

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 82.6 Amendment Instrument 2016 (No. 1)

Purpose

The purpose of *Civil Aviation Order 82.6 Amendment Instrument 2016 (No. 1)* (the **CAO amendment**) is to amend *Civil Aviation Order 82.6 (CAO 82.6)* to clarify the legislative arrangements for training and proficiency checking for a special fire endorsement (an **SFE**). An SFE is an endorsement for a night vision imaging system (**NVIS**) pilot to conduct certain firefighting operations at night in the form of incendiary dropping and fire mapping. The CAO amendment also modifies some definitions and makes some drafting corrections.

The CAO amendment will facilitate participation in certain firefighting operations in the 2016-17 fire season by suitable operators who might otherwise be excluded. Such exclusion could have arisen because of a gap in the interaction between Part 61 of the *Civil Aviation Safety Regulations 1998 (CASR 1998)* concerning NVIS, and CAO 82.6 concerning the SFE. Because of the urgency arising from the imminence of the 2016-17 fire season, the consultation period for the CAO amendment has been shortened.

Legislation

A wide range of statutory powers was required to make CAO 82.6 and the same powers are used to make the CAO amendment. Given their detail, they are set out in Appendix 1.

Background

CAO 82.6 established operational and airworthiness standards and approval requirements for the use of night vision goggles (**NVG**) in specialised helicopter aerial work operations, including fire fighting. The CAO has the effect of making unlawful any unapproved use of NVG as a primary means of terrain avoidance for safe air navigation by means of visual surface reference external to an aircraft.

The CAO amendment is an interim measure pending completion of relevant Parts of CASR 1998 which affect the use of NVG. Some of those Parts have already taken effect on and from 1 September 2014, in particular Part 61 which deals with flight crew training, proficiency and licensing. In 2014, CASA amended CAO 82.6 to take account of the changes under Part 61 that had an impact on the use of NVG.

NVIS training requirements

A key change was that all initial NVIS training requirements, licensing and proficiency checks were removed from the scope of CAO 82.6 because it was thought that they were covered by the content of Part 61. However, a disconnect has been identified between what Part 61 does in relation to flight crew training, proficiency and licensing for fire fighting, and what CAO 82.6 does in relation to the SFE. The SFE requirements were unintentionally omitted from Part 61 and retained in CAO 82.6.

Thus, on the one hand, currently Part 61 does not adequately provide for the SFE. On the other hand, CAO 82.6, while it contains eligibility requirements for the SFE does

not provide an appropriate training, testing, and proficiency checking framework for an NVIS pilot to be able to obtain, and continue to safely use, an NVIS SFE.

2016-17 fire season

Given that CAO 82.6 was made in 2007, CASA has been reviewing CAO 82.6 through a post-implementation review to bring its requirements up-to-date and to better take account of the existing requirements in Part 61.

However, as the 2016-17 Australian firefighting season approaches, CASA is not satisfied that relevant provisions in CAO 82.6 constitute optimum requirements for aviation safety in fire fighting for this fire season. It is not considered safe or appropriate to await the outcome of the review mentioned above which is due for completion towards the middle to end of 2017.

Following an inevitably foreshortened consultation period, CASA has, therefore, made the CAO amendment to clarify the SFE requirements for the approaching fire season only. The new requirements in the CAO amendment will be reviewed during the post-implementation review mentioned above, in light of the experience gained from the 2016-17 firefighting season.

Special fire endorsement — eligibility requirements

Under CAO 82.6, *aerial fire fighting* involves incendiary dropping or use of a belly tank for dropping water or fire retardant. *Aerial firefighting support* involves the insertion or extraction of firefighting crews or the carriage of persons to map, locate or observe fires, or to control or direct firefighting operations.

Under subsection 1 of CAO 82.6, an **SFE** means an endorsement in the logbook of an NVIS pilot, specifying that the holder has satisfied the fire-related requirements for holding an SFE. Under subclause 5.4 of Appendix 1 of CAO 82.6, *only an NVIS pilot who holds an SFE* may conduct aerial fire fighting involving *incendiary dropping*, or aerial firefighting support involving *fire mapping*.

