

## Explanatory Statement

### Civil Aviation Regulations 1988

#### CASA 01/19 — Number of Cabin Attendants (Alliance Airlines) Direction 2019

##### Purpose

The direction would repeal and replace instrument CASA 66/18, expressed to repeal on 31 August 2020. In particular, the instrument would replace the direction in subsection 4 (3) of CASA 66/18 with a direction that instead requires Alliance Airlines Pty Limited (*Alliance Airlines*) to give CASA written notice at least 14 days before making any revision to any part of its operations manual affecting emergency evacuation procedures.

The reason for repealing and replacing CASA 66/18 is to address concerns that the Senate Standing Committee on Regulations and Ordinances (*SSCRO*) has expressed, related to whether decisions made by CASA to approve or refuse to approve an operator's operations manual should be subject to merits review.

The instrument would make no other substantive changes to CASA 66/18. Therefore, the instrument would, like CASA 66/18, enable Alliance Airlines to continue operating relevant aircraft with 1 cabin attendant for every 50 passenger seats or part of that number, subject to required risk reduction measures.

##### 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. Relevantly, the Governor-General has made the *Civil Aviation Regulations 1988* (*CAR*).

Under regulation 208 of CAR, CASA may give directions relating to the operating crew required to be carried on an aircraft having regard to the safety of air navigation.

Subparagraph 6.1 (b) of Civil Aviation Order (*CAO*) 20.16.3 was made under regulation 208 of CAR and provides that aircraft carrying more than 36 but not more than 216 passengers shall carry a cabin attendant for each unit of 36 passengers or part of that number.

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.

##### Background

In response to a notice of motion to disallow CASA 66/18 mentioned in Delegated Legislation Monitor number 14 of 2018, CASA has prepared the instrument to repeal and remake CASA 66/18 in the way described under the headings "Purpose" and "Senate Standing Committee on Regulations and Ordinances concerns".

The standard in subparagraph 6.1 (b) of CAO 20.16.3 is a unique Australian requirement that is more onerous than the cabin attendant ratio required elsewhere in the world. The ratio permitted in Europe, the USA and most other countries is for an airline to provide 1 cabin attendant for every 50 seats on the aircraft or part of that number.

CASA permits operators to use the internationally accepted ratio in certain circumstances, assessed on a case-by-case basis.

### **Instrument**

By directing that Alliance Airlines can operate Fokker F27 Mark 050 series aircraft (*relevant aircraft*) with a cabin attendant to passenger seat ratio of 1:50, the instrument allows Alliance Airlines to continue operating relevant aircraft with 1 cabin attendant.

The instrument also directs Alliance Airlines to give written notice to CASA at least 14 days before revising any part of its operations manual relating to emergency procedures for relevant aircraft. That direction ensures that CASA maintains visibility of appropriate risk reduction measures in Alliance Airlines' operations manual, enforceable under CAR, as well as addressing SSCRO's concerns, mentioned under the headings "Purpose" and "Senate Standing Committee on Regulations and Ordinances concerns".

### **Legislation Act 2003 (the LA)**

The instrument is being registered as a legislative instrument and is, therefore, a legislative instrument in accordance with subsection 8 (3) of the LA, and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Under subsection 47 (1) of the LA, if a notice of motion to disallow a legislative instrument has been given in a House of Parliament, a legislative instrument that is the same in substance as the legislative instrument for which the notice of motion has been given must not be made unless a circumstance mentioned in paragraph 47 (1) (a), (b), (c) or (d) exists (none of which exist at the time of making this instrument). Under subsection 47 (3) of the LA, a legislative instrument made in contravention of section 47 has no effect.

CASA 01/19 is not the same in substance as CASA 66/18 because the direction in subsection 5 (3) of CASA 01/19 directs Alliance Airlines to perform particular conduct while the direction in subsection 4 (3) of CASA 66/18 directs Alliance Airlines not to perform different conduct without CASA's prior written approval. Therefore, CASA 01/19 is not the same in substance as CASA 66/18, can be remade without contravening subsection 47 (1) of the LA and would have effect because subsection 47 (3) of the LA does not apply.

### **Consultation**

Initial consultation under section 17 of the LA was undertaken following the issue of the CASA report that recommended the recognition of the US Federal Aviation Administration and EASA certification standards in relation to setting the ratio of cabin attendants to passenger seats. In addition, CASA conducted extensive consultation with Alliance Airlines before issuing the initial direction (CASA 95/16).

The instrument has been issued to address concerns that SSCRO has expressed about CASA 66/18, mentioned under the headings "Purpose" and "Senate Standing Committee on Regulations and Ordinances concerns".

CASA 66/18 was issued at the request of Alliance Airlines to continue existing arrangements, and is similar to instruments issued to other operators that appear to be accepted by industry. Since issuing CASA 95/16, CASA has conducted ongoing consultation with Alliance Airlines including during audits, safety event reporting and investigations.

In those circumstances, CASA is satisfied that, for section 17 of the LA, no further consultation is appropriate or reasonably practicable for the instrument.

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

A Regulatory Impact Statement (*RIS*) is not required in this case as the instrument is covered by a standing agreement between CASA and OBPR under which a RIS is not required for directions (OBPR id: 14507).

#### **Senate Standing Committee on Regulations and Ordinances concerns**

The instrument repeals and replaces CASA 66/18 to address concerns that SSCRO has expressed about CASA 66/18, related to whether decisions made by CASA to approve or refuse to approve an operator's operations manual should be subject to merits review. In particular, the instrument would replace the direction in subsection 4 (3) of CASA 66/18 with a direction that instead requires Alliance Airlines to give CASA written notice at least 14 days before making any revision to any part of its operations manual affecting emergency evacuation procedures.

The instrument provides for Alliance Airlines to meet a standard for cabin attendant numbers that differs from the standard currently set down in CAO 20.16.3, but is considered to be a standard consistent with international safety standards and practice.

Part 121 of CASR, which will implement a new scheme of requirements relating to cabin attendant numbers (Division 121.P.2), is expressed to commence on 25 March 2021.

#### **Statement of Compatibility with Human Rights**

The Statement of Compatibility with Human Rights at Attachment 1 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The instrument does not engage any of the applicable rights or freedoms, and is compatible with human rights as it does not raise any human rights issues.

#### **Making and commencement**

The instrument has been made by a delegate of CASA relying on the power of delegation under subregulation 11.260 (1) of the *Civil Aviation Safety Regulations 1998*.

The instrument commences on the day after registration and is repealed at the end of 24 March 2021.

## **Statement of Compatibility with Human Rights**

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

### ***CASA 01/19 — Number of Cabin Attendants (Alliance Airlines) Direction 2019***

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 legislative instrument allows Alliance Airlines Pty Limited to operate designated aircraft with 1 cabin attendant for every 50 passenger seats or part of that number.

#### **Human rights implications**

The legislative instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

The legislative instrument is compatible with human rights as it does not raise any human rights issues.

**Civil Aviation Safety Authority**