

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA 09/19 — Civil Aviation (Community Service Flights — Conditions on Flight Crew Licences) Instrument 2019

Purpose

The Civil Aviation Safety Authority (**CASA**) has assessed that community service flight operations have a higher risk of an accident or incident due to the existence of risk factors that are not usually present in baseline private operations. The purpose of the instrument is to mitigate this risk by placing conditions on flight crew licence holders conducting such operations that relate to requirements on the pilot (licence requirements, aeronautical experience, recency and medical fitness), operational and notification requirements and aircraft maintenance requirements.

Legislation

Section 98 of the *Civil Aviation Act 1988* (the **Act**) empowers the Governor-General to make regulations for the Act and in the interests of the safety of air navigation. Relevantly, the Governor-General has made the *Civil Aviation Safety Regulations 1998* (**CASR**) and *Civil Aviation Regulations 1988* (**CAR**).

Regulation 11.068 of CASR allows CASA, for subsection 98 (5A) of the Act, to issue a legislative instrument that imposes a condition relating to a matter mentioned in that subsection on a specified class of authorisations. Authorisations include flight crew licences, ratings and endorsements.

Overview of instrument

The main object of the Act is to establish a regulatory framework for maintaining, enhancing and promoting the safety of civil aviation, with particular emphasis on preventing aviation accidents and incidents.

Community service flights are non-emergency flights that primarily transport people to specialist medical treatment and are coordinated, arranged or facilitated by an entity for a charitable purpose or community service purpose. These flights are conducted by volunteer pilots under conditions that can be challenging. Pilots can operate from a variety of unfamiliar locations in varying weather conditions with no organisational oversight or safety support from a certificated air operator. Pilots conducting such operations might become subject to self-induced pressure to start or complete a flight because of a passenger's medical condition.

The lack of organisational safety risk mitigators and the reliance on individual pilot assessments regarding a pilot's acceptance of a volunteer flight, and the flight's commencement or continuance, results in an increased need for pilots in command to be experienced and operationally recent. CASA has assessed that persons travelling on aircraft conducting community service flights are subject to flight operations of increased risk compared to charter or regular public transport flights. Although such persons are informed that these flights are not charter or regular passenger transport flights, there remains doubt regarding whether a non-aviation professional adequately understands the specific risks posed by this kind of operation.

Since 2011, community service flight accidents have resulted in 6 fatalities. To take account of the elevated risks, CASA considers it is appropriate to establish a regulatory baseline that provides clarity regarding an appropriate minimum safety standard. The instrument is intended to introduce reasonable and proportionate additional safety measures.

The instrument places conditions on the licences of flight crew members that conduct community service flights. The conditions introduce safety measures in relation to pilot licensing, medical fitness, and aeronautical experience. Operational requirements include that community service flights at night must be conducted using instrument instead of visual procedures. A community service flight can only be conducted in an aeroplane, and aeroplanes with a lower standard of airworthiness are excluded. There are also enhanced maintenance requirements for some aircraft.

The detail of the instrument is set out below.

Documents incorporated by reference

In accordance with paragraph 15J (2) (c) of the *Legislation Act 2003* (the **LA**) and subsection 98 (5D) of the Act, the legislative instrument applies, adopts or incorporates matters contained in the Aeronautical Information Publication (the **AIP**).

Subsection 98 (5D) of the Act permits a non-legislative instrument to be incorporated as in force or existing at a particular time, or from time to time, including a non-legislative instrument that does not exist when the legislative instrument is made.

The AIP is published by Airservices Australia (**AA**) as an Aeronautical Information Service provider, under the *Air Services Regulations 1995*, to disseminate information relevant to aviation participants on matters essential to safe air navigation that are of lasting relevance. Some parts of the AIP are underpinned by legislative instruments, while other parts are not. The AIP is incorporated into the instrument as the AIP exists and is published by AA from time to time. The AIP is freely available on the AA website:

www.airservicesaustralia.com/aip/aip.asp.

