

## **Explanatory Statement**

### **Civil Aviation Act 1988**

### **Civil Aviation Order 40.0 Amendment Order (No. 3) 2008**

#### **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 5.11 (1) of the *Civil Aviation Regulations 1988* (**CAR 1988**), CASA may issue a flight crew licence subject to any condition that is necessary in the interests of the safety of air navigation.

Under subregulation 5.11 (2), a condition must be set out in, among other options, a Civil Aviation Order (**CAO**) under regulation 303 of CAR 1988. Under subregulations 5.11 (3) and (4), it is a strict liability offence to contravene a condition.

Under subregulation 303 (1) of CAR 1988, whenever CASA is empowered to issue a licence subject to conditions, it may specify and notify in a CAO any conditions that are to be of general application to a specified class of licences and those conditions are deemed to be conditions on every licence of the class.

#### **CAO 40.0**

Acting under these powers, CASA made CAO 40.0 containing general conditions on different flight crew licences.

#### **Background**

CASA is introducing a new international pilot licence, namely, the multi-crew pilot (aeroplane) licence (**MP(A)L**).

The new licence was originally created by the International Civil Aviation Organization (**ICAO**) in November 2006 and the requirements for it were prescribed in Annex 1 (Personnel Licensing) of the Chicago Convention.

The MP(A)L is for co-pilots of multi-engine turbine-powered aeroplanes certificated for operation with a minimum crew of at least 2 pilots in all types of weather.

The new licence has been under consideration and evaluation by CASA with a view to its implementation in Australia.

The new licence was introduced for Australia through amendments to Part 5 of CAR 1988 (*Civil Aviation Amendment Regulations 2008 (No. 4)* [the **CAR amendments**]). The CAR amendments enable CASA to issue MP(A)Ls to eligible applicants. The CAR amendments specify the eligibility criteria for the grant of a MP(A)L, the requirements for using the licence and the requirements for qualifying for other flight crew licences as the holder of a MP(A)L.

Under the CAR amendments, a CAO will prescribe the training course, examinations, competency standards and flight tests required for the MP(A)L.

A trial of the draft MP(A)L standards and training requirements has been underway in Brisbane and it is expected that, on completion of the course, successful graduates will be issued with the MP(A)L.

Flight training organisations in Australia are interested in providing instruction for the MP(A)L and are finalising arrangements to conduct MP(A)L training for overseas airline clients.

### **The CAO amendment**

The CAR amendment specifies the restricted flight privileges of the holder of a MP(A)L, the highest of which is authorisation to fly an aeroplane as co-pilot while the aeroplane is engaged in charter or RPT operations under an AOC.

An amendment to CAO 40.0 is required to support the implementation of the MP(A)L in relation to this privilege by ensuring that each MP(A)L holder specifically consolidates his or her flying skill and experience. This is to be done by accumulating flight time on the same aircraft type, with the same operator. This can usually be achieved during the 12 months immediately after gaining the licence. It must be achieved before seeking another aircraft type endorsement for the MP(A)L.

The opportunity is also taken to make some amendments consequential on the creation of the MP(A)L.

Details of the CAO amendment are set out in Attachment 1.

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

Under subsection 98 (5) of the Act where regulations provide that a direction, instruction, notification, permission, approval or authority to be given or issued in the form of a CAO, a CAO so given or issued is a legislative instrument and subject to the LIA (other than Part 6 concerning sunseting). In addition, under paragraph 98 (5A) (a) and subsection 98 (5B) of the Act, where the regulations empower CASA to issue instruments in relation to matters affecting the safe navigation and operation of an aircraft, the instrument is a legislative instrument and subject to the LIA (other than Part 6 concerning sunseting). The CAO amendment is, therefore, a legislative instrument, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

### **Consultation**

Extensive consultation under section 17 of the LIA for the MP(A)L was carried out before the CAR amendments were made. This is detailed in the Explanatory Statement for the CAR amendments. This included consultation in relation to the related CAO proposals. The CAO amendment is consequential and, therefore, further consultation in relation to it was not considered necessary. However, details of the CAO amendment proposals were circulated for consideration to Standards Consultative Committee, an industry representative body, and the joint CASA/industry MPL Project Team. No adverse comments or objections were received.

