

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### Prescription — type ratings for CASR Part 142 flight training (Edition 2) Amendment Instrument 2015 (No. 1)

##### Purpose

*Prescription — type ratings for CASR Part 142 flight training (Edition 2) Amendment Instrument 2015 (No. 1)* (the **amendment instrument**) amends the instrument known as *Prescription — type ratings for CASR Part 142 flight training (Edition 2)* (the **principal instrument**) to add 5 additional type ratings for the purpose of relevant provisions in Part 142 of the *Civil Aviation Safety Regulations 1998 (CASR 1998)*.

##### 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. Under paragraph 98 (5A) (a) of the Act, such regulations may empower CASA to issue instruments in relation to matters affecting the safe navigation and operation of aircraft.

The *Civil Aviation Legislation Amendment Regulation 2013 (No. 1)* (the **amendment regulation**) was made under section 98 of the Act to include new Parts 141 and 142 of CASR 1998 (**CASR Part 141** and **CASR Part 142**).

CASR Part 141 contains regulations for recreational, private and commercial pilot flight training, other than certain integrated training courses. Such Part 141 flight training may be carried out by a Part 141 operator, that is, a person who holds a Part 141 certificate.

CASR Part 142 contains regulations for integrated and multi-crew pilot flight training, training for the grant of a type rating, contracted recurrent training and contracted checking. Such training and checking may only be carried out by a Part 142 operator, that is, a person holding a Part 142 authorisation. For training and checking that is carried out in an aircraft, the form of the Part 142 authorisation is an air operator's certificate (**AOC**).

The rationale behind CASR Parts 141 and 142 is that flight training may be authorised to be conducted for a particular aircraft type rating only if the flight training operator has a course of training together with sufficient systems and personnel in place to safely and effectively manage flight training for the types of aircraft, including their variant models.

Within the range of available aircraft types, some can be grouped together and treated in a common way under Part 61 of CASR 1998. The groups of aircraft are known as class ratings. Thus, training to operate one type of aircraft may satisfy the training requirements for a number of other types of aircraft if they have similar characteristics and performance.

However, many types of aircraft are sufficiently complex or different from other types as to warrant type specific training to be required to fly these aircraft. These aircraft are identified as type-rated aircraft.

In some cases, aircraft types can have *more than one model* and the characteristics of the models can differ, for example, in such areas as operating systems, size, performance or handling. In some cases, the differences between the models are such that additional training (***differences training***) of the pilots is warranted to enable them to fly another variant of the models the pilot has been trained to operate.

The regulations ordinarily require flight training for the grant of a type rating, and type rating differences training, to be conducted by a CASR Part 142 operator. In some cases for the least simple type ratings, this training can be done adequately by the holder of a CASR Part 141 certificate. In other words, the training would not require the additional organisational systems and processes that are required under CASR Part 142. The regulations make provision for prescribing these aircraft in an instrument that can be made by CASA under regulation 142.045 of CASR 1998.

Under paragraph 142.045 (a) of CASR 1998, for paragraph 98 (5A) (a) of the Act, CASA may issue a legislative instrument to prescribe type ratings for certain elements of the definition of ***Part 142 flight training***.

Under paragraph 142.015 (2) (d) of CASR 1998, ***Part 142 flight training*** is defined as including *training* for the grant of a CASR Part 61 flight crew rating that **is not** prescribed in a legislative instrument under regulation 142.045.

Under subparagraph 142.015 (g) (i) of CASR 1998, ***Part 142 flight training*** is also defined as *differences training* required under regulations 61.780, 61.835 and 61.1370 of CASR 1998 for a variant covered by a type rating that **is not** prescribed in a legislative instrument under regulation 142.045.

Under paragraph 141.015 (1) (d) of CASR 1998, ***Part 141 flight training*** is defined as including *training* for the grant of a Part 61 flight crew rating that **is** prescribed in a legislative instrument under regulation 142.045.

Under subparagraph 141.015 (g) (i) of CASR 1998, ***Part 141 flight training*** is also defined as *differences training* required under regulations 61.780 and 61.835 of CASR 1998 for a variant covered by a type rating that **is** prescribed in a legislative instrument under regulation 142.045.

Regulation 61.780 of CASR 1998 requires the holder of a pilot type rating in an aircraft with variants to undertake differences training for other variants if the variants are prescribed, and differences training for them is required, under a legislative instrument made under regulation 61.055 or 61.060 of CASR 1998.

Regulation 61.835 of CASR 1998 authorises the holder of a cruise relief co-pilot type rating to act as co-pilot in an aircraft (in certain defined circumstances). Again, in particular defined circumstances, including passing a flight test in the aircraft model covered by the rating (the “first variant”), if differences training is required, and completed, for another aircraft model covered by the rating, the holder may exercise the privileges of that second variant.

Under regulation 61.1370 of CASR 1998, the holder of a flight engineer type rating in an aircraft, who passed a flight test for the rating in the aircraft model (the “first variant”), may exercise the privileges of the rating in another aircraft model (the “second variant”) covered by the rating if differences training for it is required and has been completed.

