**Explanatory Statement**

**Civil Aviation Safety Regulations 1998**

**CASA EX57/22 – Flight Crew Licensing (Differences Training and Flight Training – Equivalent Overseas Training) Amendment Instrument 2022**

**Purpose**

*CASA EX57/22 – Flight Crew Licensing (Differences Training and Flight Training – Equivalent Overseas Training) Amendment Instrument 2022* (the ***amending instrument***) amends instrument *CASA EX66/21 — Flight Crew Licensing (Miscellaneous Exemptions) Exemption 2021* (the ***principal instrument***) by adding new Part 13 (***Part 13***) to the principal instrument. Part 13 replaces the measure in instrument CASA EX79/19 (the ***previous instrument***) which expired at the end of 31 July 2022.

Part 13 exempts the holder of an aircraft class rating from the requirements to complete flight training and a flight review under the *Civil Aviation Safety Regulations 1998* (***CASR***) to fly an aircraft of a prescribed type, provided that the holder has completed equivalent flight training conducted by a national aviation authority (***NAA***) of a recognised foreign State (an ***authorised overseas training provider***).

Part 13 also exempts the holder of a pilot type rating or a flight engineer type rating from the requirement to complete differences training under CASR in order to pilot, or act as the flight engineer of, an aircraft of the model covered by the training, provided that the holder has completed an equivalent training course of an authorised overseas training provider.

Each exemption only applies if the holder of the rating has also been assessed by the authorised overseas training provider or, for the holder of an aircraft class rating, by a person authorised by the NAA of the recognised foreign State, as competent in relation to an aircraft of the model covered by the training, and the holder has provided specified documentation to that effect to the Civil Aviation Safety Authority (***CASA***).

Part 13 will allow for the recognition of training that is not typically available within Australia because there are no operators authorised by CASA under Part 141 or Part 142 of CASR to conduct the particular training, or foreign training providers offer better outcomes, for example, because the foreign training utilises flight simulators that are not available in Australia.

**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 CASR.

Part 61 of CASR sets out flight crew licensing requirements. Regulation 61.010 of CASR sets out definitions for Part 61, including ***differences training***and ***recognised foreign State***. The definition of ***recognised foreign State***lists countries that are recognised foreign States and states that it also includes any other foreign country prescribed by a legislative instrument under regulation 61.047 of CASR.

***Flight training and flight review for certain class-rated aircraft***

Under subregulation 61.747 (1) of CASR, the holder of an aircraft class rating is authorised to exercise the privileges of the rating in an aircraft of a prescribed type only if the holder has completed specified flight training for the aircraft type and completed a flight review in an aircraft of the type or an approved flight simulator for the flight review.

***Differences training***

Regulation 61.780 of CASR applies if the holder of a pilot type rating passed the flight test for the rating in an aircraft model covered by the rating (the ***first variant***) or an approved flight simulator for the first variant, and any differences training required by a legislative instrument under regulation 61.055 or 61.060 for another aircraft model covered by the rating (the ***second variant***). Under subregulation 61.780 (2), the holder of the pilot type rating is authorised to exercise the privileges of the rating in an aircraft of the second variant only if the holder has competed the differences training for the second variant.

Regulation 61.1370 of CASR applies if the holder of a flight engineer type rating passed the flight test for the rating in an aircraft model covered by the rating (the ***first variant***) or a flight simulator representing the first variant, and differences training is required by a legislative instrument under regulation 61.055 for another aircraft model covered by the rating (the ***second variant***). Under subregulation 61.1370 (2), the holder is authorised to exercise the privileges of the rating in the second variant only if the holder has completed the differences training for the second variant.

Further information regarding CASR differences training and flight training and flight review requirements for class-rated aircraft is set out under the heading **Background**below.

Subpart 11.F of CASR provides for the granting of exemptions from provisions of the regulations. Subregulation 11.160 (1) of CASR provides that, for subsection 98 (5A) of the Act, CASA may grant an exemption from a provision of CASR.

Under subregulation 11.160 (2) of CASR, an exemption may be granted to a person or a class of persons and may specify the class by reference to membership of a specified body or any other characteristic.

Under subregulation 11.160 (3) of CASR, an exemption may be granted on application by a person or on CASA’s own initiative.

Under subregulation 11.170 (3) of CASR, in deciding whether to grant an exemption on application, CASA must regard as paramount the preservation of at least an acceptable level of aviation safety. CASA has regard to the same test when deciding whether to grant an exemption on its own initiative.

Regulation 11.225 of CASR requires an exemption to be published on the internet. Under subregulation 11.230 (1), the maximum duration of an exemption is 3 years.

