

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### Prescription of Type Ratings Excluded from CASR Part 142 Flight Training (Edition 6) Instrument 2018

##### Purpose

*Prescription of Type Ratings Excluded from CASR Part 142 Flight Training (Edition 6) Instrument 2018* (the **instrument**) prescribes type ratings for the purpose of relevant provisions in Part 142 of the *Civil Aviation Safety Regulation 1998 (CASR)*. The instrument repeals and replaces instrument *Prescription — type ratings for CASR Part 142 flight training (Edition 5)* (referred to in this Explanatory Statement as **Edition 5**).

##### 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.

Part 141 of CASR contains regulations for recreational, private and commercial pilot flight training, other than certain integrated training courses. Such Part 141 flight training may be carried out by a Part 141 operator, that is, a person who holds a Part 141 certificate.

Part 142 of CASR contains regulations for integrated and multi-crew pilot flight training, training for the grant of a type rating, contracted recurrent training and contracted checking. Such training and checking may only be carried out by a Part 142 operator, that is, a person holding a Part 142 authorisation. For training and checking that is carried out in an aircraft, the form of the Part 142 authorisation is an air operator's certificate (**AOC**).

The rationale behind Parts 141 and 142 of CASR is that flight training may be authorised to be conducted for a particular aircraft type rating only if the flight training operator has a course of training together with sufficient systems and personnel in place to safely and effectively manage flight training for the types of aircraft, including their variant models.

Within the range of available aircraft types, some can be grouped together and treated in a common way under Part 61 of CASR, which sets out the licensing scheme for pilots and flight engineers of registered aircraft. The groups of aircraft are known as class ratings. Thus, training 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.

However, many types of aircraft are sufficiently complex or different from other types as to warrant type specific training to be required to fly these aircraft. These aircraft are identified as type-rated aircraft.

In some cases, aircraft types can have *more than 1 model* and the characteristics of the models can differ, for example, in such areas as operating systems, size, performance or handling. In some cases, the differences between the models are such that additional training (***differences training***) of the pilots is warranted to enable them to fly another variant of the aircraft type the pilot has been trained to operate.

The regulations ordinarily require flight training for the grant of a type rating, and type rating differences training, to be conducted by a CASR Part 142 operator. In some cases for the less complex type ratings, this training can be done adequately by the holder of a Part 141 certificate. In other words, the training would not require the additional organisational systems and processes that are required under Part 142. The regulations make provision for prescribing these aircraft in an instrument that can be made by CASA under regulation 142.045 of CASR.

#### *Parts 141 and 142 of CASR*

Under paragraph 142.045 (a) of CASR, for paragraph 98 (5A) (a) of the Act, CASA may issue a legislative instrument to prescribe type ratings for certain elements of the definition of ***Part 142 flight training***.

Paragraph 142.015 (2) (d) of CASR provides that ***Part 142 flight training*** is defined as including *training* for the grant of a CASR Part 61 type rating that **is not** prescribed in a legislative instrument under regulation 142.045.

Under subparagraph 142.015 (2) (g) (i) of CASR, ***Part 142 flight training*** is also defined as *differences training* required under regulation 61.780, 61.835 or 61.1370 of CASR for a variant covered by a type rating that **is not** prescribed in a legislative instrument under regulation 142.045.

Under paragraph 141.015 (1) (d) of CASR, ***Part 141 flight training*** is defined as including *training* for the grant under Part 61 of a type rating that **is** prescribed in a legislative instrument under regulation 142.045.

Subparagraph 141.015 (1) (g) (i) of CASR further provides that ***Part 141 flight training*** is defined as including *differences training* required under regulation 61.780 or 61.835 of CASR for a variant covered by a type rating that **is** prescribed in a legislative instrument under regulation 142.045.

#### *Part 61 of CASR*

Regulation 61.780 of CASR requires the holder of a pilot type rating in an aircraft with variants to undertake differences training for other variants if the variants are prescribed, and differences training for them is required, under a legislative instrument made under regulation 61.055 or 61.060 of CASR.

Regulation 61.835 of CASR authorises the holder of a cruise relief co-pilot type rating to act as co-pilot in an aircraft (in certain defined circumstances). Again, in particular defined circumstances, including passing a flight test in the aircraft model covered by the rating (the “first variant”), if differences training is required and completed for another aircraft model covered by the rating (the “second variant”), the holder may exercise the privileges in that second variant.

Under regulation 61.1370 of CASR, the holder of a flight engineer type rating in an aircraft, who passed a flight test for the rating in an aircraft model (the “first variant”), may exercise the privileges of the rating in another aircraft model (the “second variant”) covered by the rating if all required differences training has been completed.

### **Background**

CASA has decided that, as a general rule, flight training for the grant of all single-pilot type ratings, and differences training for those type ratings, should be conducted by a Part 141 operator. There is to be an exception to that general rule for type ratings for certain aircraft that have unique characteristics that warrant the flight training being conducted by a Part 142 operator.

