Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 40.2.1 Amendment Order (No. 1) 2007

Legislation
Section 98 of the Civil Aviation Act 1988 (the Act) empowers the Governor-General to make regulations for the Act and the safety of air navigation.

CAR 1988
Under subregulation 5.14 (1) of the Civil Aviation Regulations 1988 (CAR 1988), CASA may give directions, in Civil Aviation Orders (CAOs), setting out the requirements for the issue to a person of a grade of flight crew rating. Under subregulation 5.14 (2), CASA must renew the grade of flight crew rating by entering it in the person’s log book only if the person has passed the necessary flight tests and satisfied the other requirements and conditions.

Under subregulation 5.16 (1) of CAR 1988, the renewal of a grade of flight crew rating may be made subject to conditions necessary in the interests of the safety of air navigation. Under paragraph 5.16 (2) (c), the conditions may be set out in CAOs made under regulation 303 of CAR 1988.

Under regulation 303 of CAR 1988, where under CAR 1988 CASA is empowered to issue a flight crew rating (such as a grade of instrument rating) subject to conditions, the conditions of general application may be set out in CAOs.

Under subregulation 5.17 (3) of CAR 1988, CASA may give directions in CAOs setting out the period for which a grade of flight crew rating remains in force.

Under regulation 5.18 of CAR 1988, CASA may give directions in CAOs setting out the authority and limitations of a grade of flight crew rating and the flight tests that must be passed and other requirements that must be satisfied before that authority may be exercised.

Under regulation 217 of CAR 1988, certain operators (for example, of regular public transport services, or of aircraft exceeding 5 700 kg) must provide a training and checking organisation to provide the aircraft flight crew with competency checks.

CAO 40.2.1
Requirements, conditions and directions for the foregoing provisions of CAR 1988 are set out in Civil Aviation Order 40.2.1 (CAO 40.2.1).

Under subparagraph 12.1 (a) of CAO 40.2.1, a grade of instrument rating must be renewed for 12 months if the holder passes the instrument rating test within the 90 days before the grade of rating is due to expire.

Under subsection 2 (Interpretation) of CAO 40.2.1, instrument rating test means the flight test and theory test described in Appendix I of the CAO. Subclause 1.1 of Appendix I mentions matters for which the person being tested must demonstrate knowledge and proficiency.

Under paragraph 12.2 of CAO 40.2.1, if an instrument rating has expired for a period of less than 12 months, an applicant may requalify for it by passing the instrument rating test applicable to renewal of the rating. Under paragraph 12.3, if an instrument rating has expired for a period of more than 12 months, an applicant may requalify for it by passing the instrument rating test applicable to initial issue of the rating.
**Background**

For sophisticated turbine and jet aircraft, flight simulator competency checks conducted by certified overseas training providers who can provide type specific flight simulators is often more extensive and safer to conduct than an actual flight test in an aircraft.

In particular, the demonstration of abnormal scenarios, such as asymmetric manoeuvres and emergencies in instrument meteorological conditions (IMC), can be conducted in a flight simulator. For this reason, under subclause 3.4A in Appendix 2 of Civil Aviation Order 82.1 (CAO 82.1) (made in January 2006), if certain quality standards are met, a charter, or aerial work, operator (but not a regular public transport (RPT) operator) may use an overseas training provider and flight simulator for all or part of its flight crew competency checking.

Use of suitable overseas training providers and flight simulators has similar advantages for renewal of a grade of instrument rating, and the testing for such renewal can coincide with flight crew competency checking. Until the CAO amendment, under the provisions of CAO 82.1 and CAO 40.2.1 this ability to combine competency checking with instrument proficiency checking on a flight simulator was not available.

**The CAO amendment**

*Civil Aviation Order 40.2.1 Amendment Order (No. 1) 2007* (the CAO amendment) has been made to permit the use of overseas training providers and flight simulators for renewal of grades of instrument rating where certain safety conditions are met.

**Details of the amendment**

The holder of a grade of instrument rating is taken to meet the requirements for the renewal of the rating if, instead of passing the relevant instrument rating test, the person complies with new subsection 12A.

**Use of an overseas flight simulator**

Under subsection 12A, for the grade of instrument rating, the holder may undertake an instrument proficiency check on a flight simulator with a training provider whose flight simulator qualification certificates are recognised by CASA (*a recognised certificate State or RCS*).

He or she must give CASA at least 10 working days’ notice of the proposed instrument proficiency check on the flight simulator.

The flight simulator must have a current qualification certificate for instrument proficiency checks issued by the RCS NAA.

Under Advisory Circular AC 60-2 (1) (May 2007), CASA currently recognises flight simulator qualification certificates issued by Canada, Hong Kong (Special Administrative Region of China), New Zealand, the United States of America, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Ireland, Italy, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom.

The overseas training provider, and the person conducting the checks (the checker), must be approved by the national airworthiness authority of the RCS (the RCS NAA) to undertake the instrument proficiency checks in the flight simulator.

The checker must be an employee of the training provider. He or she must hold a current delegation or authorisation from the RCS NAA, equivalent to that of a CASA approved testing officer (ATO), for certifying the instrument procedures proficiency of flight crew in the RCS.
The instrument proficiency checks must be undertaken on a flight simulator with a current relevant qualification certificate issued by the RCS NAA.

The checks must conform to Australian instrument procedures and comply with the Australian instrument rating renewal requirements in Appendix I of CAO 40.2.1 (except paragraphs 4.1 (a), (b) and (c) dealing with use of synthetic flight trainers).

For example, the Australian instrument rating renewal requirements in Appendix I include a requirement for the holder to satisfactorily demonstrate a circling approach. This, and other requirements contained in the Appendix, may differ from the requirements of the relevant RCS.