Previously, clause 16 in Appendix 3 of CAO 82.6 (**clause 16**) set out the requirements for an SFE. For eligibility to hold an SFE, an NVIS pilot was required to hold or have the following qualifications and experience:

- (a) a GNSS (GPS NAV) endorsement to a night V.F.R. rating;
- (b) successful completion of special fire endorsement training and testing under this Order or its equivalent based on recognition of prior training and experience as approved in writing by CASA;
- (c) the following hours of aeronautical experience as a helicopter pilot:
 - (i) 1 000 hours;
 - (ii) 50 hours in the type or class of helicopter that is, or is representative of, the type or class of helicopter in which incendiary dropping and fire mapping is to be conducted;
 - (iii) 100 hours in fire fighting;
 - (iv) 50 hours in night V.F.R. (unaided);

- (v) 10 hours in night V.F.R. (unaided) in the type or class of helicopter that is, or is representative of, the type or class of helicopter in which incendiary dropping and fire mapping is to be conducted;
- (vi) 50 hours of post-NVIS qualification NVIS flying experience.

Before September 2014, CAO 82.6 also contained the relevant training requirements applicable to obtaining the SFE. However, these were removed from the CAO in anticipation of Part 61 of CASR 1998 as it was assumed that adequate training would be provided for under relevant provisions of Part 61. However, although Part 61 dealt extensively with NVIS licences, ratings and endorsements, it did not deal with the specific requirements for an SFE under CAO 82.6.

Special fire endorsement — recency requirements

Previously, subclause 21.4 in Appendix 3 of CAO 82.6 (*subclause 21.4*) set out the recency requirements for an NVIS pilot to continue to hold an SFE. Thus, an SFE required:

- (a) the minimum recent experience for an NVIS pilot as such, and also:
- (b) within the 90 days before an NVIS operation for which the pilot requires an SFE, NVFR recency, including 3 hours of NVFR (unaided) flight; and
- (c) within the 30 days before an NVIS operation for which the pilot requires an SFE — completion on type of a proficiency check for an NVIS pilot with an SFE; and
- (d) repeated daylight practice of recovery from unusual attitudes.

In September 2014, Table 21.1, setting out minimum NVIS pilot recency requirements, was superseded by regulation 61.1010 of CASR 1998 which provided for such NVIS recency. Thus, Table 21.1 was redundant. However, its removal was overlooked in September 2014 when Part 61 was made. A second occurring subclause 21.2 had duplicated subclause 21.4 on recency for an SFE and its removal from CAO 82.6 was also overlooked at the time Part 61 was made.

Special fire endorsement — proficiency check requirements

Previously, clause 23 in Appendix 3 of CAO 82.6 (*clause 23*) set out the proficiency check requirements for an NVIS pilot, including where applicable with an SFE. Thus, the proficiency check must:

- (a) be conducted by an NVIS checking pilot of a training and checking organisation (a *TCO*) or an operator approved under Part 142 of CASR 1998 (a *Part 142 operator*); and
- (b) involve representative NVIS flight; and
- (c) be a minimum of 60 minutes NVIS flight time, or 90 minutes for the SFE; and
- (d) require the candidate to demonstrate competency in the following:
 - (i) NVIS unit failure;
 - (ii) NVIS single tube failure;
 - (iii) white light failure;
 - (iv) procedures for utilising backup power;
 - (v) certain circuit operations;

- (vi) procedures for loss of visual reference;
- (vii) procedures for in-flight deteriorating visibility;
- (viii) inadvertent I.M.C. penetration and recovery;
- (ix) procedures for wire and obstacle detection and avoidance;
- (x) procedures for operating in the vicinity of a fire, and emergency procedures for fire mapping and incendiary dropping.

These proficiency check requirements were, in effect, the training competency requirements for an SFE. However, they were not so stated, and the removal from CAO 82.6 of specific training requirements for an SFE, based on the assumption that these requirements were included in Part 61 of CASR 1998, had the effect of disconnecting the SFE proficiency check from the SFE training and competency requirements.

The CAO amendment

The CAO amendment is designed to remediate the gaps and clarify the requirements for an NVIS pilot to be trained, tested and checked to hold and use the SFE. The CAO amendment also ensures recognition of prior equivalent training for these purposes.

Training for, and issue of, an SFE — clause 16 in Appendix 3

In the Definitions, an SFE is redefined (in Amendment No. 5) to preserve the relevance of existing SFE logbook endorsements issued before 23 December 2016 (the commencement date), and also to include SFE endorsements, in the form of a certificate of competency issued under the amended clause 16 in Appendix 3 on or after 23 December 2016.