### **Instrument**

The instrument prescribes type ratings for the purposes of Part 142 of CASR. The effect of the instrument is that training in the relevant aircraft (and differences training for the relevant aircraft) is defined as Part 141 flight training, instead of Part 142 flight training. The main purpose of this amendment is to include additional single-pilot aeroplane and helicopter type ratings to the prescribed list.

#### *Part 1 of Schedule 1 — aeroplanes*

The instrument repeals and replaces Edition 5 in order to prescribe 6 new aeroplane type ratings (EA500(SP), PHENOM(SP), PC-24, RA390(SP), C510(SP) and C500/550/560(SP)) in Part 1 of Schedule 1.

Changes to the list in Part 1 of Schedule 1 have also been made to reflect that various type certificates that were previously held by Beechcraft Corporation, Hawker Beechcraft, Raytheon Aircraft and Cessna are now held by Textron Aviation Inc.

The C525C-CJ3+ variant has also been added to the C525(SP) type rating in anticipation of an aircraft of that variant being added to the Australian Civil Aircraft Register.

#### *Part 2 of Schedule 1 — helicopters*

The instrument also prescribes 9 new helicopter type ratings (BH212/412, EC135, AS365/EC155, BH214, BH222/430, BH427, BH429, MD900 and SK76(SP)) in Part 2 of Schedule 1. Also, 4 new variants (A109 E, A109 K2, A109 S and A109 SP) have been added for the A109 type rating and 2 new variants (BK117 C-2 (EC145 models) and BK117 D-2 (H145 models)) have been added for the BK117/EC145 type rating.

The instrument also makes a minor change to the references to BO105 model aircraft to confirm that the prescription of the type rating for these aircraft under this instrument applies to all BO105 models.

A separate instrument (CASA 40/18) is being made under regulation 141.035 of CASR to provide a transitional approval for persons authorised to conduct flight training under Part 142 of CASR so that they can continue to conduct training that they were previously authorised to conduct for the type ratings and variants that are newly prescribed by this instrument. That instrument will commence on the same day as this instrument and will be published on the CASA website ([www.casa.gov.au](http://www.casa.gov.au)).

### **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.

In addition, subsection 8 (2) of the LA provides that if a primary law gives power to do something by legislative instrument, that thing must be done by instrument, and the instrument so made is a legislative instrument. Regulation 142.045 of CASR provides that CASA's prescription of type ratings for paragraph (d) and subparagraph (g) (i) of the definition of **Part 142 flight training** in subregulation 142.015 (2) is made by legislative instrument.

The various prescriptions made by the instrument apply to classes of aircraft. The instrument also prescribes type ratings for paragraph (d) and subparagraph (g) (i) of the definition of **Part 142 flight training** in subregulation 142.015 (2) 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**

Discussions with the aviation industry on assigning certain type ratings to Part 141 flight training has been ongoing since the commencement of Parts 61, 141 and 142 of CASR in 2014. On 1 February 2018, CASA met with the Australian Helicopter Industry Association (the **AHIA**). The AHIA advised CASA of its support for the proposal to prescribe single-pilot helicopter type ratings and suggested a small number of such aircraft for which flight training should continue to be conducted by a Part 142 operator. Correspondence between CASA and the AHIA has confirmed the outcome of the meeting and subsequent discussions.

The instrument benefits the aviation industry because the reduced number of aircraft covered by type ratings for which training by a Part 142 operator is required has the effect of reducing compliance costs.

Appropriate approvals will be provided without cost to affected Part 142 operators so that they can continue their currently authorised operations.

Having regard to these circumstances, it is CASA's view that it is not reasonably practicable 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 the legislative instrument. This RIS was assessed as adequate by OBPR (OBPR ID: 2777) and applies for the purpose of the legislative instrument. The legislative instrument has been assessed by CASA as generally benefitting the aviation industry because the reduced number of aircraft covered by type ratings for which training by a Part 142 operator is required 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 and freedoms and is compatible with human rights. 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 after it is registered.

## Statement of Compatibility with Human Rights

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

### Prescription of Type Ratings Excluded from CASR Part 142 Flight Training (Edition 6) Instrument 2018

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 *Prescription of Type Ratings Excluded from CASR Part 142 Flight Training (Edition 6) Instrument 2018* (the **instrument**) is a legislative instrument that prescribes type ratings for the purpose of relevant provisions in Part 142 of the *Civil Aviation Safety Regulations 1998*. The instrument, thereby, determines whether a Part 141 operator, rather than a Part 142 operator, may deliver flight training for the prescribed type ratings. Part 142 operators are required to have more sophisticated systems for managing their operations than Part 141 operators.

The instrument repeals and replaces *Prescription — type ratings for CASR Part 142 flight training (Edition 5)* to add various single-pilot certificated aircraft, thus allowing flight training for those aircraft to be conducted by a Part 141 operator, rather than a Part 142 operator.

The instrument is, therefore, essentially a machinery instrument whose 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 and the International Covenant on Economic, Social and Cultural Rights are engaged for Part 141 flight training organisations, since they cannot provide relevant flight training for aircraft types that are not prescribed. However, such differential treatment arises from the requirements of aviation safety for the particular types of specialised aircraft involved.

#### 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**