

Explanatory Statement

Civil Aviation Regulations 1988

Civil Aviation Safety Regulations 1998

CASA 28/20 — Number of Cabin Attendants (Virgin Australia Airlines) Direction 2020

CASA 29/20 — Number of Cabin Attendants (Virgin Australia International Airlines) Direction 2020

Purpose

The purpose of *CASA 28/20 — Number of Cabin Attendants (Virgin Australia Airlines) Direction 2020* and *CASA 29/20 — Number of Cabin Attendants (Virgin Australia International Airlines) Direction 2020* (the **instruments**) is to allow, respectively, Virgin Australia Airlines Pty Ltd (**VAA**) and Virgin Australia International Airlines Pty Ltd (**VAIA**) to continue to carry at least 1 cabin attendant for each 50, or part of 50, passenger seats, on specified kinds of flights. These flights are those of a B737-800 series aircraft, with the certified maximum passenger seating capacity of 189 passengers.

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 20.16.3, as in force from time to time (**CAO 20.16.3**), was made under regulation 208. 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 (TCDS)** 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.

Subsection 98 (5D) of the Act provides 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 from time to time, even if the other instrument or writing does not yet exist when the legislative instrument is made.

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 every 50 passenger seats on the aircraft or part of that number. 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)*.

Instrument CASA 28/20 — *Number of Cabin Attendants (Virgin Australia Airlines) Direction 2020* replaces instrument CASA 44/18 — *Number of Cabin Attendants (Virgin Australia Airlines) Direction 2018 (instrument CASA 44/18)*. Instrument CASA 29/20 — *Number of Cabin Attendants (Virgin Australia International Airlines) Direction 2020* replaces instrument CASA 45/18 — *Number of Cabin Attendants (Virgin Australia International Airlines) Direction 2018 (instrument CASA 45/18)*. Instruments CASA 44/18 and 45/18 allowed, respectively, VAA and VAIA to operate B737-800 aircraft with a cabin crew complement consistent with the internationally-accepted ratio.

Overview of the instruments

Each instrument directs that subparagraph 6.1 (b) of CAO 20.16.3 does not apply in relation to the operator to which the instrument applies, and directs the number of cabin attendants that the operator must assign.

The directions taken in the instrument regarding the number of cabin crew members required reflects the approach that will be taken when Part 121 of CASR commences, and is consistent with future regulation 121.635 of CASR and the related definition of **flight base number** to be inserted into the CASA Dictionary by the *Civil Aviation Safety Amendment (Operations Definitions) Regulations 2019*.

The instrument also includes directions that any proposed revisions of the operator's operations manual are notified to CASA. This ensures that CASA continues to have oversight over the appropriate risk reduction measures in the operator's operations manual.

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

Documents incorporated by reference

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

The instrument also incorporates by reference the TCDS, for the relevant aircraft, as it exists at the commencement of the instrument. In the instrument, this document is referred to as the *relevant type certificate data sheet*.

The Federal Aviation Administration of the United States of America (the *FAA*) has published the TCDS for the relevant aircraft. This document is freely available, and accessible via the Internet from the U.S. Federal Aviation Administration's Regulatory and Guidance Library at <https://rgl.faa.gov>.

As at commencement of this instrument, the latest version of this TCDS is A16WE (Revision 65, dated April 8, 2020). In May 2020 this version was available in the list of New TCDS (Last 45 Days) at:

[https://rgl.faa.gov/Regulatory_and_Guidance_Library/rgMakeModel.nsf/0/d66298a8b703595d8625854a00394e3c/\\$FILE/A16WE_Rev65.pdf](https://rgl.faa.gov/Regulatory_and_Guidance_Library/rgMakeModel.nsf/0/d66298a8b703595d8625854a00394e3c/$FILE/A16WE_Rev65.pdf).

If the TCDS is no longer available in this list at the time of searching, it will be freely available at the following webpage:

https://rgl.faa.gov/Regulatory_and_Guidance_Library/rgMakeModel.nsf/Frameset?OpenPage

Content of the instruments

The following provision descriptions apply to both instruments except that in the descriptions a reference to “the operator” means VAA for *CASA 28/20 — Number of Cabin Attendants (Virgin Australia Airlines) Direction 2020* and VAIA for *CASA 29/20 — Number of Cabin Attendants (Virgin Australia International Airlines) Direction 2020*.

Section 1 states the name of the instrument.

Section 2 states the duration of the instrument.

Section 3 contains definitions for the purposes of the instrument, including defining *relevant aircraft* to mean B737-800 series aircraft with the certified maximum passenger seating capacity of 189 passengers, and corresponding cabin configuration, mentioned in the relevant type certificate data sheet.

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

Subsection 5 (1) directs that subparagraph 6.1 (b) of CAO 20.16.3 does not apply to the operator in respect of its operation of the relevant aircraft.

Subsection 5 (2) directs the operator to assign for duty, for each flight of a relevant aircraft, at least 1 cabin attendant for every 50, or part of 50, passenger seats fitted for the flight.

This means, for example, that a flight of a relevant aircraft with 170 seats fitted can, therefore, operate with a minimum number of 4 cabin attendants (at least 1 cabin attendant for every 50 passenger seats and 1 cabin attendant for the remaining 20 passenger seats).

Subsection 5 (3) directs the operator to give written notice to CASA of any proposed revision of any part of the operator'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.

The direction in subsection 5 (3) ensures that CASA will continue to have oversight over the appropriate risk reduction measures included by the operator in its operations manual. These measures are enforceable under CAR.

Legislation Act 2003 (the LA)

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

The instruments replace instruments that were also registered as legislative instruments.

Consultation

Following the issue of the CASA report that recommended the recognition of the FAA and European Union Aviation Safety Agency of the European Union certification standards in relation to setting the ratio of cabin attendants to passenger seats, initial consultation under section 17 of the LA was undertaken before instruments CASA 44/18 and 45/18 were made.

More recently, CASA consulted extensively with industry and the public about adopting the internationally-accepted ratio of at least 1 cabin attendant for each 50 passenger seats, or part of that number, on a flight of an aircraft engaged in charter, or regular public transport, operations. Adoption of this ratio has been accepted by industry which is aware that it will be the new standard for the operation of aeroplanes under Part 121 of CASR.

The instruments have been issued at the request of the Virgin Australia Group and are similar to instruments previously issued for VAA, VAIA and other operators. 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 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 (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*.

Making and commencement

The instruments have been made by a delegate of CASA relying on the power of delegation under subregulation 11.260 (1) of CASR.

The instruments commence on the day after they are registered and will be repealed at the earlier of the following:

- (a) commencement of the *Civil Aviation Safety Amendment (Part 121) Regulations 2018*;
- (b) the end of 30 June 2022.

Statement of Compatibility with Human Rights

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

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Each of these legislative instruments 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 instruments

Instrument CASA 28/20 allows Virgin Australia Airlines Pty Ltd to operate relevant aircraft for flights with at least 1 cabin attendant for every 50, or part of 50, passenger seats.

Instrument CASA 29/20 allows Virgin Australia International Airlines Pty Ltd to operate specified aircraft for flights with at least 1 cabin attendant for every 50, or part of 50, passenger seats.

The relevant aircraft are B737-800 series aircraft with the certified maximum passenger seating capacity of 189 passengers, and corresponding cabin configuration, mentioned in the type certificate data sheet for the aircraft.

Human rights implications

The legislative instruments do not engage any of the applicable rights or freedoms.

Conclusion

Each of the legislative instruments is compatible with human rights as it does not raise any human rights issues.

Civil Aviation Safety Authority