

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 165, 2014**

Issued by the authority of the Minister for Infrastructure and Regional Development

*Civil Aviation Act 1988*  
*Civil Aviation Amendment (Narrow Runways) Regulation 2014*

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 to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Subsection 98(1) also provides that the Governor-General may make regulations for the purpose of carrying out and giving effect to the provisions of the *Convention on International Civil Aviation* (Chicago Convention) relating to safety and in relation to the safety of air navigation, being regulations with respect to any other matters for which the Parliament has power to make laws.

Subsection 9 (1) of the Act specifies, in part, that the Civil Aviation Safety Authority (CASA) has the function of conducting the safety regulation of civil air operations in Australian territory by means that include developing and promulgating appropriate, clear and concise aviation safety standards and issuing certificates, licences, registrations and permits.

The *Civil Aviation Amendment (Narrow Runways) Regulation 2014* (the Regulation) makes an amendment to the *Civil Aviation Regulations 1988* (CAR 1988), to allow certain aeroplanes to operate to aerodromes designed and constructed with runways of a width less than the International Civil Aviation Organization (ICAO) minimum runway width for the aeroplane (a narrow runway), but in accordance with ICAO guidance on alternative measures to enable the operation of new larger aeroplanes onto narrow runways<sup>1</sup>.

The Regulation removes the previous requirement for operators to seek an exemption against regulation 235A of CAR 1988 to land on, and take off from a narrow runway, if the operator has:

- an aeroplane flight manual that allows for the operation of the aeroplane on a narrow runway;
- an operations manual which includes limitations on such operations that are at least as restrictive as the flight manual;
- a training and checking manual which outlines the training the operator requires the flight crew to undertake before using the narrow runway, and the flight crew have undertaken that training.

The Regulation also removes the requirement for aerodrome operators to widen runways to accommodate certain aeroplanes that comply with the Regulation. This is a considerable cost saving to industry.

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<sup>1</sup> ICAO Circular 305 – Operation of New Larger Aeroplanes at Existing Aerodromes (Cir 305)

There is no impact on safety, as the Regulation predominantly relieves an administrative burden, and allows new aeroplanes to operate on narrow runways when demonstrated it is safe to do so. The regulations are also consistent with ICAO requirements.

### **Consultation**

A consultation draft of the Regulation was published on the CASA website and provided to the joint CASA/industry Standards Consultative Committee (SCC) on 24 May 2013, for public comment and review. The responses closed on 21 June 2013. Responses were accepted after the closing date in order to capture as many responses as possible with the final response accepted on 31 March 2014.

CASA received 16 formal responses to the consultation draft. The comments were evaluated and as a result one change was made to the draft regulation to remove the applicability of the regulation to those aeroplanes that were certificated to standards that are no longer in existence. Those aeroplanes, such as the DC-3, will be able to continue operations to narrow runways in accordance with the provisions of Regulation 92 of CAR 1988.

In general, comments received from aerodrome and aeroplane operators indicated that the amendments were acceptable. Comments were received from the two major manufacturers, Boeing and Airbus, both of which have aeroplanes for which this Regulation will enable continued operation.

Comments that indicated the amendments were not acceptable were predominantly found to be based on a misunderstanding of the proposed regulation. All applicable comments were addressed and a reply sent to each individual respondent, without further respondent comment.

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

The Office of Best Practice Regulation assessed that the amendment will have minor impacts and that no further analysis in the form of a Regulation Impact Statement was required (OBPR ID:17497).

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

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

### **Commencement and making**

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

The *Civil Aviation Amendment (Narrow Runways) Regulation 2014* commences on 13 November 2014.

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 Amendment (Narrow Runways) Regulation 2014

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 Amendment (Narrow Runways) Regulation 2014* (the **Regulation**) relates to the operation of aeroplanes on runways with a width of less than the International Civil Aviation Organization (**ICAO**) minimum runway width for the aeroplane (a **narrow runway**). The purpose of the Regulation is to allow an aeroplane that has a flight manual that provides for the operation of the aeroplane on narrow runways to operate on narrow runways where it is safe for it to do so.

