

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### Part 60 Manual of Standards Amendment Instrument 2023

##### Purpose

The *Part 60 Manual of Standards Amendment Instrument 2023* (the *instrument*) extends the end date of a transitional arrangement provided under the *Part 60 Manual of Standards* (the *Part 60 MOS*), by which a stated standard applies for the assessment, during a recurrent evaluation or special evaluation, of an aeroplane qualified flight simulator against its current qualification level if its equipment or software has, since the qualification level was determined, been modified for full stall training.

##### Legislation

Under section 9 of the *Civil Aviation Act 1988* (the *Act*), the Civil Aviation Safety Authority (*CASA*) has the function of conducting the safety regulation of a range of matters including, under paragraph 9(1)(c), developing and promulgating appropriate, clear and concise aviation safety standards.

Section 98 of 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*). Part 60 of CASR provides for the evaluation, and qualification, of flight simulators.

Subregulation 60.020(1) of CASR provides for the qualification level of a flight simulator to be determined in accordance with the standards mentioned in the Part 60 MOS.

So far as is relevant, regulation 60.045 of CASR provides for the recurrent evaluation of a qualified flight simulator.

So far as is relevant, regulation 60.070 of CASR provides for the modification of the equipment or software of a qualified flight simulator and the special evaluation of the flight simulator as it is proposed to be modified.

Under subsection 33(3) of the *Acts Interpretation Act 1901* (the *AIA*), 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

The *Part 121 Manual of Standards 2020*, which commenced on 2 December 2021, introduced flight training requirements. Some of the new requirements affect aeroplane qualified flight simulators that are used for such flight training, located in Australia and operated under the Part 60 MOS. These flight simulators will need to be upgraded to meet the new flight training requirements.

The Part 60 MOS was amended in 2021 to put in place transitional arrangements that, in effect, gave operators until 24 March 2023 to upgrade any flight simulators affected by the

new flight training requirements. Operators have been unable to meet this deadline due to reduced training demand, restrictions and delays brought about by COVID-19 since 2020. It is, therefore, necessary to extend the transitional arrangements to give operators more time to upgrade the flight simulators.

### **Overview of instrument**

Section 5 of the Part 60 MOS sets out transitional arrangements for aeroplane qualified flight simulators. Under subsection 5(4), if the qualification level of an aeroplane qualified flight simulator was determined in accordance with one of 3 mentioned standards, and its equipment or software has, since the qualification level was determined, been modified under regulation 60.070 for full stall training, the standard mentioned in subsection 5(5) applies for the assessment, during a recurrent evaluation or special evaluation, of the flight simulator against its current qualification level. The transitional arrangement currently applies until the end of 24 March 2023.

Under the transitional arrangement:

- (a) if the qualification level of an aeroplane qualified flight simulator was determined in accordance with a standard mentioned in subsection 5(2), the standard for the assessment during a recurrent evaluation of the flight simulator against that qualification level is that mentioned in subsection 5(1); or
- (b) if CASA had changed the qualification level of the flight simulator after the Part 60 MOS commenced, the standard for the assessment during a recurrent evaluation of the flight simulator against the qualification level, as changed, is the standard mentioned in subsection 3(1) of the Part 60 MOS.

In any event, the impact of COVID-19 since early 2020 has lowered training demand and resulted in restrictions and arrangements affecting operators, such that upgrades to affected flight simulators, within Australia and globally, have been substantially delayed.

Accordingly:

- (a) CASA has not been asked, under subregulation 60.045(1), to conduct a recurrent evaluation of an aeroplane qualified flight simulator, whose equipment or software has been modified under regulation 60.070 for full stall training; and
- (b) CASA has not conducted, under regulation 60.045, a recurrent evaluation of an aeroplane qualified flight simulator, whose equipment or software has been modified under regulation 60.070 for full stall training.

Under the instrument, the transitional arrangement has been extended, with a new expiry date for subsection 5(4) of 24 March 2025. This amendment allows the operator an extension of time to utilise the transitional arrangement. This would lead to an increase in the number of upgraded flight simulators in Australia that could provide full stall training. The operator of a flight simulator would otherwise have to incur significant costs to ensure a flight simulator is assessed in accordance with the latest relevant international standards.