Under subsection 33 (3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

### **Instrument**

The principal instrument prescribed type ratings for the purposes of CASR Part 142. The effect of this was that the type rating prescriptions made training in the relevant aircraft, and differences training for relevant aircraft, not Part 142 flight training, but Part 141 flight training.

The amendment instrument amends the principal instrument to add 5 additional type ratings, being:

- BE350/1900 type rating for Kingair 300 (all models), Kingair 350 (all models) and Beechcraft 1900 (all models) aircraft
- C525(SP) type rating for C525-CJ, C525-CJ1, C525A-CJ2, C525-CJ1+, C525A-CJ2+, C525B-CJ3, C525C-CJ4 and C525 M2-CJM2 aircraft
- DO228 type rating for Dornier 228 series aircraft
- MU2 type rating for MU-2 (all models) aircraft
- SA226/227 type rating for Merlin II, IIIB, IIIC, IV, Metro II, III and Metro23 aircraft.

Training for the aircraft types mentioned above has been identified as being suitable to be conducted by the holder of a Part 141 certificate — that is, the requirement to hold a Part 142 authorisation for these aircraft is not considered necessary. This follows feedback from industry requesting that the number of SA226/227 variants be simplified, as well rectifying a situation where pilots were unable to complete flight training due to SA226/227 operators not holding AOCs that authorise CASR Part 142 activities (or otherwise not being able to contract another such operator authorised to conduct the training). The C525(SP), DO228, MU2 and BE350/1900 are aircraft types in a similar situation to the SA226/227 and are considered by CASA to also benefit from being added to the principal instrument.

From an aviation safety perspective, the 5 aircraft types added are all certificated for single-pilot operations and are, compared to larger regular public transport aircraft, relatively less complex aircraft in terms of aircraft systems and operations.

### ***Legislative Instruments Act 2003 (the LIA)***

Under paragraph 98 (5A) (a) of the Act, CASA may issue instruments in relation to matters affecting the safe navigation and operation of aircraft. Under subsection 98 (5AA) of the Act, an instrument issued under paragraph 98 (5A) (a) is a legislative instrument if expressed to apply in relation to a class of persons or aircraft.

The additional type rating prescriptions made by the instrument applies to a class of aircraft and, therefore, the instrument is a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under sections 24, 38 and 42, of the LIA.

**Consultation**

This amendment instrument has been prepared by CASA as a result of industry feedback and internal CASA policy deliberations. No further consultation under section 17 of the LIA was considered appropriate or necessary.

**Office of Best Practice Regulation (OBPR)**

A Regulation Impact Statement (*RIS*) was prepared by CASA for the regulations which constitute the head of power for the legislative instrument. This RIS was assessed as adequate by OBPR (OBPR ID: 2777) and applies for the purpose of the legislative instrument. Part 61 of CASR 1998, including the legislative instrument, has been assessed by CASA as generally benefitting the aviation industry because the reduced number of aircraft covered by type ratings has the effect of reducing compliance costs.

**Statement of Compatibility with Human Rights**

The legislative instrument does not directly engage any of the applicable rights and freedoms and is compatible with human rights. To the extent that it may indirectly limit certain human rights, those limitations are necessary and proportionate in the interests of aviation safety. A Statement of Compatibility with Human Rights is at Attachment 1.

**Making and commencement**

The instrument has been made by the Acting Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

The instrument commences on the day after registration and expires 2 days after registration, as if it had been repealed by another instrument.

*[Prescription — type ratings for CASR Part 142 flight training (Edition 2) Amendment Instrument 2015 (No. 1)]*

## Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the  
Human Rights (Parliamentary Scrutiny) Act 2011*

### **Prescription — type ratings for CASR Part 142 flight training (Edition 2) Amendment Instrument 2015 (No. 1)**

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the legislative instrument**

The *Prescription — type ratings for CASR Part 142 flight training (Edition 2)* (the **principal instrument**) is a legislative instrument prescribing type ratings for the purpose of relevant provisions in Part 142 of the *Civil Aviation Safety Regulations 1998* (**CASR 1998**), thereby determining whether a Part 141 operator, rather than a Part 142 operator, may deliver flight training for the type ratings. The principal instrument is, therefore, essentially a machinery instrument whose requirements are consistent with Australia's obligations of conformity to the Chicago Convention on International Civil Aviation, its Protocols and Annexes.

The *Prescription — type ratings for CASR Part 142 flight training (Edition 2) Amendment Instrument 2015 (No. 1)* (the **amendment instrument**) amends the principal instrument to add 5 type ratings that would benefit, in terms of accessibility to flight training providers, from being prescribed in the principal instrument.

#### **Human rights implications**

To the extent that certain aircraft are **not** prescribed, it might be said that the right to work, equality and non-discrimination under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR) are engaged for Part 141 flight training organisations since they cannot provide relevant flight training for aircraft types that are not prescribed. However, such differential treatment arises from the requirements of aviation safety for the particular types of specialised aircraft involved.

#### **Conclusion**

The legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. To the extent that it may also limit human rights, those limitations are reasonable and proportionate in the interests of aviation safety.