New clause 16 (Amendment No. 8) sets out the training requirements for an SFE. First, the requirement for a GNSS (GPS NAV) endorsement to a night V.F.R. rating is deleted because it no longer exists as a night V.F.R. endorsement.

Under subclause 16.2 in Appendix 3, an NVIS pilot must have successfully completed a course of training in the use of NVIS in incendiary dropping, or in fire mapping, conducted by an NVIS flight instructor who also holds an SFE special fire endorsement and is engaged by either a TCO, or, until 31 August 2018, by an “old NVG training provider”.

Old NVG training provider

An “old NVG training provider”, defined in Amendment No. 1, is a “grandfathering” concept which, until 31 August 2018, will allow SFE training, and also recurrent training and checking, and aircrew member training, to be conducted by an NVIS operator:

- who was, immediately before 1 September 2014, in Australia, an “NVG training provider” — as that expression was defined in subsection 1 of CAO 82.6 before it was amended on 1 September 2014; and
- who is specifically approved by CASA for the CAO amendment on or after 23 December 2016.

An NVG training provider was a pre-1 September 2014 training organisation approved by CASA to provide NVG initial training under the then version of CAO 82.6. The

31 August 2018 cut-off date is the same as that which applies to the various transitional provisions in Part 61.

The course of training must be designed to develop competency in a wide range of matters. In addition to competency in the actual techniques of NVIS incendiary dropping or NVIS fire mapping (as the case may be), and in communications and emergency requirements, competency must also be developed in assessing and planning for the risks of these operations at night, including risks arising from excessive light, inadvertent entry into I.M.C., turbulence, the fire environment created by weather, terrain and smoke, and fatigue.

The NVIS pilot must also have accumulated 1 000 hours of flight time as the pilot of a helicopter; 50 hours of aeronautical experience in the representative type or class of helicopter; 100 hours of flight time in helicopter fire operations, for example, fire bombing by day (but only for an SFE for incendiary dropping operations); 50 hours of aeronautical experience in certain helicopter night flight in V.M.C. conditions; 10 hours of aeronautical experience in certain night flight in V.M.C. conditions in the representative type or class of helicopter; 50 hours of post-NVIS qualification NVIS flight time; or less than 50 hours of flight time provided that the SFE is limited to NVIS operations as pilot in command under supervision (*PICUS*), co-pilot or dual pilot only.

Flight test

The NVIS pilot must be assessed as competent in the matters in which he or she has been trained, following a flight test. The flight test must be conducted by CASA, or by 1 of the following:

- an NVIS checking pilot of a TCO or a Part 142 operator, who is the holder of an NVIS flight examiner rating under Part 61 of CASR 1998, and who also holds an SFE; or
- the holder of an approval under regulation 61.040 of CASR 1998 to conduct flight tests for the issue of an NVIS rating and endorsement under Part 61 of CASR 1998, who also holds an SFE; or
- until not later than 31 August 2018 — an NVIS flight examiner of an old NVG training provider, who also holds an SFE.

The intention behind this provision is to ensure that a wide range of suitable flight testers is available.

No duplication

An NVIS pilot who has been issued with 1 kind of an SFE (that is for incendiary dropping only, or for fire mapping only) and who seeks the other kind of SFE, is not required to be retrained or reassessed for any particular matters that are common to both kinds of SFE.

Certificate of competency

If an NVIS pilot satisfies these requirements, then CASA, or the person who conducted the flight test, must give the NVIS pilot a signed certificate of competency showing which SFE he or she has qualified for based on the training completed and any limitation arising from hours of post-NVIS qualification NVIS flying experience.

The options are:

- (a) the special fire endorsement — incendiary dropping and fire mapping (with or without a limitation to PICUS, co-pilot or dual); and
- (b) the special fire endorsement — incendiary dropping only (with or without a limitation to PICUS, co-pilot or dual); and
- (c) the special fire endorsement — fire mapping only (with or without a limitation to PICUS, co-pilot or dual).

A special form of certificate is available on the CASA website for this purpose.

A limitation expressed in an SFE is deemed to have been cancelled as soon as the NVIS pilot completes the relevant 50 hours of post-NVIS qualification flight time.

