

Explanatory Statement

Civil Aviation Safety Regulations 1998

Prescription of aircraft and ratings — CASR Part 61 (Edition 1)

Legislation

Section 98 of the *Civil Aviation Act 1988* (the *Act*) empowers the Governor-General to make regulations for the Act and the safety of air navigation.

Under paragraph 98 (5A) (a) of the Act, such regulations may empower CASA to issue instruments in relation to matters affecting the safe navigation and operation of aircraft.

The *Civil Aviation Legislation Amendment Regulation 2013 (No. 1)* as amended (the **amendment regulation**) was made under section 98 of the Act to include a new Part 61 in the *Civil Aviation Safety Regulations 1998 (CASR 1998)*, which commenced on 1 September 2014. Part 61 contains regulations for flight crew licensing, including the various requirements for flight crew licences, ratings and endorsements. These requirements, which include flight training in units of competency, aeronautical knowledge examinations, flight tests, flight reviews and proficiency checks, are predicated on types and classes of aircraft and operations, including whether aircraft are variants of other aircraft, and whether in such cases, differences training is required if privileges are to be exercised in a variant.

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

Purpose

Prescription of aircraft and ratings — CASR Part 61 (Edition 1) (the **instrument**) prescribes different types of aircraft, ratings and variants for the purpose of relevant provisions in Part 61 of CASR 1998.

Fundamental concepts in the operation of Part 61 of CASR 1998

The rationale behind Part 61 of CASR 1998 is that a pilot may be authorised to fly a particular type of aircraft only if he or she has undertaken sufficient training and an assessment has been made to confirm that the pilot is competent in operating that type of aircraft. In addition, a pilot must periodically undergo a review (a flight review) of his or her continued competence operating the aircraft if the pilot wishes to continue flying that type of aircraft.

Within the range of available aircraft types, some can be grouped together and treated in a common way under Part 61 of CASR 1998. Thus, undertaking training and being assessed to operate one type of aircraft may satisfy the training requirements for a number of other types of aircraft if they have similar characteristics and performance. Also undertaking a flight review in one type of aircraft may satisfy the flight review requirements for a number of other types of aircraft.

Most single-engine aeroplanes are grouped together in this way into the single-engine aeroplane class rating. If a pilot completes appropriate training and is assessed as competent flying a particular type that is identified within that single-engine aeroplane

class, the pilot does not need to undertake further training and assessment to fly other similar types within the class rating.

However, many types of aircraft are sufficiently complex or different from other types as to warrant a pilot undertaking type specific training to be authorised to fly these types. These aircraft are identified as type rated aircraft. Aircraft that are certificated to be flown by more than 1 pilot are examples of type rated aircraft.

Before flying an aircraft, a pilot must be competent in operating the particular aircraft. Consequently, even if the pilot is qualified to fly single-engine aeroplanes covered by the class rating, before flying a different type within the class rating, the pilot must make sure that he or she are competent to fly the new type, which may have different systems, performance and handling characteristics to the type of aircraft he or she flew when qualifying for the class rating.

Some aircraft, which are designated as type rated aircraft are, nevertheless, sufficiently similar in their characteristics to aircraft included in the class rating as to warrant recognition of ongoing competency checks (flight reviews) done in these type rated aircraft for the purposes of the class rating flight review.

Some aircraft have been included within a class although they are sufficiently complex or have performance characteristics that warrant initial type specific training and a flight review. However, once the pilot has completed that initial type specific training and the flight review, the competency of the pilot to fly the aircraft in the future can effectively be managed as a class rated aircraft.

Several regulations in Part 61 of CASR 1998 provide for a legislative instrument to prescribe the types of aircraft for which some of the concessions mentioned above apply.

Regulation 61.050 — multi-engine aeroplanes included in single-engine aeroplane class

Under regulation 61.050, for paragraph 98 (5A) (a) of the Act, CASA may, by legislative instrument prescribe aeroplanes that are included in the single-engine aeroplane class.

Aircraft referred to by regulation 61.050 are aircraft that would otherwise be included in the multi-engine aeroplane class rating or type rating. These aircraft are sufficiently like single-engine aeroplanes that separate training and checking is not justified.

