

Explanatory Statement

Civil Aviation Safety Regulations 1998

Prescription of aircraft and ratings — CASR Part 61 (Edition 3)

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.

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.

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)*, 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.

Purpose

Prescription of aircraft and ratings — CASR Part 61 (Edition 3) (the **instrument**) prescribes the variants, differences training requirements, flight review requirements and type ratings for specified aircraft types for the purpose of relevant provisions in Part 61 of CASR. It also prescribes the flight training and flight review requirements for the exercise of the privileges of specified class ratings.

Fundamental concepts in the operation of Part 61 of CASR

The rationale behind Part 61 of CASR 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. Thus, undertaking training and being assessed to operate 1 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 1 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 is 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.

Nevertheless, some aircraft that are designated as type-rated aircraft are sufficiently similar in their characteristics to other aircraft covered by the class rating as to warrant recognition of ongoing competency checks (flight reviews) done in the type-rated aircraft for the purposes of the class rating flight review.

There will be aircraft that 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. 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 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 of CASR, for paragraph 98 (5A) (a) of the Act, CASA may, by legislative instrument, prescribe aeroplanes that are included in the single-engine aeroplane class. Regulation 61.020 (2) of CASR includes multi-engine centre-line thrust aeroplanes as types of aeroplanes that are covered by a single-engine class. In addition, the definition of a *multi-engine aeroplane* under regulation 61.010 of CASR excludes a multi-engine centre-line thrust aeroplane. A person operating such an aeroplane under the authority of a single-engine aeroplane class rating is also required to hold a multi-engine centre-line thrust design feature endorsement under subregulation 61.380 (2) of CASR.

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 in their performance and handling characteristics that they can be safely flown under the authority of a single-engine aeroplane class rating.

CASA has reserved its prescription of multi-engine aeroplanes that are to be included in the single-engine aeroplane class because no relevant aircraft have 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) of CASR, 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 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) of CASR, 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 1 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 competency checking. These aircraft are sufficiently complex, or their performance or handling characteristics are such, that additional training of the pilots is warranted to enable them to pilot these aircraft safely.

Aircraft types can have variants within each type, 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 is warranted to enable them to pilot variants of the original aircraft type. However, there will be variants that are sufficiently similar that additional training and competency checking is not warranted, and completing a proficiency check or a flight review in 1 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) of CASR, 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;
- (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;
- (c) the type ratings for which the flight review requirements may be met by completion of a single flight review;
- (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) of CASR, 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 may be operated by 1 pilot and require initial and ongoing type-specific training and competency checking. These aircraft are sufficiently complex, or their performance or handling characteristics are such, that additional training of the pilots is warranted to enable them to pilot these aircraft safely.

Aircraft types can have variants within each type, 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 is warranted to enable them to pilot these variants of the original aircraft type.

In other cases, variants are sufficiently similar that additional training and competency checking is not warranted, and completing a proficiency check or a flight review in 1 variant meets the proficiency check or flight review requirements applicable to the other variants of that type.

Civil Aviation Legislation Amendment (Flight Crew Licensing) Regulation 2013

The *Civil Aviation Legislation Amendment (Flight Crew Licensing) Regulation 2013* was made under section 98 of the Act to amend Part 61 of CASR to include regulations 61.061, 61.062 and 61.063. The instrument gives effect to CASA's powers under regulations 61.061, 61.062 and 61.063 by prescribing aircraft for the purposes mentioned within those regulations.

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

Under regulation 61.061 of CASR, for paragraph 98 (5A) (a) of the Act, CASA may, by instrument, prescribe types of aircraft for which the conduct of a flight review or instrument proficiency check 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 competency checking requirements that must be satisfied before pilots are authorised to fly these types of aircraft. However, conducting 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.

CASA has prescribed types of multi-engine aeroplanes for this purpose, while reserving its prescription of types of single-engine helicopters on this matter.

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

Under regulation 61.062 of CASR, for paragraph 98 (5A) (a) of the Act, CASA may, by 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 competency 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 of CASR, for paragraph 98 (5A) (a) of the Act, CASA may, by 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, conducting a flight review in such an aircraft is regarded as acceptable for the purposes of the other listed single-engine helicopter types.

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 variants, differences training requirements, flight review requirements and type ratings for specified aircraft types. It also prescribes flight training and flight review requirements for class ratings.

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.

The instrument repeals and replaces instrument *Prescription of aircraft and ratings — CASR Part 61 (Edition 2) (Edition 2)* in accordance with subsection 33 (3) of the *Acts Interpretation Act 1901*.