The Regulation replaces regulation 235A of the *Civil Aviation Regulations 1988* (**CAR 1988**) with a new regulation 235A. Under the existing regulation 235A, it is an offence of strict liability for the pilot in command of an aeroplane to land at, or take-off from, a runway with a minimum width that is less than the runway width specified for that aeroplane by CASA in instructions. Those instructions are currently contained in instrument CASA 61/12 (F2012L00453).

Pilots of aeroplanes that are engaged in aerial work or private operations are exempted from the existing requirements of regulation 235A by instrument CASA EX126/12 (F2012L01676). The new regulation 235A will not apply to aerial work or private operations.

When the Regulation commences, CASA 61/12 and CASA EX126/12 will no longer have any effect and will be repealed.

CASA has also granted exemptions against the requirement in regulation 235A to particular aeroplane operators and their pilots. In doing so, CASA has considered whether those operations are safe, taking into account the content of the aeroplane's flight manual, the operator's manuals, and whether the flight crew have appropriate training in operating the aeroplanes on narrow runways.

Under regulation 11.230 of the *Civil Aviation Safety Regulations 1998* (**CASR 1998**), an exemption cannot be granted for a period of more than 3 years. Under regulation 11.225 of CASR 1998, CASA must publish details of an exemption in the Internet. Current exemptions can be found on the CASA website at:

[http://www.casa.gov.au/scripts/nc.dll?WCMS:STANDARD::pc=PC\\_100708](http://www.casa.gov.au/scripts/nc.dll?WCMS:STANDARD::pc=PC_100708)

Instead of prohibiting operations to narrow runways, new regulation 235A enables those operations to be conducted, subject to meeting specified safety and performance based requirements.

Subregulations 235A (2), (3), (4) and (5) provide that the operator of an aeroplane commit an offence if, when the take-off or landing is conducted, any of the following requirements are not met:

- the aeroplane's flight manual provides for the operation of the aeroplane on a narrow runway (subregulation 235A (2))
- the operator's operations manual includes operating limitations for taking off from, or landing on, a narrow runway that are at least as restrictive as the provisions of the aeroplane's flight manual that provide for the operation of the aeroplane on a narrow runway (subregulation 235A (3))
- the operator's training and checking manual states the training the operator requires the aeroplane's flight crew to have completed before conducting a take-off from, or a landing on, a narrow runway (subregulation 235A (4))
- each member of the aeroplane's flight crew has successfully completed that training (subregulation 235A (5)).

In addition, subregulations 235A (2) and (5) provide that the pilot in command commits an offence if, when the take-off or landing is conducted, the aeroplane's flight manual does not provide for the operation of the aeroplane on a narrow runway, or any member of the aeroplane's flight crew has not successfully completed the training.

If the requirements in new regulation 235A are met, the operator will no longer need to apply to CASA for the grant or renewal of an exemption to allow it to operate on narrow runways. Therefore, the Regulation reduces an administrative burden on operators conducting these operations and CASA.

### **Human rights implications**

The Regulation engages the following rights:

- The right to life (Article 6, International Covenant on Civil and Political Rights (*ICCPR*));
- The right to health (Article 12 of the International Covenant on Economic, Social and Cultural Rights (*ICESCR*));
- The right to the presumption of innocence (Article 14 (2) of the ICCPR); and
- The right to work (Article 6 (1) of the ICESCR) and rights in work (Article 7 (b) of the ICESCR).

#### *Right to life and right to health*

The right to life in Article 6 of the ICCPR provides that every human being has the inherent right to life and this right shall be protected by law. It includes a duty on governments to take appropriate steps to protect the right to life of those within its jurisdiction. The right to health contained in Article 12 of the ICESCR includes that everyone has the right to the highest attainable standard of physical and mental health. The Committee of Economic, Social and Cultural Rights has said that the right to health extends safe and healthy working conditions (General Comment No.14).

Aviation safety promotes the right to life and the right to health. In the context of aeroplane operations to narrow runways, the Regulation addresses risks to the life and health of passengers, pilots, cabin crew and people on the ground that could arise from aviation accidents and incidents, by establishing appropriate safety requirements to be met for the conduct of those operations. The risks are mitigated by the requirement that the flight manual must provide for the operation of the aeroplane on a narrow runway.