CASA has reserved its prescription of multi-engine aeroplanes that are to be included in the single-engine aeroplane class because no relevant aircraft had been identified at the time of making the legislative instrument.

Regulation 61.055 — type ratings and variants for multi-crew aircraft

Under subregulation 61.055 (1), for paragraph 98 (5A) (a) of the Act, CASA may, by legislative instrument, prescribe for multi-crew aircraft:

- (a) the type ratings that may be granted for multi-crew operations; and
- (b) the aircraft models that are variants of each other; and
- (c) in relation to each variant — the variants for which differences training is required; and

- (d) the type ratings for which the flight review or instrument proficiency check requirements may be met by completion of a single flight review; and
- (e) the type ratings for which the instrument proficiency check requirements may be met by completion of a single instrument proficiency check.

Under subregulation 61.055 (2), for paragraph 98 (5A) (a) of the Act, if 2 or more aircraft models are variants of each other, CASA may, by legislative instrument, prescribe that the models are no longer variants of each other if satisfied that:

- (a) the complexity of one of the models' systems; or
 - (b) a difference in their performance or handling characteristics;
- requires the provision of additional flight training to enable a person to pilot an aircraft of that model safely.

Aircraft referred to by regulation 61.055 are aircraft that are operated by 2 pilots and require initial and ongoing type specific training and checking. These aircraft are sufficiently complex, or their performance or handling characteristics are such, that additional training of the pilots to enable them to pilot these aircraft safely is warranted.

In some cases, aircraft types can have variants and the characteristics of the variants can differ, for example, in such areas as operating systems, size or performance. In some cases, the variant differences are such that additional training of the pilots to enable them to pilot variants of the original aircraft type is warranted. In some cases, variants are sufficiently common that additional training and checking is not warranted and completing a proficiency check or a flight review in one variant meets the proficiency check or flight review requirements applicable to the other variants of that type.

Regulation 61.060 — type ratings for single-pilot aircraft

Under subregulation 61.060 (1), for paragraph 98 (5A) (a) of the Act, CASA may, by legislative instrument, prescribe the following:

- (a) for a type of aircraft that is certificated for single-pilot operation — whether a single-pilot type rating is required; and
- (b) for aircraft for which single-pilot type ratings are required:
 - (i) the type ratings that may be granted for single-pilot operation; and
 - (ii) the aircraft models that are variants of each other; and
 - (iii) in relation to each variant — the variants for which differences training is required; and
- (c) the type ratings for which the flight review or instrument proficiency check requirements may be met by completion of a single flight review; and
- (d) the type ratings for which the instrument proficiency check requirements may be met by completion of a single instrument proficiency check.

Under subregulation 61.060 (2), CASA may prescribe that a single-pilot type rating is required for an aircraft only if satisfied that:

- (a) the complexity of the aircraft's systems; or
 - (b) its performance or handling characteristics;
- requires the provision of additional flight training to enable a person to pilot an aircraft of that type safely.

Aircraft referred to by regulation 61.060 are aircraft that are operated by 1 pilot and require initial and ongoing type specific training and checking. These aircraft are

sufficiently complex, or their performance or handling characteristics are such, that additional training of the pilots to enable them to pilot these aircraft safely is warranted.

In some cases, aircraft types can have variants and the characteristics of the variants can differ. Variants can differ in such areas as operating systems, size or performance. In some cases, the variant differences are such that additional training of the pilots to enable them to pilot these variants of the original aircraft type is warranted.

In some cases, variants are sufficiently common that additional training and checking is not warranted and completing a proficiency check or a flight review in one variant meets the proficiency check or flight review requirements applicable to the other variants of that type.

The *Civil Aviation Legislation Amendment (Flight Crew Licensing) Regulation 2013* was made under section 98 of the Act to amend Part 61 of CASR 1998 to include regulations 61.061, 61.062 and 61.063.

Regulation 61.061 — types of aircraft where flight review for a pilot type rating meets flight review requirements for a class rating

Under regulation 61.061, for paragraph 98 (5A) (a) of the Act, CASA may, by legislative instrument, prescribe types of aircraft for which the conduct of a flight review for a pilot type rating meets the flight review requirements for a class rating.