Under subsection 14 (1) of the *Legislation Act 2003* (the ***LA***), a legislative instrument may make provision in relation to matters by applying, adopting or incorporating provisions of an Act or disallowable legislative instrument as in force at a particular time or as in force from time to time.

**Background**

Part 61 requires pilots to complete type specific flight training for the grant of an aircraft type rating. The ratings are prescribed in the *Prescription of aircraft and ratings — CASR Part 61 (Edition 8) Instrument 2021.* CASA prescribes type ratings for all aircraft that are certified for multi-crew operations, all multi-engine helicopters, multi-engine aeroplanes that have a maximum take-off weight above 5 700 kg and other aircraft for which CASA considers it necessary in the interest of safety.

An aircraft type rating can cover several variant models — for example, the A320 type rating has 6 variant models: A318, A319, A320, A321, A320 NX and A321 NX. Sometimes the differences between the variants are minor so a pilot qualified to fly one variant model is qualified to fly each of the variants. Pilots normally qualify for a type rating by completing a course of training using one variant model and demonstrate competency operating that model. The minor differences in the variants are managed by the operator as there are no additional licensing training requirements for the different models.

In some cases where a type rating covers more than one variant, there are significant differences between the variants such as different systems, performance and procedures – for example, the B777 and the B787 are covered by the one type rating – B777/787. However, while the variants are similar in many areas, operating both types requires specific additional differences training to be completed. In these cases, CASA prescribes the required differences training in the *Prescription of aircraft and ratings — CASR Part 61 (Edition 8) Instrument 2021*.

Aircraft not covered by a type rating are covered by an aircraft class rating. Type ratings for these aircraft are not prescribed because they are sufficiently similar to operate and pilots qualified with the class ratings are taken to have completed sufficient formal training to fly other types of aircraft in the same class. However, some types of class-rated aircraft are relatively more complex or have unique characteristics that are not so significant as to warrant a type rating being prescribed. In this case, Part 61 requires pilots to complete type‑specific training and a flight review in the type of aircraft before exercising the privileges of the class rating in that type of aircraft. The requirement in regulation 61.747 of CASR ensures pilots flying these more complex class-rated aircraft learn to fly these types of aircraft and demonstrate competency in a flight review in an aircraft of the type. CASA also prescribes these types of aircraft in the *Prescription of aircraft and ratings — CASR Part 61 (Edition 8) Instrument 2021*.

Regulation 61.780 of CASR requires pilots to complete a course of differences training if the pilot holds a type rating that was issued on the basis of completing the training and flight test in a variant model of the aircraft covered by the type rating and wishes to operate an aircraft included under the type rating that is a different variant model and has sufficient differences from the first variant model to require further training. Regulation 61.1370 sets out similar differences training requirements for flight engineers. The prescribed differences training for pilots or flight engineers must be completed in an aircraft or in a flight simulation training device. Allowing differences training reduces the cost and effort required to operate similar types of aircraft.

Some pilots and flight engineers have completed overseas differences training for aircraft variants, conducted by training providers authorised by recognised foreign States, that is equivalent to the differences training required under CASR. Similarly, some pilots have completed overseas training that is equivalent to the flight training required to exercise the privileges of an aircraft class rating. These pilots have been assessed as competent by a training provider authorised by the relevant NAA to fly the model or type of aircraft, as appropriate. Part 13 is required because this kind of overseas training is not recognised under CASR, and the ratings holders are unable to operate the relevant aircraft in compliance with the requirements of Part 61 of CASR.

**Overview of Part 13**

Part 13 exempts the holder of an aircraft class rating from the CASR requirement to complete the flight training required to fly the aircraft type and complete a flight review in an aircraft of the type or in an approved flight simulator for the flight review, in circumstances where the holder has completed training related to flying an aircraft of the prescribed type that is conducted by an authorised overseas training provider.

This exemption only applies if the holder completes the equivalent flight training and has been assessed, by a person authorised by the NAA for the recognised foreign State to conduct the assessment, as competent to fly an aircraft of the prescribed type and has provided CASA with documentation to that effect.

Part 13 also exempts the holder of a pilot type rating or a flight engineer type rating from the CASR requirement to complete the differences training required to exercise the privileges of the rating for an aircraft model.

This exemption only applies if the holder completes the equivalent training course, has been assessed by the authorised overseas training provider as competent to fly, or act as the flight engineer of, the aircraft, and has provided CASA with documentation from the authorised overseas training provider to that effect.

CASA has assessed the impact Part 13 will have on aviation safety and is satisfied that the circumstances in which the exemptions in Part 13 apply will preserve an acceptable level of safety.