Before an aeroplane's flight manual can provide for the operation of the aeroplane on a narrow runway, the aeroplane must be assessed to ensure that it can safely conduct that operation. The risks are further mitigated by the requirements for operating limitations in the operator's operations manual, and for training of flight crew in narrow runway operations in accordance with the operator's training and checking manual.

The operator's operations manual and training and checking manual are subject to approval by CASA. If appropriate for the maintenance of aviation safety, CASA can require the operator to include additional operating limitations in its operations manual, with which it must comply. For example, additional operating limitations could relate to the acceptable level of cross-winds, or include a requirement for additional fuel to allow the aeroplane to safely divert to a suitable alternate aerodrome. In this way, operating limitations that are currently set out as conditions in exemptions can continue.

In practice, the Regulation does not impact on the right to life or the right to health. The Regulation merely standardises the current arrangements under which CASA exempts operators from the prohibition on operations on narrow runways. In deciding whether to grant an exemption, CASA must regard as paramount the preservation of a level of aviation safety that is at least acceptable. In doing so, CASA will assess whether the aeroplane, the operator and the flight crew are able to safely conduct operations on narrow runways.

Therefore, the Regulation does not engage the right to life or the right to health.

#### *Presumption of Innocence*

The presumption of innocence is contained in Article 14 (2) of the ICCPR. The presumption of innocence imposes on the prosecution the burden of proving charges, and guarantees that no guilt can be presumed until charges have been proved beyond reasonable doubt. In general, consistency with the presumption of innocence requires the prosecution to prove each element of a criminal offence beyond reasonable doubt.

Strict liability offences will not violate the presumption of innocence if they are reasonable in the circumstances and maintain the rights of the accused. Such a provision may be justified if the nature of the offence makes it very difficult for the prosecution to prove the fault element of an offence, or if it is clearly more practical for the accused to prove a fact than for the prosecution to disprove it.

Regulation 235A (6) of CAR 1988 provides that the offences in subregulations 235A (2), (3), (4) and (5) are offences of strict liability.

The strict liability offences in a new regulation 235A of CAR 1988 engage the right to the presumption of innocence in the ICCPR by applying strict liability to elements of the offences. If strict liability applies to physical elements of an offence, those elements can be proved without the need to prove a corresponding fault element. However, the defence of honest and reasonable mistake of fact, as set out in section 9.2 of the *Criminal Code*, will be available to the defendant. In addition, section 30 of the *Civil Aviation Act 1988* (the *Act*) provides that, in any proceedings for an offence against the Act or the regulations, it is a defence if the act or omission charged is established, on the balance of probabilities, to have been due to extreme weather conditions or other unavoidable cause.

The offences inserted by the Regulation replace existing strict liability offences relating to operations to and from runways with a minimum width that is less than the minimum runway width specified in instructions issued by CASA. Consequently, the Regulation does not create strict liability offences in relation to a new field of regulation.

The offences in subregulations 235A (2), (3), (4) and (5) apply to operators of aeroplanes. Subregulations 235A (2) and (5) also apply to the pilot in command of an aeroplane. The offences relate to administrative and safety requirements that must be adhered to by regulated individuals or organisations to protect the safety of aircraft operations to and from narrow runways.

The offence in the existing regulation 235A applied only to the pilot in command of an aeroplane, and not to the aircraft operator. It prohibited the conduct of operations on narrow runways. The new regulation enables those operations to be conducted. However, it makes it an offence for the operator to allow the operation to occur unless the requirements of the regulation are met. It is appropriate to place this obligation on the aircraft operator as the aircraft operator has responsibility for the contents of the operator's operations manual and training and checking manual, the operation of the aeroplane, and having knowledge of the contents of the aeroplane's flight manual.

The offences in subregulations 235A (2) and (5) apply to the pilot in command of an aeroplane as it is appropriate that, before conducting an operation on a narrow runway, the pilot in command ensures that the aeroplane's flight manual provides for the operation of the aeroplane on the runway and that the flight crew have successfully completed the appropriate training. As the pilot in command of an aeroplane is not expected to have control over the contents of the operator's operations manual and training and checking manual, the offences in subregulations 235A (3) and (4) do not apply to the pilot in command.

