

EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 119

Issued by the authority of the Minister for Infrastructure and Transport

Civil Aviation Act 1988

Civil Aviation (Fees) Amendment Regulation 2013 (No. 1)

Subsection 98(1) of the *Civil Aviation Act 1988* (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act, or necessary or convenient for carrying out or giving effect to the Act.

Under paragraph 98(3)(u) of the Act, regulations may be made prescribing fees, either by specifying amounts or by prescribing a method of calculation, for services, applications or requests, or the doing of anything under the Act, the regulations or the Civil Aviation Orders.

Under paragraph 98(3)(v) of the Act, regulations may be made prescribing fees in relation to services “or the doing of anything by CASA” under the *Aviation Transport Security Act 2004* (the ATSA) or, by extension, the doing of anything by the Civil Aviation Safety Authority (CASA) under the *Aviation Transport Security Regulations 2005* (the ATSR).

Section 13 of the Act gives CASA the power to do all things necessary or convenient to be done for or in connection with the performance of its functions, which, under paragraph 9(3)(cb), includes any functions conferred on CASA under the ATSA.

The *Civil Aviation (Fees) Amendment Regulation 2013 (No. 1)* (the Amendment Regulation) amends Regulation 5 of the *Civil Aviation (Fees) Regulations 1995* (the Fees Regulations) to change the way in which fees are charged by CASA for aviation security status checks and related matters and for the Aviation Security Identification Card (ASIC).

Legislative arrangements in relation to aviation security status checking and related activities, and the ASIC, are set out in the ATSA and the ATSR. CASA is one of a number of ASIC-issuing bodies under the ATSR, and also issues Aviation Identification Documents (AVIDs) as part of its security checking activities. Possession of a current ASIC allows a person involved in the operation of an airport or aircraft, such as a pilot, to operate unescorted in the secure areas of a security controlled airport and a non-security controlled airport. CASA may issue an AVID to certain persons who have passed necessary background checks.

Before an ASIC or AVID is issued, background checking may be required through AusCheck, the Australian Federal Police, the Australian Security Intelligence Organisation, the CrimTrac Agency or the Department of Immigration and Citizenship. Regulation 5 of the Fees Regulations sets out how CASA may recover, through fees, the costs associated with background checking and the issuing of AVIDs or ASICs. This includes costs borne by CASA and costs passed on to CASA from other agencies that provide background checking services.

The Amendment Regulation adopts a fee structure that separates CASA’s administrative fee for issuing an AVID or ASIC, from the costs charged by other agencies to provide background checking services. This will allow for any future increases or decreases in costs charged by agencies undertaking background checking to be reflected in the total fee charged by CASA without requiring further changes to the Fees Regulations. This flexibility is achieved because the component of the total fee that relates to background checking services is specified as the amount that CASA is required to pay to another organisation or person for those services, rather than a particular monetary amount being specified for the total fee. The Amendment Regulation fixes the CASA administrative component of the total fee at \$54 for all applications relating to ASICs,

security status checking and related activities. The CASA administrative fixed fee is achieved by using process improvements and efficiencies of scale to reduce overall administrative costs.

Consultation

The changes were published on the CASA website during February 2013 for public review and comment. CASA also engaged with ASIC and AVID holders and other interested stakeholders via email.

CASA received 73 responses during the consultation process with a large portion relating to the substantive requirements for ASICs as set out under the ATSA and ATSR and the requirements for an AVID rather than the fees structure. CASA addressed other questions raised relating to their administrative processes by updating the information available on its website.

Statement of Compatibility with Human Rights

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

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) assessed that the amendments will have minor impacts and that no further analysis in the form of a Regulation Impact Statement is required (OBPR ID: 14989).

The Amendment Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. Details of the Amendment Regulation are set out in [Attachment B](#).

The Amendment Regulation commences on 1 July 2013.

Authority: Subsection 98(1) of the
Civil Aviation Act 1988

Statement of Compatibility with Human Rights

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

Civil Aviation (Fees) Amendment Regulation 2013 (No. 1)

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

The Civil Aviation (Fees) Amendment Regulation 2013 (No. 1) (the Amendment Regulation) amends Regulation 5 of the Civil Aviation (Fees) Regulations 1995 (the Fees Regulations) to change the way in which fees are charged by the Civil Aviation Safety Authority (CASA) for the Aviation Security Identification Card (ASIC), and also for aviation security status checking and the Aviation Identification Card (AVID).

The legislative arrangements for the ASIC are set out in the *Aviation Transport Security Act 2004* (ATSA) and the Aviation Transport Security Regulations 2005 (the ATSR). CASA is one of a number of ASIC-issuing bodies under the ATSR, and also issues AVIDs.