Changes from Edition 2

The instrument incorporates and makes changes to Schedule 2 of Edition 2, which prescribes the type ratings, variants and differences training required for multi-crew aeroplanes.

Sections 24, 25 and 26 of the legislative instrument refer to flight training and flight review requirements for certain types of aircraft that are listed in Schedules 12, 13 and 14. The listing of the aircraft in cells is critical to the intention that pilots complete the

training on the type or in 1 of the other aircraft mentioned in the cell. The drafting of these sections has been changed to clarify this intention.

In addition, the King Air 90 series aircraft and King Air 200/250 series aircraft have been moved into separate cells of Schedule 13 to make it clear that a pilot wanting to fly the King Air 90 must complete type-specific training and a flight review in that aircraft type and model, even if the pilot had already qualified to fly the King Air 200 or 250.

In anticipation of the possibility of these aircraft being added to the Australian Civil Aircraft Register (the **Register**), the following new aircraft types have been added to the schedules: Boeing 737-8 (Max 8), Amphibian Aircraft Technologies G-111, Airbus Helicopters EC135 T3H and EC 135 P3H, Airbus Helicopters BK117 D-2 (H145), Cirrus SF-50, Bell Helicopters Bell 505.

Except for the Cirrus SF-50, which is a single-pilot aeroplane, type ratings have been prescribed for the newly-added aircraft types.

In accordance with subregulation 61.060 (2), CASA is satisfied a type rating is not required for the SF-50. This is based on CASA's assessment that the SF-50 has a relatively simple design and its performance is comparable to or less than the performance of a number of turbo-prop aircraft that are not prescribed with type ratings and are included in the single-engine aeroplane class rating. Accordingly, CASA has not prescribed a type rating for the SF-50. The aircraft has instead been prescribed under regulation 61.062 on the basis that its systems, performance and handling characteristics are more complex than those of a basic aircraft of the single-engine aeroplane class rating (design feature endorsements are separately required). This approach is consistent with other aircraft covered by a class rating that require the type-specific training and flight review.

For consistency in Schedule 2, the different series of several aircraft types have been added for the B757, 767, 777 and 787 types. The arrangement of the cells to indicate when differences training is required has also been updated for several Boeing aircraft types.

A number of schedules have been rearranged to reflect changes to the entity holding the type certificate of prescribed aircraft types. Most notably, the type certificates for aircraft types made by the Cessna Aircraft Company are now held by Textron Aviation Inc, which is reflected in changes to Schedules 2, 6 and 12.

There are no Syberjet SJ30 or Bombardier Challenger 300 (BD 100) type aircraft on the Register and so these types are being omitted from the legislative instrument.

The instrument also reflects minor editorial drafting changes.

Legislation Act 2003 (the LA)

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.

Under regulation 61.055 of CASR, CASA's prescription of type ratings and aircraft model variants for multi-crew aircraft is made by legislative instrument. Similarly,

under regulation 61.060 of CASR, CASA's prescription of aircraft types that require a single-pilot type rating, and the prescription of the type ratings that may be granted for single-pilot operation, is made by legislative instrument.

The various prescriptions made by the instrument apply to classes of persons and aircraft. The instrument also prescribes type ratings and aircraft model variants for multi-crew aircraft and single-pilot aircraft under regulations 61.055 and 61.060 of CASR. Therefore, the instrument is a legislative instrument, and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

CASA's consultation for the matters prescribed in this 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. This consultation process was set out in the Explanatory Statement for the amendment regulation (F2016L01509 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 this instrument was derived from, and replaces, Edition 2. Edition 2 was in turn derived from Edition 1 of the instrument and Civil Aviation Order 40.1.0 and Civil Aviation Order 40.0 (the *CAOs*), with modifications to accommodate the new aircraft class ratings. The 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. During the development of this instrument, CASA has consulted with relevant sectors of the industry on the changes to the grouping and or reclassification of aircraft variants within the type ratings. Some of the changes made in this instrument are to clarify the intention of Edition 2, while others are to consolidate aircraft with similar characteristics and reduce the formal training burden associated with these aircraft.

As the need to make amendments arises, the instrument will itself be repealed and reissued with newer editions to reflect those changes. Having regard to these circumstances, it is CASA's view that it is not necessary or appropriate to undertake any further consultation under section 17 of the LA.

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 made by a delegate of CASA, relying on the power of delegation under subregulation 11.260 (1) of CASR.

The instrument commences on the day of registration.

[Prescription of aircraft and ratings — CASR Part 61 (Edition 3)]

Statement of Compatibility with Human Rights

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

Prescription of aircraft and ratings — CASR Part 61 (Edition 3)

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