Recognition of prior training and experience

An NVIS pilot will also qualify to be issued with an SFE if he or she has, first, prior training that CASA determines in writing is equivalent to the training mentioned in clause 16, and either equivalent flight testing (as determined by CASA), or such extensive experience in NVIS operations similar to those for which an SFE is required, as CASA determines in writing is equivalent to the flight test.

A note makes it clear that the hours of aeronautical experience mentioned above are also required.

The special form of certificate available on the CASA website also accommodates this option.

An NVIS operator must not permit an NVIS pilot to fly for the operator under an SFE unless the operator has examined the NVIS pilot's logbook endorsement, or obtained a copy of the pilot's signed certificate of competency.

For this purpose, before he or she commences operations for an NVIS operator, an NVIS pilot is required to give the NVIS operator a certified copy of the signed certificate of competency. The NVIS operator must retain the certificate for not less than 3 years for audit and similar purposes.

Competency – new subsection 4 – Amendment No. 7

The general requirements for NVIS operators to have a TCO or a Part 142 flight training organisation are modified to include an old NVG training provider as a substitute for either of these for maintaining NVIS pilot competency — a role performed by old NVG training providers pre-1 September 2014.

Operator's obligations – clause 17 in Appendix 3 – Amendment No. 9

An NVIS operator's general obligations for subsection 4 (that is, not specifically for the SFE) are further set out in clause 17 in relation to who is qualified to maintain NVIS pilot competency and proficiency.

Thus, competency must be maintained by the operator through:

- an NVIS training pilot of a TCO or a Part 142 operator, who is an NVIS flight instructor; or

- until not later than 31 August 2018 — an NVIS flight instructor of an old NVG training provider.

Proficiency checking must be conducted by:

- an NVIS checking pilot of a TCO or a Part 142 operator, who is the holder of an NVIS flight examiner rating under Part 61 of CASR 1998; or
- the holder of an approval under regulation 61.040 of CASR 1998 to conduct the proficiency check; or
- until not later than 31 August 2018 — an NVIS flight examiner of an old NVG training provider.

(Subclause 17.3 merely repeats the previous subclause in relation to initial NVIS flight instruction.)

Recency — Amendment No. 11

The general minimum recent experience requirements for an NVIS pilot with an SFE, as mentioned earlier, are modified by deleting paragraphs 21.4 (b), (c), and (d). A new paragraph 21.4 (b) now requires that the minimum recent experience for an NVIS pilot with an SFE is, not only the recency of an NVIS pilot as such, but also completion of a clause 23 NVIS proficiency check for an SFE.

Proficiency check — Amendment No. 14

Under the substituted subclause 23.1, an NVIS proficiency check for an NVIS pilot as such must be conducted in accordance with the requirements of clause 21 and Part 61 of CASR 1998 by:

- an NVIS checking pilot of a TCO or a Part 142 operator, who is the holder of an NVIS flight examiner rating under Part 61 of CASR 1998; or
- the holder of an approval under regulation 61.040 of CASR 1998 to conduct the proficiency check; or
- until not later than 31 August 2018 — an NVIS flight examiner of an old NVG training provider.

The relevant proficiency check requirements of Part 61 of CASR 1998 may be found in regulation 61.1015 of CASR 1998, section 13 of the Part 61 Manual of Standards (*MOS*) and Appendix 3 of Schedule 6 of the Part 61 MOS. Clause 21 (which is not amended by the CAO amendment) applies regulation 61.1015 but in a way which, as an Air Operator's Certificate (*AOC*) condition on NVIS operators, increases the safety frequency of required proficiency checks depending on the degree of experience already acquired by the NVIS pilot.

Under the substituted subclause 23.1, an NVIS proficiency check for an NVIS pilot with an SFE must also be conducted in accordance with subclause 23.1 by a person qualified as for the check for an NVIS pilot as such, but who also holds an SFE. The check must also require the NVIS pilot to demonstrate the competencies mentioned above in relation to the training course for incendiary dropping operations or for fire mapping operations, as the case may be.

Other amendments

A HLS is a helicopter landing site and HLS have varying characteristics. Amendment Nos. 3 and 4 modify the definitions of a ***HLS-NVIS standard***, an ***NVIS basic HLS*** to update these definitions to take account of Civil Aviation Advisory Publication (***CAAP***) 92-2(2), which replaced the CAAP previously referred to (CAAP 92-2(1)).