**Documents incorporated by reference**

Part 13 incorporates a legislative instrument by reference, namely the legislative instrument made under regulation 61.062 of CASR (mentioned in subregulation 61.747 (2) of CASR). As authorised by paragraph 14 (1) (a) of the LA, the legislative instrument is incorporated as in force from time to time. At the commencement of Part 13, the incorporated instrument was the *Prescription of aircraft and ratings — CASR Part 61 (Edition 8) Instrument 2021* (see the Note following the definition of ***aircraft of the prescribed type***in section 60 of Part 13).

That instrument is freely available on the Federal Register of Legislation at <https://www.legislation.gov.au/Details/F2021L00622>.

**Content of amending instrument**

Section 1 sets out the name of the amending instrument.

Section 2 provides that the amending instrument commences on 1 August 2022.

Section 3 provides that Schedule 1 of the amending instrument amends the principal instrument.

Item [1] of Schedule 1 inserts Part 13 into the principal instrument. Part 13 consists of sections 60 to 63.

Section 60 sets out the definitions for Part 13. Key defined terms are ***authorised overseas training provider***,***equivalent training course***and ***equivalent flight training***.

Section 61 exempts the holder of an aircraft class rating from compliance with regulation 61.747 of CASR to a specified extent. The exemption applies if the holder has completed the equivalent flight training for an aircraft of the prescribed type and given CASA documentation showing the person has completed the equivalent flight training and has been assessed by a person authorised by the NAA of the recognised foreign State to conduct the assessment as competent to fly an aircraft of the prescribed type. The exemption is from regulation 61.747 of CASR to the extent that it requires the holder to have completed the flight training mentioned in subregulation 61.747 (3) of CASR for the aircraft type and a flight review in an aircraft of the type or an approved flight simulator for the flight review.

Section 62 exempts the holder of a pilot type rating from compliance with regulation 61.780 of CASR to a specified extent. The exemption applies if the holder has passed the required flight test for the rating in an aircraft model covered by the rating (the ***first variant***) or an approved flight simulator for the first variant, and completed an equivalent training course for another aircraft model covered by the rating (the ***second variant***) and has given CASA documentation, from the overseas training provider that conducted the equivalent training course for the second variant, showing the person has completed the course and has been assessed by the provider as competent to pilot an aircraft of the model covered by the training. The exemption is from regulation 61.780 of CASR to the extent that it requires the holder to have completed differences training for the second variant to exercise the privileges of the rating in an aircraft of the second variant.

Section 63 exempts the holder of a flight engineer type rating from compliance with regulation 61.1370 of CASR to a specified extent. The exemption applies if the holder has passed the required flight test for the rating in an aircraft model covered by the rating (the ***first variant***) or a flight simulator that represents the first variant, completed an equivalent training course for another aircraft model covered by the rating (the ***second variant***), and given CASA documentation, from the overseas training provider that conducted the equivalent training course for the second variant, showing the person has completed the course and has been assessed by the provider as competent to act as the flight engineer of an aircraft of the model covered by the training. The exemption is from regulation 61.1370 of CASR to the extent that it requires the holder to have completed differences training for the second variant to exercise the privileges of the rating in an aircraft of the second variant.

***Legislation Act 2003***

Paragraph 10 (1) (d) of the LA provides that an instrument will be a legislative instrument if it includes a provision that amends or repeals another legislative instrument. The amending instrument amends the principal instrument which is a legislative instrument and is, therefore, also a legislative instrument. It is subject to registration on the Federal Register of Legislation and tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

As the amending instrument relates to aviation safety and is made under CASR, Part 4 of Chapter 3 of the LA (the ***sunsetting provisions***) does not apply to the instrument (as per item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). In this case, the instrument amends the principal instrumentand is almost immediately spent. It is repealed in accordance with the automatic repeal provisions in section 48A of the LA. Part 13 is itself repealed at the end of 31 May 2024 by virtue of section 2 of the principal instrument. Therefore, the exemption from sunsetting does not affect parliamentary oversight of the amending instrument.

**Consultation**

Consultation was undertaken, before the making of the previous instrument, with external stakeholders, particularly with those impacted by the current rules not allowing recognition of training that is not available in Australia but is available overseas. Each of the small number of operators and pilots who have completed relevant overseas training that were consulted supported the proposal. Part 13 continues the provisions of the previous instrument which has been in place since 2019. By allowing for the recognition of specific foreign qualifications (for which evidence must be provided to CASA), Part 13 will provide operators with flexibility in meeting their requirements under CASR whilst maintaining an appropriate regime of safeguards. In these circumstances, CASA is satisfied that no further consultation is appropriate or reasonably practicable for the amending instrument for section 17 of the LA.