The strict liability offences in the Regulation are reasonable, and therefore not inconsistent with the presumption of innocence. The offences are regulatory in nature. There is an expectation that individuals who participate in the aviation sector have accepted certain conditions and have certain knowledge, particularly where the activities carry public safety risks. The deterrence effect of the strict liability offences also contributes significantly to maintaining the integrity of the aviation safety system.

The strict liability offences also contain reasonable limitations and safeguards. The offences only apply to aeroplanes that have a maximum certificated take-off weight of more than 5700 kg, are being used to conduct regular public transport or charter operations, and are of a type first certificated in their country of manufacture on or after 1 March 1978.

Regulation 235A does not apply to light aircraft or to private or aerial work operations. Instead, the primary concern is for the safe operation of larger aeroplanes engaged in regular public transport and charter operations as they are more likely to be transporting greater numbers of people and consequently demand a higher standard of safety from those operating the aircraft.

While there are aeroplanes in Australia that were first certificated in their country of manufacture before 1 March 1978, there is only one such type of aeroplane operating in Australia that is known to be affected by the existing regulation CAR235A. That type of aeroplane, the McDonnell Douglas DC-3, carries a small number of passengers on ad hoc charter operations, has very low take-off speeds, and is designed to operate on unimproved runways.

The certification date applicable to these aeroplane types also pre-dates the current ICAO aerodrome design standards to which this regulation is referenced. Therefore, there is no need for this regulation to apply to the DC-3 or to other aeroplanes first certificated in their country of manufacture before 1 March 1978.

Aircraft that are not affected by regulation 235A will still be required to operate safely in accordance with the general rule in regulation 92 of CAR 1988, which requires safe operations on suitable runways. The strict liability offences are also proportionate in that the penalties fall at the lower end of the scale, not exceeding 50 penalty units.

Accordingly, any potential limitation of Article 14 (2) of the ICCPR is necessary, reasonable and proportionate to achieving a legitimate objective of maintaining the integrity of aviation safety.

*Right to work and rights at work*

The right to work in Article 6 (1) of ICESCR includes the right of everyone to the opportunity to gain their living by work which they freely choose or accept.

The right to work is engaged by the strict liability offences in the Regulation, in conjunction with the demerit points scheme, described in Division 3D of Part III of the Act and Division 13.K.2 of CASR 1998. A person incurs 3 demerit points for committing a strict liability offence and a person who incurs 12 demerit points in a 3 year period can have a relevant civil aviation authorisation, such as a flight crew licence, suspended for 90 days. Incurring further demerit points may lead to longer periods of suspension or cancellation of the authorisation.

However, CASA has a discretion, under section 30EF of the Act, to reinstate an authorisation, with or without conditions, if it is satisfied that suspension or cancellation of the authorisation would cause the holder severe financial hardship because, without the authorisation, the holder would not be able to earn the holder's principal or only income.

The demerit points scheme is reasonable, necessary and proportionate as it helps to ensure compliance with the regulations and the integrity of the aviation safety system, while recognising the right of everyone to the opportunity to gain their living by work.

The requirements of the Regulation are necessary in order to ensure competent use of aircraft within Australia's aviation environment. Any potential limitation on the right to work is necessary, reasonable and proportionate in promoting the objective of improving aviation safety.

Rights at work, set out in Article 7 of ICESCR, include safe and healthy working conditions. Aviation safety promotes the right to safe and healthy working conditions, especially for people working in the aviation industry. In the context of aeroplane operations to narrow runways, the Regulation addresses risks to the life and health of passengers, pilots, cabin crew and people on the ground that could arise from aviation accidents and incidents, by establishing appropriate safety requirements to be met for the conduct of those operations.

However, in practice, the Regulation does not impact on the right to safe and healthy working conditions. The Regulation merely standardises the current arrangements under which CASA exempts operators from the prohibition on operations on narrow runways if the aeroplane, the operator and the flight crew have been assessed as being able to safely conduct operations on narrow runways.

Therefore, the Regulation does not engage rights at work.

### **Conclusion**

The legislative instrument is compatible with human rights and to the extent that it may also limit human rights, those limitations are reasonable, necessary and proportionate to protect aviation safety in the operation of aircraft.