Possession of a current ASIC allows a person involved in the operation of an airport or aircraft, such as a pilot, to operate unescorted in the secure areas of a security controlled airport and non-security controlled airports. CASA may issue an AVID to certain persons who have passed necessary security status checks.

Before an ASIC or AVID is issued, background checking may be required through AusCheck, the Australian Federal Police, the Australian Security Intelligence Organisation, the CrimTrac Agency or the Department of Immigration and Citizenship. Regulation 5 of the Fees Regulations sets out how CASA may recover, through fees, the costs associated with background checking and the issuing of AVIDs or ASICs. This includes costs borne by CASA and costs passed on to CASA from other agencies that provide background checking services.

The Amendment Regulation adopts a fee structure that separates CASA's administrative fee for issuing an AVID or ASIC, from the costs charged by other agencies to provide background checking services. This will allow for any future increases or decreases in costs charged by agencies undertaking background checking to be reflected in the total fee charged by CASA without requiring further changes to the Fees Regulations. This flexibility is achieved because the component of the total fee that relates to background checking services is specified as the amount that CASA is required to pay to another organisation or person for those services, rather than a particular monetary amount being specified for the total fee. The Amendment Regulation fixes the CASA administrative component of the total fee at \$54 for all applications relating to ASICs, security status checking and related activities. The CASA administrative fixed fee is achieved by using process improvements and efficiencies of scale to reduce overall administrative costs.

Human rights implications

The legislative instrument indirectly engages the right to work under the International Covenant on Economic, Social and Cultural Rights in that the inability of a person to obtain an ASIC or AVID may affect their employment situation. However, this right is more directly engaged by the primary requirements for ASICs and security status checking under the ATSA and ATSR. The ASIC and AVID card requirements are necessary in order to ensure that only suitable individuals participate in Australia's aviation sector and under appropriate access arrangements.

Conclusion

The legislative instrument is compatible with human rights and to the extent that it may also limit human rights, those limitations are reasonable and proportionate in order to reduce the threat of unlawful interference with aviation operations, and thereby protect the safety of passengers, aviation industry participants and the public, in relation to the conduct of aviation operations.

Anthony Albanese
Minister for Infrastructure and Transport

Details of the *Civil Aviation (Fees) Amendment Regulation 2013 (No. 1)*

1 — Name of Regulation

Section 1 provides that the title of the regulation is the *Civil Aviation (Fees) Amendment Regulation 2013 (No. 1)*.

2 — Commencement

Section 2 provides that the regulation commences on 1 July 2013.

3 — Authority

Section 3 provides that the regulation is made under the *Civil Aviation Act 1988*.

4 — Schedule

Section 4 provides that each instrument that is specified in a Schedule to the Regulation is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Regulation has effect according to its terms.

Schedule 1 — Amendments

Schedule 1 amends the *Civil Aviation (Fees) Regulations 1995*.

Item [1] - Schedule 1 — Regulation 5

Item 1 repeals Regulation 5 (Fees for aviation security status checking and related matters) and substitutes a new regulation 5 (Fees for aviation security status checks, aviation security identification cards (ASICs) and related matters) as follows.

New subregulation 5(1)

This subregulation provides that an expression used in Regulation 5 and also in Part 6 of the *Aviation Transport Security Regulations 2005* (the *ATSR*) has the same meaning in Regulation 5 as in Part 6.

New subregulation 5(2)

This subregulation provides that the fee for the processing and consideration of an application for any one or more of ‘the things’ mentioned in subregulation (3) is the total of:

- (a) \$54; and
- (b) if the processing and consideration would require CASA to pay an amount to another person or organisation—the amount required to be paid by CASA to the other person or organisation.

A Note explains that guidance as to the actual additional amounts that may be payable will be published on the CASA website at <http://www.casa.gov.au>.

New subregulation 5(3)

The subregulation provides that ‘the things’ mentioned in subregulation 5(2) are the following:

- (a) an aviation security status check for the holder of, or an applicant for, a security designated authorisation;
- (b) verification of identity and citizenship status under paragraphs 6.57(1)(a) and (b) of the *ATSR* for an applicant for a security designated authorisation;
- (c) the issue, in connection with the carrying out of CASA’s functions under Division 6.7 of the *ATSR*, of an identity document (however described), other than an ASIC;
- (d) the replacement of an identity document mentioned in paragraph (c).

New subregulation 5(4)

This subregulation provides that a fee imposed by Regulation 5 for the processing and consideration of an application for an aviation security status check, or verification of identity and citizenship, for an applicant for a security designated authorisation is in addition to any fee imposed by Regulation 4 for the grant or issue of the authorisation.

New subregulation 5(5)

This subregulation provides that the fee for the processing and consideration of an application for the issue or replacement of an ASIC is the total of:

- (a) \$54; and
- (b) if the processing and consideration would require CASA to pay an amount to another person or organisation—the amount required to be paid by CASA to the other person or organisation.