The person being tested must successfully complete all of the rating renewal checks in Appendix I of CAO 40.2.1 as if those requirements were applicable to an instrument rating renewal flight test on the flight simulator.

Consistent with the current position, if proficiency is demonstrated on the flight simulator in using ILS or LLZ, and another non-precision instrument approach, that proficiency is also taken to meet the proficiency testing requirement for VOR.

**Oral test**
The person must also successfully complete an oral aeronautical knowledge test (the oral test) based on the matters mentioned in subclause 1.1 of Appendix I and relevant to the instrument rating to be renewed

If the holder is subject to competency checks by a training and checking organisation under subregulation 217 (2) of CAR 1988, this test may be conducted by the chief pilot, or an approved check pilot, of the training and checking organisation provided he or she is approved by CASA to conduct flight tests for the grade of instrument rating applied for. Otherwise, the oral test must be conducted in the same way as for a person who is not subject to checking by a training and checking organisation (see below).

If the holder is not subject to checking by a training and checking organisation, the oral test must be conducted by a CASA flying operations inspector (an FOI) or an ATO approved by CASA to conduct flight tests for the grade of instrument rating applied for.

**Application and documents**
When applying for the renewal, the holder must give a CASA officer, or the relevant chief pilot, approved check pilot, or ATO, as the case requires, certain documents to prove successful completion of the tests. The documents include the NAA approval of the training provider, the NAA approval and delegation of the checker, and the checker’s signed statement of the instrument proficiency checks that were successfully undertaken.

**Who may issue the renewal?**
The chief pilot or the approved check pilot may issue the renewal of the grade of instrument rating if he or she is a CASA delegate for that purpose, has received the relevant documents mentioned above, the training and checking organisation’s operations manual sets out the procedures for this renewal process and the person has successfully completed the oral test.

If the oral test was conducted by an FOI or an ATO (approved by CASA), generally only a CASA officer may issue the renewal of the grade of instrument rating, following receipt of the relevant documents and confirmation that the holder has successfully completed the oral test.
However, an ATO who was present to observe the instrument flight check may issue the renewal if he or she conducted the successful oral test (or if not, received confirmation from the FOI or ATO who did) and received the relevant documents.

**What if the rating had expired?**
Under the CAO amendment, the renewal option in subsection 12A will also be available to a person whose grade of instrument rating has expired for a period of less than 12 months.

However, if it has expired for a period greater than 12 months, the renewal option under subsection 12A will not be available. The person must requalify for the grade of instrument rating by passing the instrument rating test applicable to the initial issue of an instrument rating.

**Combining instrument proficiency checks with competency checks**
The CAO amendment also provides that for a person who is subject to competency checks by a training and checking organisation under subregulation 217 (2) of CAR 1988, renewal of a grade of instrument rating using an instrument proficiency check on a flight simulator under subsection 12A, may be conducted as part of the flight crew competency checking mentioned in subclause 3.4A of Appendix 2 of CAO 82.1.

The respective requirements of subsection 12A and of subclause 3.4A of Appendix 2 of CAO 82.1 must all be met.

**Combining instrument rating renewals with competency checking**
While under the CAO amendment, any operator may avail of the use of an appropriate overseas flight simulator for instrument rating renewals, the ability to combine this with competency checking on a flight simulator is restricted to charter, or aerial work, operators.

This is because competency checks required by regulation 217 of CAR 1988 for RPT operations would remain restricted to the requirements contained in Civil Aviation Order 82.3 and Civil Aviation Order 82.5 which differ from those in CAO 82.1. Competency checks for RPT operators are not permitted in an overseas flight simulator outside the relevant training and checking organisation (unless an exemption were issued by CASA). Hence, for RPT operators, it is not possible to use an overseas flight simulator to combine instrument rating renewals with competency checks.

**Legislative Instruments Act 2003 (LIA)**
The provisions of CAR 1988, mentioned at the beginning of this Explanatory Statement, provide for directions and related conditions to be in a CAO. Under subsection 98 (5) of the Act, where regulations provide directions to be issued in the form of a CAO, the CAO is a legislative instrument and subject to the LIA (other than Part 6 concerning sunsetting). The principal CAO for the relevant CAR 1988 provisions is CAO 40.2.1. The CAO amendment to it is, therefore, a legislative instrument, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

**Consultation**
Consultation under section 17 of the LIA was carried out as follows.

On 24 October 2007, CASA published a notice of proposed rule making (NPRM) for the CAO amendment, inviting public and industry consideration of, and comment on, the proposals. The NPRM attracted formal responses from 4 industry participants leading CASA to fine-tune some aspects of the CAO amendment and its supporting civil aviation advisory publication (CAAP) material.
The CASA Operational Standards Sub-Committee, a joint CASA/industry consultative forum involving a variety of industry organisations, was notified of the proposed CAO amendment and was fully supportive of it.

**Office of Best Practice Regulation (OBPR)**  
The CAO amendment extends, on a voluntary basis, the options available to operators and pilots for renewing a grade of instrument rating.

Where the renewal of a grade of instrument rating overseas coincides with overseas competency checking by the same training provider, operator costs may, in fact, be reduced.

A preliminary assessment of business compliance costs, therefore, indicates that the amendment will have no impact on business other than costs that may arise from voluntarily deciding to adopt this alternative means of renewing relevant instrument ratings. Consequently, preparation of a Regulation Impact Statement is not required for the CAO amendment.

**Commencement and making**  
The CAO amendment commences on the day after it is registered.

It has been made by the Director of Aviation Safety on behalf of CASA in accordance with subsection 84A (2) of the Act.

[Civil Aviation Order 40.2.1 Amendment Order (No. 1) 2007]