Content of instrument

Section 1

This section provides the citation of the instrument as *CASA 09/19 — Civil Aviation (Community Service Flights — Conditions on Flight Crew Licences) Instrument 2019*.

Section 2

This section provides for the instrument to commence on 19 March 2019 and be repealed 3 years after its commencement. CASA will monitor community service flights and consider the need for changing the measures or introducing appropriate regulatory standards for community service flights in the future.

Section 3

This section contains the definitions for the instrument. The meaning of ***community service flight*** is set out in section 6.

The note to the section heading sets out a list of terms, relevant to the instrument, that are defined in the regulations made under the Act, and that are applicable to the instrument under paragraph 13 (1) (b) of the LA.

Section 4

This section provides that the instrument applies to flights that are conducted as private operations. The instrument is directed at improving the minimum safety standards for community service flights in private operations that are not otherwise subject to organisational oversight under an Air Operator's Certificate (**AOC**).

Section 5

The instrument is made under regulation 11.068 of CASR. This section states that the instrument imposes conditions on flight crew licences for the purposes of that regulation.

Section 6

This section provides for the meaning of **community service flight**. A flight is a community service flight if the flight involves transporting a person (called a **patient** in the provision) to a place to receive non-emergency medical treatment or services. A community service flight could have more than one patient on board who is being transported to receive medical treatment.

The purpose of the instrument is to place conditions on the licences of flight crew members to improve the safety of flights that are undertaken for charitable or community service purposes. These are flights that are arranged, coordinated or facilitated by a third party entity that does so for a charitable purpose or community service purpose. The definition captures flights that are provided free of charge to a patient and passengers who accompany the patient to provide support and assistance. The definition contemplates that the aircraft could carry more than one patient, and a patient could have more than one support person with them. Under the instrument, it is a condition on a flight crew licence that the number of passengers overall on an aircraft for a flight is no more than 5 (see section 10). Section 7 imposes a condition that a community service flight cannot carry on board any persons who are not operating crew, patients or support persons for those patients. Despite the conditions mentioned above, the instrument does not limit the size of an aeroplane that may be used for a community service flight.

The definition captures flights that transport a patient to a destination to receive treatment, and then possibly to a second destination (or further destinations) to receive more treatment. The definition also captures flights that transport a patient back home after having received treatment, or to a place from which the person had departed.

It is not the intention that a community service flight, within the meaning given by the instrument, will cover flights on which emergency medical treatment is provided on board an aircraft. However, a flight is still characterised as a community service flight if there is a need to administer medication on board an aircraft or if a medical emergency occurs on board the aircraft that requires a medical response.

Under subsection 6 (5) a community service flight is one that is coordinated, arranged or facilitated by an entity for a charitable purpose or a community service purpose. The note to the provision points to the definition of **charitable purpose** in the *Acts Interpretation Act 1901* (the **AIA**) that incorporates the definition of the term in Part 3 of the *Charities Act 2013*. Under section 13 of the LA, the provisions of the AIA apply to a legislative instrument as if it were an Act.

The term “community service purpose” is undefined in the instrument and is to be given its ordinary meaning.

A community service flight, within the meaning of the instrument, does not include a flight that is not coordinated, arranged or facilitated by an entity for a charitable or community services purpose. Such a flight, whether conducted on a commercial basis, cost-sharing basis, or private basis remains subject to the normal rules governing commercial or private operations (as relevant) under the civil aviation legislation.

However, the definition is otherwise expressed to cover all flight crew licence holders conducting the stated kinds of operations in any aircraft. This is to ensure that the instrument applies with respect to all of the target operations, even though in practical terms only a small number of pilots are expected to be affected by the conditions.

Conditions imposed by the instrument

Sections 7 to 11 impose conditions on the holder of a flight crew licence. Each condition therefore applies broadly to any such licence holders. A licence holder must not conduct a community service flight unless they meet the prescribed conditions.