Warren Truss, Minister for Infrastructure and Regional Development



**Details of the *Civil Aviation Amendment (Narrow Runways) Regulation 2014***

**Section 1 - Name of Regulation**

Section 1 provides that the title of the regulation is the *Civil Aviation Amendment (Narrow Runways) Regulation 2014*.

**Section 2 - Commencement**

Section 2 provides that the regulation commences on 13 November 2014.

**Section 3 - Authority**

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

**Section 4 - Schedule(s)**

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

**Schedule 1            Amendments**

***Civil Aviation Regulations 1988 (CAR)***

**Item [1]            Regulation 235A**

Item [1] repeals regulation 235A of CAR 1988 and substitutes a new regulation titled: Regulation 235A - Taking off from and landing on narrow runways—certain aeroplanes.

**Subregulation 235A (1), Application**

Subregulation 235A (1) provides that regulation 235A only applies to aeroplanes if they take off from, or land on, a runway with a width of less than the ICAO minimum runway width for the aeroplane; have a maximum certificated take-off weight of more than 5700 kg; are being used to conduct a regular public transport or a charter operation; and are of a type first certificated in their country of manufacture on or after 1 March 1978. The subregulation includes a definition of the term ***narrow runway*** to mean a runway with a width of less than the ICAO minimum runway width for the aeroplane.

**Subregulation 235A (2), Offence for operator and pilot in command – flight manual**

Subregulation 235A (2) provides that the operator of the aeroplane and the pilot in command of the aeroplane each commit an offence if, when the take-off or landing is conducted, the aeroplane's flight manual does not provide for the operation of the aeroplane on a narrow runway. The penalty for this offence is set at 50 penalty units.

**Subregulation 235A (3), Offence for operator – operator’s operations manual**

Subregulation 235A (3) provides that the operator of the aeroplane commits an offence if, when the take-off or landing is conducted, the operator’s operations manual does not reflect the aeroplane’s flight manual in that it does not include limitations for taking off from, or landing on, a narrow runway that are at least as restrictive as the provisions of the aeroplane’s flight manual that relate to the operation of the aeroplane on a narrow runway. The penalty for this offence is 50 penalty units.

**Subregulation 235A (4), Offence for operator – operator’s training and checking manual**

Subregulation 235A (4) provides that the operator of the aeroplane commits an offence if, when the take-off or landing is conducted, the operator’s training and checking manual does not state the training the operator requires the aeroplane’s flight crew to have completed before conducting a take-off from, or a landing on, a narrow runway. The penalty for this offence is set at 50 penalty units.

**Subregulation 235A (5), Offence for operator and pilot in command – flight crew training requirements**

Subregulation 235A (5) provides that the operator and the pilot in command of the aeroplane each commit an offence if, when the take-off or landing is conducted, each member of the aeroplane’s flight crew has not successfully completed the training mentioned in subregulation 235A (4). The penalty for this offence is set at 50 penalty units.

Taken together, subregulations 235A (2)-(5) mean that an aircraft, of a type mentioned in subregulation 235A(1), that takes off from, or lands at, a narrow runway must:

- have a flight manual that allows for the operation of that type of plane on a narrow runway;
- have an operations manual in which limitations on operations at narrow runways are at least as restrictive as the flight manual (but may be more restrictive);
- have a training and checking manual which outlines the training the operator requires the flight crew to undertake before using the narrow runway; and
- be staffed by crew that have undertaken that training.

**Subregulation 235A (6), Strict liability**

Subregulation 235A (6) provides that an offence against regulation 235A is an offence of strict liability, meaning that that the fault element of the offence does not need to be proven.

**Subregulation 235A (7), Definitions**

Subregulation 235A (7) provides definitions for code letter, code number, contaminated, dry, ICAO minimum runway width, maximum certificated take-off weight, reference field length, and take-off distance required.

The term **ICAO minimum runway width**, which is used in subregulation 235A (1) to define a narrow runway, depends on the code letter and code number for the aeroplane. The **code letter** for an aeroplane is defined by reference to the aeroplanes wing span and outer main gear wheel span. The **code number** for the aeroplane depends on its reference field length. The **reference field length** is in turn defined by reference to the take-off distance required, the maximum certificated take-off weight and whether the runway is dry and not contaminated.