The instrument relies on subsection 33(3) of the AIA to make the abovementioned amendments.

## Content of instrument

Section 1 states the name of the instrument is the *Part 60 Manual of Standards Amendment Instrument 2023*.

Section 2 states the instrument commences on the day after it is registered.

Section 3 states Schedule 1 to the instrument amends the Part 60 MOS.

## Schedule 1 — Amendment

### Item [1] Subsection 5(4)

Item [1] effectively replaces the date mentioned in subsection 5(4) of the Part 60 MOS with the date of 24 March 2025. See the *Overview of instrument* section of this Explanatory Statement for the basis for the amendment.

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

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 instrument amends the Part 60 MOS, which was registered as a legislative instrument. Therefore, the instrument is also a legislative instrument, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

### Sunsetting

As the Part 60 MOS 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 Part 60 MOS (as per item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). The Part 60 MOS deals with aviation safety matters that, once identified, require a risk response or treatment plan. Generally speaking, item 15, when invoked, is necessary in order to ensure that, in the interests of aviation safety, a relevant instrument has enduring effect, certainty and clarity for aviation operators, both domestic and international.

In this case, the instrument amends the Part 60 MOS and is almost immediately spent and repealed in accordance with the automatic repeal provisions in Subdivision A in Division 1 of Part 3 of Chapter 3 of the LA. Thus, in practice, no sunsetting avoidance issues arise and there is no impact on parliamentary oversight.

### Consultation

Several flight simulator operators have requested relief so that upgrades may be carried out after the period of 2 years from 25 March 2023. The instrument gives effect to those requests. Under regulation 11.280 in Subpart 11.J of CASR, if CASA intends to issue a MOS, CASA must, in effect, engage in public consultation on the draft MOS. This requirement also applies to a MOS amendment.

However, under paragraph 11.275(1)(d), CASA is not obliged to consult if the Director of Aviation Safety (the *Director*) determines that the MOS is of a minor or machinery nature that does not substantially alter existing arrangements. In such circumstances, under subregulation 11.275(2), CASA must publish the determination, and a statement of reasons for it, on the internet within 28 days after making the determination. The Director has made

such a determination because the purpose of the instrument is to extend the duration of a transitional arrangement.

CASA is satisfied that no further consultation is appropriate, or reasonably practicable, for the 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) that the standard would cause individuals, businesses and the community to incur. The economic impact of a standard refers to the impact the 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 the standard on different industry sectors.

The economic and cost impact of the instrument has been determined having regard to the following:

- (a) the identification of individuals and businesses affected by the instrument;
- (b) consideration of how the requirements to be imposed on individuals and businesses under the instrument will be different compared to existing requirements;
- (c) community impacts, beyond those direct impacts on individuals and businesses affected by the instrument, that are relevant if the instrument were to result in flow-on effects to other aviation businesses, or local non-aviation businesses that experience a change in their activity due to the instrument.

The instrument provides relief to the operator of an aeroplane qualified flight simulator from the burden of updating flight simulators when such updates have been impracticable due to COVID-19 restrictions and delays.

### **Impact on categories of operations**

The instrument is likely to have a beneficial effect on operators of aeroplane qualified flight simulators by giving them more time to transition to new flight training requirements.

### **Impact on regional and remote communities**

The instrument does not affect rural and regional communities specifically, but is likely to have a beneficial effect inasmuch as the operators affected by the instrument provide services to, and employment for, people from rural and regional communities.

**Office of Impact Analysis (OIA)**

An Impact Analysis (*IA*) is not required in this case, as the instrument is covered by a standing agreement between CASA and OIA under which an IA is not required for amendments to the Manuals of Standards (OIA 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 the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73(2) of the Act.

The instrument commences on the day after it is registered, and will be repealed in accordance with section 48A of the LA.

## Statement of Compatibility with Human Rights

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

### Part 60 Manual of Standards Amendment Instrument 2023

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

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#### 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**