

## Explanatory Statement

### Civil Aviation Regulations 1988

### Civil Aviation Safety Regulations 1998

### CASA 71/19 — Number of Cabin Attendants (Hevilift Australia (Fixed Wing) Pty Ltd) Direction 2019

#### Purpose

The purpose of *CASA 71/19 — Number of Cabin Attendants (Hevilift Australia (Fixed Wing) Pty Ltd) Direction 2019* (the **instrument**) is to enable Hevilift Australia (Fixed Wing) Pty Ltd (**Hevilift**) to carry at least 1 cabin attendant for each unit of 46 passengers or less, or 48 passengers or less, carried on a flight of the ATR 42-320 series aircraft, operated by Hevilift. The ratio of at least 1 cabin attendant for each unit of 48 passengers or less applies if modification 0481, as mentioned in the type certificate data sheet (the **TCDS**), for the aircraft, is made to the aircraft. Otherwise, the ratio of at least 1 cabin attendant for each unit of 46 passengers or less applies.

#### 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 Regulations 1988* (**CAR**) and the *Civil Aviation Safety Regulations 1998* (**CASR**).

Subpart 11.G of CASR enables the Civil Aviation Safety Authority (**CASA**) to issue directions in relation to matters affecting the safety of air navigation. Paragraph 11.245 (1) (a) of CASR empowers CASA, for subsection 98 (5A) of the Act, to issue a direction about any matter affecting the safe navigation and operation of aircraft.

Under subregulation 11.245 (2), CASA may issue such a direction:

- (a) only if CASA is satisfied it is necessary to do so in the interests of the safety of air navigation; and
- (b) only if the direction is not inconsistent with the Act; and
- (c) only for the purposes of CASA's functions.

Under paragraph 11.250 (a) of CASR, a direction under regulation 11.245 ceases to be in force on the day specified in the direction. Under regulation 11.255 of CASR, it is an offence of strict liability if a person contravenes a direction under regulation 11.245.

Under regulation 208 of CAR, CASA may give directions relating to the operating crew members required to be carried on an aircraft during a flight, 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. It states that if an aircraft, engaged in charter or regular public transport operations carries more than 36 but not more than 216 passengers on a flight, it must carry at least 1 cabin attendant for each unit of 36 or less passengers carried.

Under Part 1 of the CASR Dictionary:

**type certificate data sheet** means a sheet attached to a type certificate for an aircraft, aircraft engine or propeller that sets out the limitations prescribed by the applicable airworthiness requirements for the aircraft, aircraft engine or propeller, and any other limitations and information necessary for type certification of the aircraft, aircraft engine or propeller.

## Background

The minimum cabin attendant-to-passenger ratio requirement stated in subparagraph 6.1 (b) of CAO 20.16.3 is a unique Australian requirement, which is more onerous than the equivalent requirement applying in other countries. The minimum ratio permitted in Europe, the United States of America and most other countries is for an airline to carry at least 1 cabin attendant for each unit of 50 or less passengers carried on a flight of an aircraft. CASA permits operators to adopt the internationally-accepted ratio in certain circumstances, as assessed on a case-by-case basis. The internationally-accepted ratio will apply from the commencement of the *Civil Aviation Safety Amendment (Part 121) Regulations 2018 (Part 121 of CASR)*.

## Documents incorporated by reference

The instrument incorporates by reference CAO 20.16.3, as in force from time to time, in accordance with section 10 of the *Acts Interpretation Act 1901* and section 13 of the *Legislation Act 2003* (the **LA**). This document is a disallowable legislative instrument made under CAR, and is freely available on the Federal Register of Legislation.

Subsection 98 (5D) of the Act states that a legislative instrument made under the Act or the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing at a particular time, or from time to time, even if the other instrument or writing does not yet exist when the legislative instrument is made.