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

A preliminary assessment of business compliance costs indicates that the CAO amendment will have no cost impact on business other than costs that may arise from voluntarily deciding to acquire and use this new form of international pilots licence. Consequently, preparation of a Regulation Impact Statement is not required for the CAO amendment.

### **Commencement and making**

The CAO amendment comes into effect 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.

## Details of amendments to CAO 40.0

### *Amendment No.1*

This amendment makes provision for consolidation on type by inserting a new subsection 2A containing this condition into CAO 40.0.

Under paragraph 2A.1, for regulation 5.11, it is a condition on each multi-crew pilot (aeroplane) licence (**MP(A)L**) that the holder must comply with the requirements of this subsection, unless CASA approves otherwise in writing.

Under paragraph 2A.2, if the MP(A)L issued to the holder is endorsed with a type endorsement (the **initial type endorsement**), the MP(A)L may not be endorsed with another type endorsement until the holder has complied with paragraph 2A.3.

Under paragraph 2A.3, the MP(A)L holder must use the initial type endorsement to accumulate certain co-pilot flight experience with the same operator, namely 250 hours of flight in charter operations or regular public transport (**RPT**) operations or both; or 150 separate sector flights in charter operations, RPT operations or both.

Under paragraph 2A.4, paragraphs 2A.2 and 2A.3 cease to apply to the holder of a MP(A)L once he or she has accumulated the required flight experience using the MP(A)L with the initial type endorsement.

Under paragraph 2A.5, paragraphs 2A.2 and 2A.3 do not apply to a person who becomes the holder of a MP(A)L by relying on a current or previous overseas pilot licence (**MP(A)L equivalent**), provided that the person has accumulated the co-pilot flight experience mentioned in subparagraph 2A.3 (a) or (b) with the same operator and using the MP(A)L equivalent and an overseas type endorsement.

Paragraph 2A.6 provides definitions of terms.

Thus, **overseas type endorsement** means an endorsement or similar authorisation issued by the national airworthiness authority of a country that is at least equivalent to a type endorsement issued by CASA.

A **sector flight** for an aeroplane means an operation that comprises take-off from an aerodrome, followed by a period of flight, followed by landing at a different aerodrome.

A **type endorsement** means a type endorsement for a multi-engine turbine-powered aeroplane certificated for operation with a minimum crew of at least 2 pilots.

### *Amendment No.2*

This amendment is consequential on the creation of the MP(A)L.

Under paragraph 4.1 of CAO 40.0, it is a condition on a private pilot licence, a commercial pilot licence or an air transport pilot licence that the holder must not, while operating a aeroplane, actively participate in a land and hold short operation (**LASHO**) unless the holder of the licence is under instruction or assessment for LAHSO, has been assessed as competent for LAHSO by his or her operator's check and training organisation under regulation 217 of CAR 1988, or is

otherwise log-book certified by an appropriate person (for example, a CASA FOI) as competent for the operation.

Amendment No. 2 adds MP(A)L holders to the categories of pilots who are subject to these constraints for LAHSO.

*Amendment No.3*

This amendment is also consequential on the creation of the MP(A)L.

Under paragraph 5.1 of CAO 40.0, it is a condition of each private pilot licence, commercial pilot licence and air transport pilot licence that its holder may act as the pilot in command of an Australian aircraft with an activated approved TCAS II (an *ACAS*) only if certain competency conditions are met in ways similar to those mentioned above for LAHSO but specifically focussed on ACAS use. An ACAS is an anti-collision avoidance system, a TCAS II is a specific type of ACAS, and an approved TCAS II is one which meets Standards set by the US FAA.

Amendment No. 2 adds MP(A)L holders to the categories of pilots who are subject to these conditions for ACAS use. (A MP(A)L holder may act as pilot in command in a private operation.)

*Amendment No.4*

This amendment is also consequential on the creation of the MP(A)L.

Subsection 7 of CAO 40.0 sets out the English language requirements for flight crew licence holders. Subsection 6 of CAO 40.0 sets out definitions for subsection 7.

Amendment No. 4 adds the MP(A)L to the list of licences mentioned in the definition of flight crew licences.