Amendment No. 2 modifies the definition of ***aerial fire fighting*** to take account of CAAP 92-2(2).

Amendment No. 1 is a shorthand definition for the purposes of Amendments Nos. 2, 3 and 4. However, it adds a new element to the operation of the previously mentioned definitions by extending the definition of certain HLS to include not only those which comply with CAAP 92-2(2), but those for which an NVIS operator's risk assessment establishes equivalent safety to that which would otherwise be produced by conformity with CAAP 92-2(2).

Amendment Nos. 1 to 4 have the effect of defining certain HLS in terms of their conformity to CAAP 92-2(2), thereby incorporating the relevant aspects of that CAAP. Although the CAAP is not a legislative instrument, this process of incorporation is permitted under subsection 98 (5D) of the Act which provides that, despite section 14 of the *Legislation Act 2003*, a legislative instrument made under the Civil Aviation Act or the regulations (which includes the CAO amendment) may apply, adopt or incorporate any matter contained in *any instrument or other writing* as in force or existing at a particular time, or as in force or existing from time to time, even if the other instrument or writing does not yet exist when the legislative instrument is made.

Copies of CAAP 92-2(2) may be accessed from the CASA website.

Amendment Nos. 6, 10, 12 and 13 are consequential, typographical or corrective.

Legislation Act 2003 (the LA 2003)

The CAO amendment is a legislative instrument under various requirements, as set out in Appendix 2.

Consultation

Consultation under section 17 of the LA 2003 was undertaken as follows. Details of the proposed CAO amendment were posted on the CASA website on 9 December 2016 and comments invited from the public and the aviation industry with a closing date of 19 December 2016. As noted above, a longer consultation period was not feasible in the circumstances. A number of individual NVIS operators involved in NVIS fire fighting in the past were also directly contacted for comment. Some 7 responses were received. All comments received were considered in preparation of the final CAO amendment.

In response to comments received, various queries about the proposed CAO amendment were answered, clarifications about its operation were given and misunderstandings were resolved.

A number of modifications were made to the draft CAO amendment arising from, and in response to, comments, in particular:

- to update definitions of certain HLS
- to broaden the nature of certain kinds of night flight that would constitute relevant aeronautical experience to qualify for the SFE
- to adjust the operator obligation to obtain the NVIS pilot certificate of competency before allowing SFE-related operations
- to clarify NVIS proficiency check obligations.

Office of Best Practice Regulation (OBPR)

OBPR assessed the impacts of the proposed changes and determined that a Regulation Impact Statement was not required (OBPR id: 21601).

Statement of Compatibility with Human Rights

The Statement in Appendix 3 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. To the extent that the legislative instrument may directly engage any of the applicable rights or freedoms, for example, the right to freedom of movement or the right to work, the limitation to human rights is reasonable, necessary and proportionate to protect aviation safety.

Commencement and making

The CAO amendment comes into effect on 23 December 2016. It has been made by the Acting Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the *Civil Aviation Act 1988* (the *Act*).

[*Civil Aviation Order 82.6 Amendment Instrument 2016 (No. 1)*]

Appendix 1

Legislation

A wide range of statutory powers was required to make CAO 82.6 and these are invoked for the CAO amendment as follows.

Under section 27 of the Act, CASA may issue AOCs for its functions. Under subsections 27 (2) and (9) of the Act, an aircraft operator must hold an AOC in order to operate for certain prescribed purposes. Paragraph 206 (1) (a) of CAR 1988 prescribes aerial work purposes of various kinds, including aerial spotting, flying training, ambulance functions, and purposes that are *substantially similar* to these. Substantially similar purposes are generally taken to include search and rescue, law enforcement, aerial fire fighting and marine pilot transfers.

Under paragraph 28BA (1) (b) of the Act, an AOC has effect subject to any conditions specified in the regulations or the CAOs.

Under subsection 98 (4A) of the Act, CASA may issue CAOs, not inconsistent with the Act, in respect to any matter in relation to which regulations may be made for the purposes of section 28BA of the Act (conditions on AOCs).

Under subregulation 5 (1) of CAR 1988, where CASA is empowered to issue certain instruments, it may do so in a CAO.

Under subregulation 157 (1) of CAR 1988, the pilot in command of an aircraft must not fly over a city, town or populous area at a height lower than 1 000 feet, or over any area at a height lower than 500 feet.