The instrument incorporates by reference the TCDS, for the relevant aircraft, as it exists at the commencement of the instrument. The Federal Aviation Administration of the United States of America (the **FAA**) has published the TCDS for the relevant aircraft. The document is freely available, and accessible via the Internet on the following webpage:

[https://rgl.faa.gov/Regulatory\\_and\\_Guidance\\_Library/rgMakeModel.nsf/0/0A93ACA996501D35862583670055A01B?OpenDocument](https://rgl.faa.gov/Regulatory_and_Guidance_Library/rgMakeModel.nsf/0/0A93ACA996501D35862583670055A01B?OpenDocument).

## Content of instrument

Section 1 states the name of the instrument.

Section 2 states the duration of the instrument.

Section 3 contains definitions of terms used in the instrument. In particular:

**relevant aircraft** means the ATR 42-320 series aircraft, which has a maximum passenger capacity of:

- (a) 46 passengers; or
- (b) if modification 0481 is made to the aircraft — 48 passengers, as mentioned in the relevant type certificate data sheet.

**relevant type certificate data sheet** means the type certificate data sheet, for the relevant aircraft, as it exists at the commencement of this instrument.

Section 4 states the instrument applies to Hevilift in relation to its operation of the relevant aircraft in charter, or regular public transport, operations.

Subsection 5 (1) overrides the minimum cabin attendant-to-passenger ratio requirement stated in subparagraph 6.1 (b) of CAO 20.16.3.

Subsection 5 (2) directs Hevilift to assign for duty at least 1 cabin attendant for:

- (a) each unit of 46 passengers or less carried on a flight of the relevant aircraft; or

- (b) if modification 0481, as mentioned in the relevant type certificate data sheet, is made to the aircraft — each unit of 48 passengers or less carried on a flight of the relevant aircraft.

Subsection 5 (3) directs Hevilift to give written notice to CASA of any proposed revision of any part of Hevilift's operations manual that relates to emergency procedures for the relevant aircraft, including in relation to exits. Under subsection 5 (4), the notice must be given at least 14 days before making the proposed revision.

CASA is satisfied it is necessary to issue the directions in the interests of the safety of air navigation.

### ***Legislation Act 2003***

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

### **Consultation**

Initial consultation was undertaken with the aviation industry following the issue of a CASA report that recommended the recognition of the FAA and European Union Aviation Safety Agency certification in relation to setting the minimum cabin attendant-to-passenger ratio for a flight of an aircraft.

More recently, CASA consulted extensively with the industry and public about adopting the ratio of at least 1 cabin attendant for each unit of 50 passengers or less for a flight of an aircraft engaged in charter, or regular public transport, operations. This ratio has been accepted as the new standard for the operation of aeroplanes under Part 121 of CASR.

The instrument has been issued at the request of Hevilift, and is similar to instruments issued by CASA for other operators and accepted by the industry. CASA assessed the operator's submission for the relaxation, for the relevant aircraft, of the minimum cabin attendant-to-passenger ratio requirement stated in subparagraph 6.1 (b) of CAO 20.16.3, including the safety case it submitted. CASA engaged with Hevilift in relation to the submission, and was satisfied what was proposed has no impact on the safety of Hevilift's operations in relation to the relevant aircraft.

Accordingly, CASA is satisfied no further consultation is appropriate, or reasonably practicable, for the instrument for section 17 of the LA.

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

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

### **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 CASR.

The instrument commences on the day after it is registered, and is repealed at the earlier of the following:

- (a) the commencement of Part 121 of CASR;
- (b) the end of 30 September 2021.

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

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

### **CASA 71/19 — Number of Cabin Attendants (Hevilift Australia (Fixed Wing) Pty Ltd) Direction 2019**

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*.

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

The legislative instrument enables Hevilift Australia (Fixed Wing) Pty Ltd (***Hevilift***) to carry at least 1 cabin attendant for each unit of 46 passengers or less, or 48 passengers or less, carried on a flight of the ATR 42-320 series aircraft, operated by Hevilift. The ratio of at least 1 cabin attendant for each unit of 48 passengers or less applies if modification 0481, as mentioned in the type certificate data sheet, for the aircraft, is made to the aircraft. Otherwise, the ratio of at least 1 cabin attendant for each unit of 46 passengers or less applies.

#### **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**