Section 7

Under this section it is a condition for a flight crew licence holder to meet the following requirements before conducting a community service flight:

- the holder must have a private pilot licence, commercial pilot licence or air transport pilot licence;
- the flight must be conducted in an aeroplane;
- the aeroplane must not carry any person on board for the flight other than a patient, passengers accompanying a patient to provide support and assistance, and the operating crew;
- the holder must hold a current class 1 or class 2 medical certificate.

Subsection 7 (2) is intended to make it clear that the requirement for a pilot to have a current class 1 or class 2 medical certificate cannot be overridden by instrument *CASA EX65/18 — Private Pilot Licence Medical Certification (Basic Class 2 Medical Certificate) Exemption 2018*, that exempts certain pilots who meet the conditions in that instrument from the requirements under CASR to hold a class 1 or class 2 medical certificate.

Section 8

Under this section a flight crew licence holder must not conduct a community service flight in an aeroplane that is excluded under subsection 8 (2).

The aeroplanes that are excluded are those for which CASA has not prescribed formal airworthiness safety standards in relation to the design, manufacture and maintenance of the aeroplane.

These aeroplanes are:

- amateur-built aircraft accepted under an Amateur Built Aircraft Acceptance; and
- aircraft in the limited category; and
- aircraft for which there is an experimental certificate in force; and
- aircraft that are not registered under Part 47 of CASR.

In effect, the aeroplanes that are permitted are those for which there has been issued a standard certificate of airworthiness, or aeroplanes, not excluded under the provision, for which there is a special certificate of airworthiness. The provision does not mention every

kind of aircraft that could not, consistent with the civil aviation legislation, be used for a community service operation. For example, a restricted category aircraft may only be used for a special purpose operation for which it is type certificated under regulation 21.025 of CASR. Those purposes (listed in subregulation 262AL (2) of CAR and regulation 21.025 of CASR) do not include anything that could be described as a community service flight.

Aircraft that are not registered under Part 47 of CASR and are used in activities administered by a sport aviation body are excluded from being used for community service flights because the maintenance standards are lower than for aircraft subject to Part 4A of CAR or Part 42 of CASR.

Section 9

Under this section a flight crew licence holder must not pilot an aeroplane for a community service flight unless the pilot meets certain aeronautical experience requirements.

Subsection (1) sets out the requirements that apply to all pilots and subsection (3) sets out additional requirements for the holders of private pilot licences.

General requirements

A pilot must have conducted a landing within the previous 30 days in an aeroplane of the same class as that to be used for the community service flight. If the community service flight will be conducted in an aeroplane that is type rated, the landing must have been conducted in an aeroplane of that type.

If the community service flight will be conducted under the visual flight rules (**VFR**), the pilot must have at least 10 hours of flight time in an aeroplane of the same type. The requirement to have the experience in the particular type applies even if the aeroplane is class rated for the purposes of Part 61 of CASR.

If the community service flight will be conducted under the instrument flight rules (**IFR**), the pilot must have at least 20 hours of flight time in an aeroplane of the same type. The requirement to have the experience in the particular type applies even if the aeroplane is class rated for the purposes of Part 61 of CASR.

If the community service flight will be conducted in a multi-engine aeroplane, the pilot must have at least 25 hours of flight time as pilot in command of a multi-engine aeroplane. This requirement applies in addition to the VFR and IFR experience requirements above.

Private pilots

The additional aeronautical experience requirements apply to a private pilot licence holder who does not also hold a commercial pilot licence or an air transport pilot licence, and are intended to ensure that private pilots have sufficient experience to manage the risks mentioned above in relation to community service flights.

The pilot must have:

- at least 400 hours of flight time in either an aeroplane or a helicopter; and
- at least 250 hours of flight time as pilot in command of either an aeroplane or a helicopter.

Although community service flights are restricted to flights conducted in an aeroplane, CASA considers that flight time experience gained in a helicopter can be counted for the purpose of this condition.