Aircraft referred to by regulation 61.061 are identified as being sufficiently complex, or have performance or handling characteristics, that warrant initial and ongoing type specific training and checking requirements that must be satisfied before pilots are authorised to fly these types of aircraft. However, completing a flight review or proficiency check in such an aircraft is regarded as being sufficient to ensure the pilot is also competent operating similar aircraft covered by the class rating and, therefore, would be acceptable for the purposes of a relevant class rating flight review. The aircraft type has sufficient commonality with aircraft included in a relevant class rating that justifies this recognition.

Regulation 61.062 — types of aircraft with additional limitations on class ratings

Under regulation 61.062, for paragraph 98 (5A) (a) of the Act, CASA may, by legislative instrument, prescribe types of aircraft for which flight training and a flight review are required under regulation 61.747 for the exercise of the privileges of a class rating. Under subregulation 61.747 (1), the holder of an aircraft class rating may, subject to other requirements, exercise the privileges of the class rating in an aircraft type prescribed under regulation 61.062.

Aircraft referred to by regulation 61.062 are identified as being sufficiently complex or have performance or handling characteristics that warrant initial type specific training and a flight review in the specific type.

However, these types are not so different that ongoing training and checking needs to be type specific. In these cases, the pilot only needs to complete initial type specific training along with a flight review, rather than a flight test, as the means of assessing the pilot's competence in operating that type of aircraft. Thereafter, a flight review in any other aircraft in the same class satisfies the flight review requirements to fly that type of aircraft.

Regulation 61.063 — types of single-engine helicopters for flight reviews

Under regulation 61.063, for paragraph 98 (5A) (a) of the Act, CASA may, by legislative instrument, prescribe types of single-engine helicopters that may be used to conduct flight reviews for other types of single-engine helicopters.

Aircraft referred to by regulation 61.063 are identified as being sufficiently complex or have performance characteristics that warrant initial and ongoing type specific training and checking requirements that must be satisfied before pilots are authorised to fly these types of aircraft. However, completing a flight review in such an aircraft is regarded as acceptable for the purposes of a relevant class rating. The aircraft type has sufficient commonality with aircraft included in a relevant class rating that justifies this recognition.

However, CASA has reserved its prescription of single-engine type rated helicopters that may be used to conduct flight reviews for other single-engine helicopters.

Instrument

For the purposes of the relevant provisions mentioned above, the instrument prescribes the aircraft, ratings, variants and other concessions. The instrument repeals and replaces CASA 186/14, being the current instrument of prescription dealing with aircraft, ratings and variants for Part 61 of CASR 1998. A new aircraft variant for the Grumman G-73 Mallard has been added, as well as a new definition for centre panel display system, which is referenced in the helicopter type rating list for the EC135 type. R22 and R44 helicopter type ratings have been removed from this instrument and are now covered under the single engine helicopter class rating in a separate instrument.

Except for matters reserved, sections 4 to 27 of the instrument are machinery provisions designed to make the schedules take effect in accordance with their terms. As such, the machinery provisions are technical provisions describing the steps to be taken to locate, and the locations of, the various prescriptions set out for the purposes of the legislative instrument. There are 15 schedules – of which 7 are reserved – that contain the relevant prescriptions and are listed by number and title, as follows:

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| Schedule 1 | Multi-engine aeroplanes included in the single-engine aeroplane class — RESERVED |
| Schedule 2 | Multi-crew pilot aeroplane type ratings, variants and differences training |
| Schedule 3 | Multi-crew pilot helicopter type ratings, variants and differences training |
| Schedule 4 | Multi-crew type ratings for which flight review or instrument proficiency check met by a single flight review — RESERVED |
| Schedule 5 | Multi-crew type ratings for which instrument proficiency check met by a single instrument proficiency check — RESERVED |
| Schedule 6 | Single-pilot type rated aeroplanes, type ratings, variants and differences training |
| Schedule 7 | Single-pilot type rated helicopters, type ratings, variants and differences training |

