Explanatory Statement

Civil Aviation Safety Regulations 1998

Prescribed type ratings for CASR Part 142 flight training Instrument 2014

**Purpose**

This instrument prescribes type ratings for the purpose of relevant provisions in Part 142 of the *Civil Aviation Safety Regulations 1998* (***CASR***).

**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 (***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 example, in the form of an air operator’s certificate (AOC).

A fundamental rationale behind CASR Parts 141 and 142 is that flying training may be authorised to be conducted for a particular aircraft type rating only if the flying training organisation has a course of training together with sufficient systems and personnel in place to safely manage flying training for the types of aircraft, including their variants.

Within the range of available aircraft types, some can be grouped together and treated in a common way under CASR Part 61. 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 *variants* and the characteristics of the variants can differ, for example, in such areas as operating systems, size, performance or handling. In some cases, the variant differences are such that additional training (***differences training***) of the pilots is warranted to enable them to fly variants of the original aircraft type.

Under paragraph 142.045 (a) of CASR, 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, ***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, ***Part 142 flight training***is also defined as *differences training* required under regulations 61.780, 61.835 and 61.1370 of CASR 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, ***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, ***Part 141 flight training***is also defined as *differences training* required under regulations 61.780 and 61.835 of CASR for a variant covered by a type rating that **is** prescribed in a legislative instrument under regulation 142.045.

Regulation 61.780 of CASR 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.

Regulation 61.835 of CASR 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, 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* (the ***AIA***), 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.

The instrument repeals and remakes instrument CASA 211/14. There is no change apart from the correction of a typographical error in the Note to section 1 (the word “Part” appeared as “art”).

**The legislative instrument**

The legislative instrument prescribes type ratings for the purposes of CASR Part 142. The effect of this is that the type rating prescriptions make training in the relevant aircraft, and differences training for relevant aircraft, not Part 142 flight training, but Part 141 flight training.

***Legislative Instruments Act 2003***

As mentioned above, under paragraph 98 (5A) (a) of the Act, regulations made for that provision may empower CASA to 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 type rating prescriptions made by the legislative instrument apply, not to a particular person or a particular aircraft but to classes of persons and aircraft and, therefore, the instrument is a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under sections 24, and 38 and 42, of the *Legislative Instruments Act 2003* (the ***LIA***).

**Consultation**

For section 17 of the LIA, because of its machinery nature, CASA’s consultation for the legislative instrument was, in effect, an integral part of the consultation undertaken for the amendment regulationwhich included Parts 141 and 142 of CASR. This consultation process was set out in the Explanatory Statement for the amendment regulation (ComLaw, F2013L00218). This amendment package was published on CASA’s website and responses to it considered by CASA. There were no responses specifically in relation to the matters addressed in the legislative instrument.

In addition, the instrument is a remake of an existing instrument and has been issued solely to correct a typographical error.

**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, namely, the amendment regulation*.* This RIS was assessed as adequate by OBPR (OBPR ID: 2777) and applies for the purpose of the legislative instrument. Part 61 of CASR, 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 Statement in Appendix 1 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The legislative instrument does not directly engage any of the applicable rights or freedoms, and is compatible with human rights, as it does not directly raise any human rights issues. To the extent that it may indirectly limit certain human rights, those limitations are necessary and proportionate in the interests of aviation safety (see Appendix 1).

**Commencement and making**

The legislative instrument commences on the day after registration.

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

[Instrument number CASA 265/14]

Appendix 1

**Statement of Compatibility with Human Rights**

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

*Civil Aviation Safety Regulations 1998*

Prescribed type ratings for CASR Part 142 flight training Instrument 2014

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**

This legislative instrument prescribes type ratings for the purpose of relevant provisions in Part 142 of the *Civil Aviation Safety Regulations 1998* (***CASR***).

The legislative instrument is, therefore, essentially a machinery instrument made under, and for the purposes of, Part 142 of CASR, furnishing the prescriptions of type ratings which determine whether a CASR Part 141 operator, rather than a CASR Part 142 operator, may deliver flight training for the type ratings. These requirements are consistent with Australia’s obligations of conformity to the Chicago Convention on International Civil Aviation, its Protocols and Annexes.

**Human rights implications**

To the extent that certain aircraft are **not** prescribed, it might be said that the right to work, equality and non-discriminationunder the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR) are engaged for CASR Part 141 flight training organisations since they cannot provide relevant flight training. 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.

**Civil Aviation Safety Authority**