the applicant, applicants will

need to demonstrate to the Minister that decisions made by the SQE are made with sufficient isolation from operational pressures to avoid compromise. For example, within an established decision-making framework with clear approval and assurance processes.

Current requirements

Australian launch permits and return authorisations – SQE not a related party provisions

The General Rules require that risk hazard analyses (sections 52(2)(a) and 98(2)(a)), flight safety plans (section 53(3)) and return safety plans (section 99(3)) submitted as part of an application for an Australian launch permit or return authorisation are to be performed by, or include written confirmation from, an SQE who is approved by the Minister and is not a related party of the applicant.

'Related party' is defined in section 9 of the *Space (Launches and Returns) Act 2018* ('the Act').

Australian high power rocket permits – SQE not a related party provision

The HPR Rules require flight safety plans (section 26(3)) submitted as part of an application for an Australian high power rocket permit to include written confirmation from an SQE. The SQE for a flight safety plan must be approved by the Minister and must not be a related party of the applicant.

The purpose of the 'not a related party' provisions for SQEs in the General Rules and HPR Rules is to assure independence in the assessment process and to avoid the risk of bias.

Environment – not a related party provision

The General Rules require a launch facility licence application to include (in certain circumstances) a written assessment of the adequacy of the environmental plan, which is required to be submitted as part of the application, by a person with suitable qualifications and experience who is not a related party of the applicant (section 21(5)).

The purpose of this provision is to assist the Minister or their delegate in determining the adequacy of the environmental plan, as required by section 18(b) of the Act.

Technology security – not a related party and 'independent person' provisions

Under the General Rules a launch facility licence application must include a written assessment of the adequacy of the cybersecurity strategy, which is required to be provided as part of the applicant's technology security plan, by an independent person with suitable qualifications and experience (section 22(3)).

Applications for an Australian launch permit (section 56(3)) or return authorisation (section 102(3)) under the General Rules and Australian high power rocket permits (section 29(3)) under the HPR Rules must also include a written assessment of the cybersecurity strategy by a person with suitable qualifications and experience who is not a related party of the applicant.

The purpose of these requirements is to ensure that cybersecurity measures taken by an applicant are appropriate, given the potential for malicious actors to gain access to, or take control of, an applicant's cyber network.