Under subregulation 174B (1) of CAR 1988, except for take-off and landing, the pilot in command of an aircraft must not fly it at night under the visual flight rules (V.F.R.) at a height of less than 1 000 feet above the highest obstacle within 10 miles.

Under subregulation 195 (1) of CAR 1988, at night and in conditions of poor visibility, the operator and pilot in command of an aircraft must comply with the rules in Part 13 of CAR 1988 about the lights to be displayed for the aircraft.

Under subregulation 207 (2) of CAR 1988, a person must not use an Australian aircraft in a class of operation if the aircraft is not fitted with the instruments and equipment approved and directed by CASA. In approving or directing, CASA may have regard only to the safety of air navigation.

Under subregulation 215 (3) of CAR 1988, CASA may give directions requiring an operator to include, revise or vary information, procedures or instructions in the operations manual (operating procedures).

Under subregulations 217 (1) and (3) of CAR 1988, CASA may specify operators who must provide an approved TCO to ensure that members of the operator's operating crews maintain their competency.

Under subregulation 249 (1) of CAR 1988, the pilot in command of an aircraft must not practice emergency procedures or fly low when carrying a passenger.

Under subregulation 11.160 (1) of CAR 1988, CASA may grant an exemption from compliance with provisions of CAR 1988 and CASR 1998.

In essence, CAO 82.6 operates as a set of conditions imposed on relevant AOC holders who wish to use NVIS.

Why the CAO is a legislative instrument

Paragraph 28BA (1) (b) of the Act provides that an AOC has effect subject to any conditions “specified in the [regulations or] Civil Aviation Orders”. By so providing, paragraph 28BA (1) (b) of the Act is considered to be a separate head of power for the making of relevant CAOs. The CAO imposes conditions on AOCs to which it applies. For subsection 8 (4) of the LA 2003 (Definition of legislative instrument), such a CAO would appear to be of a legislative, “law determining” character and is, therefore, a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under sections 15G, and 38 and 42, of the LA 2003.

Under paragraph 28BA (1) (b) of the Act, an AOC has effect subject to any conditions “specified in the regulations [or Civil Aviation Orders]”. Subsection 98 (4A) of the Act provides that CASA may issue CAOs with respect to any matter in relation to which regulations may be made for the purposes of section 28BA. The CAO imposes conditions on AOCs to which it applies. Under subsection 98 (4B) of the Act, a CAO issued under subsection 98 (4A) is stated to be a legislative instrument and is, therefore, subject to registration, and tabling and disallowance in the Parliament, under sections 15G, and 38 and 42, of the LA 2003.

Statement of Compatibility with Human Rights

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

Civil Aviation Order 82.6 Amendment Instrument 2016 (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 purpose of *Civil Aviation Order 82.6 Amendment Instrument 2016 (No. 1)* (the **CAO amendment**) is to amend *Civil Aviation Order 82.6 (CAO 82.6)* to clarify, for the approaching 2016-17 fire season, the legislative arrangements for training, testing and proficiency checking for a special fire endorsement (an **SFE**). An SFE is an endorsement for a night vision imaging system (**NVIS**) pilot to conduct fire fighting operations in the form of incendiary dropping and fire mapping. The CAO amendment is to clarify the SFE requirements for the approaching fire season only while a broader review of the requirements in CAO 82.6 continues.

Human rights implications

The legislative instrument may indirectly engage the right to freedom of movement under the *International Covenant on Civil and Political Rights*, and the right to work under the *International Covenant on Economic, Social and Cultural Rights* by placing restrictions on certain NVIS operations unless particular aviation qualification and safety requirements are met.

However, these rights are more directly engaged by the primary requirements of the *Civil Aviation Act 1988*, the *Civil Aviation Safety Regulations 1998*, and the *Civil Aviation Regulations 1988* with respect to which the CAO amendment is made and which are designed for aviation safety and conformity with the standards of the *International Civil Aviation Organization* under the *Convention on International Civil Aviation* (the Chicago Convention).

Thus, the right to freedom of movement and employment is engaged in a way that is balanced by the objectives of achieving and improving aviation safety.

The instrument is otherwise 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*. The instrument does not otherwise engage any of the applicable rights or freedoms.

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.

Civil Aviation Safety Authority