Section 10

Under this section a flight crew licence holder must not pilot an aeroplane for a community service flight unless the pilot meets certain operational and notification requirements. The requirements are:

- the aeroplane must not carry more than 5 passenger (this includes the patients); and
- the aeroplane must not be operated under the visual flight rules at night; and
- the pilot must submit a specified flight notification for the flight to AA that identifies the flight as a community service flight; and
- the pilot must record information that the flight is a community service flight in the pilot's personal logbook. This is in addition to the requirements set out in regulation 61.350 of CASR.

The conditions in the instrument requiring a pilot to provide flight notifications to AA involve the collection and recording by AA of 'personal information', as defined in the *Privacy Act 1988*. The information is required in order to ensure the protection and safety of individuals on the flight, and seeks only the minimum information necessary to identify persons with safety-related responsibilities. Privacy issues are discussed further in Attachment 1.

Section 11

Under this section a flight crew licence holder must not pilot an aeroplane for a community service flight unless the pilot meets certain additional maintenance requirements. These maintenance requirements apply only in respect of aeroplanes that use, under regulation 42B of CAR, the CASA maintenance schedule set out in Schedule 5 to CAR. Only class B aircraft (being aircraft that are not certificated as transport category aircraft or not used by the holder of an AOC for a commercial purpose referred to in paragraph 206 (1) (c) of CAR) can be maintained under the CASA maintenance schedule.

Under the terms of Schedule 5, for private aircraft, the periodic inspection must be carried out annually, regardless of hours flown. This instrument applies a 100-hour time in service threshold in addition to the annual threshold, such that whichever is the lower of the two thresholds applies at the time of the community service flight.

Paragraph 11 (2) (a) provides that an aeroplane must undergo a periodic inspection within the last 100 hours of service of the aeroplane. If the aeroplane has been in service for less than 100 hours in the preceding 12 months, then the aeroplane must have undergone a periodic inspection within the 12 months. The term ***periodic inspection*** is defined in paragraph 2.1 of Part 2 of Schedule 5 to CAR.

Paragraph 11 (2) (c) has the effect that an aeroplane that was issued its current certificate of airworthiness less than 12 months before the proposed community service flight, and that has been in service for less than 100 hours since the issue, can be flown for the flight without undergoing a periodic inspection.

A pilot can check the maintenance release for the aeroplane to satisfy himself or herself that the requirement in paragraph 11 (2) (b) has been met or that paragraph (2) (c) applies for the aeroplane.

Legislation Act 2003

Under subsection 8 (2) of the LA, if a primary law (such as a regulation made under an Act) gives power to do something by legislative instrument, then, if the thing is done, it must be done by instrument and that instrument is a legislative instrument. This instrument is made under regulation 11.068 of CASR, which provides that CASA may issue a legislative instrument that imposes a condition relating to a matter mentioned in subsection 98 (5A) of the Act on a specified class of authorisations.

The instrument is, therefore, a legislative instrument subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

CASA published a Discussion Paper in December 2014 that sought responses from the aviation community and public to assist CASA in its consideration of non-regulatory and regulatory options for enhancing the safety of community service flights. CASA did not proceed to publish a Notice of Proposed Rulemaking at that time, but decided to continue to monitor the operation of community service flights.

Formal consultations on a draft of the instrument were conducted by CASA from 18 December 2018 through to 31 January 2019. CASA received 233 responses from this consultation. All comments were read and assessed to determine areas of agreement and disagreement with the draft proposal, and the justifications provided for changes to the draft. This feedback highlighted that the proposal as consulted did not in all cases reflect requirements that were necessary, proportionate and cost-effective to mitigate the risks presented by the conduct of community service flights as private operations.