**Sector risk, economic and cost impact**

Subsection 9A (1) of the Act states that, in exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration. Subsection 9A (3) of the Act states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9 (1) (c), CASA must:

(a) consider the economic and cost impact on individuals, businesses and the community of the standards; and

(b) take into account the differing risks associated with different industry sectors.

The cost impact of a standard refers to the direct cost (in the sense of price or expense) which a standard would cause individuals, businesses and the community to incur. The economic impact of a standard refers to the impact a standard would have on the production, distribution and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly. The economic impact of a standard could also include the general financial impact of that standard on different industry sectors.

As Part 13 replaces an expiring instrument with the same provisions, there will be no change of economic or cost impact on individuals, businesses or the community.

**Impact on categories of operations and regional and remote communities**

The effect of Part 13 is to broaden the pool of pilots and flight engineers who can operate aircraft of particular models who may be employed by aircraft operators. Part 13 is likely to continue to have a generalised beneficial effect on type rating applicants, flight engineers, flight simulator operators and aircraft operators of the types of aircraft affected by the Part. Similarly, it is likely to have a generalised beneficial effect on regional, remote and urban communities.

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

A Regulation Impact Statement (***RIS***) is not required in this case, as the exemption is covered by a standing agreement between CASA and OBPR under which a RIS is not required for exemptions (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 amending instrument has been made by a delegate of CASA relying on the power of delegation under subregulation 11.260 (1) of CASR.

The amending instrument commences on 1 August 2022 and is automatically repealed in accordance with section 48A of the LA.

**Attachment 1**

**Statement of Compatibility with Human Rights**

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

**CASA EX57/22 – Flight Crew Licensing (Differences Training and Flight Training – Equivalent Overseas Training) Amendment Instrument 2022**

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 amends instrument *CASA EX66/21 — Flight Crew Licensing (Miscellaneous Exemptions) Exemption 2021* by inserting new Part 13 (***Part 13***). Part 13 replaces (and continues) the measure in instrument CASA EX79/19 (which expired at the end of 31 July 2022).

Part 13 exempts the holder of an aircraft class rating from the flight training and flight review the holder is required to complete under the *Civil Aviation Safety Regulations 1998* (***CASR***) to fly an aircraft of a prescribed type if the holder completes flight training conducted by an authorised overseas training provider instead of the flight training and flight review the holder is required to complete under CASR to fly an aircraft of the prescribed type. This exemption only applies if the holder of the rating who completed the flight training overseas has been assessed by a person authorised by the national aviation authority (***NAA***) of the relevant recognised foreign State (the ***authorised overseas training provider***) as competent to fly an aircraft of the prescribed type and the person has given the Civil Aviation Safety Authority (***CASA***) documentation showing the person has completed the training and been assessed as competent to fly the aircraft.

Part 13 also exempts a holder of a pilot type rating or a flight engineer type rating from the requirement to complete the differences training the holder is required to complete under CASR to pilot, or act as the flight engineer of, an aircraft of a particular model. The circumstances are where the holder completes an equivalent training course conducted by an overseas training provider authorised by an NAA of a recognised foreign State. The exemption only applies if the holder of the rating who completed the training overseas has also been assessed by the authorised overseas training provider as competent to pilot, or act as the flight engineer of, the aircraft, and has given CASA documentation from the authorised overseas training provider to that effect.

Part 13 will allow for the recognition of training that is not typically available within Australia because there are no operators authorised by CASA under Part 141 or Part 142 of CASR to conduct the training.

**Human rights implications**

Part 13 promotes the right to work (Article 6 (1) of the International Covenant on Economic, Social and Cultural Rights) by enabling pilots to fly, and flight engineers to act as the flight engineer of, models of aircraft for which they would normally have to complete differences training required under CASR, provided they have completed equivalent training overseas. Part 13 also promotes the rights to work of holders of aircraft class ratings who complete equivalent flight training overseas to fly aircraft of a prescribed type.

The exemptions in Part 13 are also of benefit to the aviation industry more generally as there will be a larger pool of pilots and flight engineers who can operate aircraft of particular models, who may be employed by aircraft operators.

Part 13 includes safeguards to address any risk to the life and health of pilots, flight engineers and other persons carried in aircraft flown by pilots or flight engineers who have completed such overseas training by ensuring the exemptions only apply if CASA has been given documentation showing that the training the person completed was conducted by a training provider authorised by the NAA of a recognised foreign State under CASR, and the person has been assessed by that provider, or, for the holder of a class rating, by a person authorised by the NAA of the recognised foreign State, as competent in relation to an aircraft of that model.

**Conclusion**

This legislative instrument is compatible with human rights because it promotes the protection of human rights.

**Civil Aviation Safety Authority**