- Schedule 8 Single-pilot type ratings for which flight review met by a single flight review — RESERVED
- Schedule 9 Single-pilot type ratings for which instrument proficiency check met by a single instrument proficiency check — RESERVED
- Schedule 10 Types of multi-engine aeroplanes for which the conduct of a flight review for a pilot rating meets the flight review requirements for the multi-engine aeroplane class rating
- Schedule 11 Types of single-engine helicopters for which the conduct of a flight review for a pilot rating meets the flight review requirements for the single-engine helicopter class rating — RESERVED
- Schedule 12 Types of single-engine aeroplanes for which flight training and flight review are required for exercising the privileges of the single-engine aeroplane class rating
- Schedule 13 Types of multi-engine aeroplanes for which flight training and flight review are required for exercising the privileges of the multi-engine aeroplane class rating
- Schedule 14 Types of single-engine helicopters for which flight training and flight review are required for exercising the privileges of the single-engine helicopter class rating
- Schedule 15 Types of single-engine helicopters that may be used for flight reviews for other types of single-engine helicopters — RESERVED

Legislative Instruments Act 2003 (the LIA)

Under paragraph 98 (5A) (a) of the Act, CASA may issue instruments in relation to matters affecting the safe navigation and operation of aircraft. Under subsection 98 (5AA) of the Act, an instrument issued under paragraph 98 (5A) (a) is a legislative instrument if expressed to apply in relation to a class of persons or aircraft.

The various prescriptions made by the instrument apply to classes of persons and aircraft and, therefore, the instrument is a legislative instrument subject to tabling and disallowance in the Parliament, under sections 24, 38 and 42 of the LIA.

Consultation

For section 17 of the LIA, because of its machinery nature, CASA's consultation for the legislative instrument, including in particular the proposed lists of type ratings, was an integral part of the consultation undertaken for the amendment regulation which included Part 61 of CASR 1998. This consultation process was set out in the Explanatory Statement for the amendment regulation (F2013L00218 refers). This amendment package was published on CASA's website and responses to it considered by CASA. There were no responses specifically in relation to the matters addressed in the legislative instrument.

The list of aircraft ratings in the legislative instrument was derived from, and replaces, Civil Aviation Order (CAO) 40.1.0 and CAO 40.0, with modifications to accommodate the new aircraft class ratings. These CAOs were amended regularly and routinely as new aircraft types were introduced into the Australian civil aviation system and others were removed as they were no longer required. As the need to make amendments arise,

the instrument will itself be repealed and reissued with newer editions to reflect those changes.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (*RIS*) was prepared by CASA for the regulations which constitute the head of power for this instrument. This RIS was assessed as adequate by OBPR (OBPR ID: 2777) and applies for the purpose of the legislative instrument. Part 61 of CASR, including the legislative instrument, has been assessed by CASA as generally benefitting the aviation industry because the reduced number of aircraft covered by type ratings has the effect of reducing compliance costs.

Statement of Compatibility with Human Rights

The legislative instrument does not directly engage any of the applicable rights or freedoms, and is compatible with human rights, as it does not directly raise any human rights issues. To the extent that it may indirectly limit certain human rights, those limitations are necessary and proportionate in the interests of aviation safety. A Statement of Compatibility with Human Rights is at Attachment 1.

Making and commencement

The instrument has been issued by the Acting Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

The instrument commences on the day of registration.

Statement of Compatibility with Human Rights

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

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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 prescribes different types of aircraft for relevant provisions in Part 61 of the *Civil Aviation Safety Regulations 1998*. Part 61 contains regulations for flight crew licensing, including the various requirements for flight crew licences, ratings and endorsements. These requirements, which include flight training in units of competency, aeronautical knowledge examinations, flight tests, flight reviews and proficiency checks, are predicated on types and classes of aircraft and operations, including whether aircraft are variants of other aircraft, and whether in such cases, differences training is required if privileges are safely to be exercised in a variant. These requirements are consistent with Australia's obligations of conformity to the Chicago Convention on International Civil Aviation, its Protocols and Annexes.

Human rights implications

To the extent that certain aircraft are not prescribed, it might be said that the right to work, equality and non-discrimination under the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights (ICESCR) are engaged for pilots of such aircraft since they cannot access some of the flight review and proficiency check concessions that the legislative instrument might otherwise provide. However, such differential treatment arises from the requirements of aviation safety for the particular types of specialised aircraft involved and is consistent with honouring the safety obligations imposed by the *Civil Aviation Act 1988*.

Conclusion

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*. To the extent that it may also limit human rights, those limitations are reasonable and proportionate in the interests of aviation safety.

Civil Aviation Safety Authority