In response to the feedback CASA made significant modifications to its proposal in relation to the kinds of aeroplanes that may be used to conduct a community service flight, multi-engine aeroplane pilot experience requirements and aircraft maintenance requirements. With respect to the latter, the proposal that aeroplane engines must be maintained in accordance with the standards applicable in commercial charter operations was removed. Other changes intended to improve and clarify the intent of the instrument were also made. CASA has also published a Summary of Consultation document that identifies and categorises the comments received, and how CASA has responded to these. The Summary of Consultation document can be found at the CASA website: <https://www.casa.gov.au>.

Office of Best Practice Regulation (OBPR)

The OBPR has assessed that a Regulation Impact Statement was not required for the conditions applying to community service flight (OBPR ID: 24818).

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is at [Attachment 1](#).

Making and commencement

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

The instrument commences on 19 March 2019 and is repealed 3 years after it commences.

Statement of Compatibility with Human Rights

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

CASA 09/19 — Civil Aviation (Community Service Flights — Conditions on Flight Crew Licences) Instrument 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

A community service flight is defined in the instrument as one that transports a person (the patient) for the purpose of receiving non-emergency medical treatment. There is no charge to a patient or persons accompanying the patient to provide support or assistance. The flights are coordinated, arranged or facilitated by an entity for a charitable or community service purpose.

Community service flights are conducted by volunteer pilots under conditions that can be challenging. Pilots can operate from a variety of unfamiliar locations in varying weather conditions with no organisational oversight or safety support from a certificated air operator.

CASA has assessed that community service flight operations have a higher risk of an accident or incident due to the existence of risk factors that are not usually present in baseline private operations. The purpose of the instrument is to mitigate this risk by placing conditions on flight crew licence holders that relate to requirements on the pilot (licence requirements, aeronautical experience, recency and medical fitness), operational and notification requirements and aircraft maintenance requirements.

In essence, the conditions introduce safety measures in relation to pilot licensing and medical fitness, aeronautical experience and recency of experience. The conditions also impose operational requirements and enhanced aircraft maintenance requirements for certain aircraft. Among other things, a pilot of a community service flight is required to submit a flight notification to Airservices Australia.

Human rights implications

The instrument engages the right to protection against arbitrary and unlawful interference with privacy in Article 17 of the International Covenant on Civil and Political Rights (*ICCPR*).

Right to protection against arbitrary and unlawful interference with privacy

Article 17 of the *ICCPR* provides that no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, or to unlawful attacks on honour and reputation. It further provides that everyone has the right to the protection of the law against such interference or attacks.

Section 10 makes it a condition on a flight crew licence that the pilot must not pilot an aeroplane operated for a community service flight unless the pilot submits a flight notification that identifies the flight as a community service flight. A flight notification involves the provision to AA of the name of the pilot. Flight notification information is required for safety regulatory purposes so that the pilot of an aircraft can be identified if necessary. Flight notification information is also used for search and rescue and recovery operations in the event of an incident, and to investigate incidents.

Reasonableness, necessity and proportionality

The requirement to submit a flight notification involves activities of one or more of the collecting, recording and storing of personal information. This is reasonable as it relates to data and information that is required to promote the safety of persons on a community service flight for search and rescue purposes in the event of an incident. The flight notification requirement also upholds the integrity of the safety regulatory scheme that protects the individuals on a flight by ensuring that information is available about who is performing activities affecting safety and demonstrating that they are appropriately authorised.

There are no other sources of the information available that will adequately and efficiently serve the regulatory purposes.

The requirements are also proportionate as they operate to ensure the fulfilment of safety objectives which are required to ensure the protection and safety of the individuals on the flight, and seek only the minimum information to identify persons with safety-related responsibilities.

The protections afforded by the *Privacy Act 1988* continue to apply.

To the extent that the instrument limits the privacy-related rights in Article 17 of the ICCPR, those limitations are reasonable, necessary and proportionate for safety purposes, consistent with the objects of the Act.

Conclusion

This legislative instrument is compatible with human rights and, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate to ensure the safety of aviation operations and to promote the integrity of the aviation safety system.

Civil Aviation Safety Authority