

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA 13/19 – Civil Aviation (Community Service Flights – Conditions on Flight Crew Licences) Amendment Instrument 2019

Purpose

To expand the scope of *CASA 09/19 — Civil Aviation (Community Service Flights — Conditions on Flight Crew Licences) Instrument 2019* (the **community service flights instrument**) to allow helicopters to be used to conduct a community service flight.

The Civil Aviation Safety Authority (**CASA**) has previously assessed that community service flight operations, described in section 6 of the community service flights instrument, have a higher risk of an accident or incident due to the existence of risk factors that are not usually present in baseline private operations. The community service flights instrument mitigates this risk by placing conditions on flight crew licence holders conducting such operations that relate to requirements on the pilot (licence requirements, aeronautical experience, recency and medical fitness), operational and notification requirements, and aircraft maintenance requirements.

The amendments expand the scheme to helicopters. This follows industry and community feedback, received after the consultation process conducted for the community service flights instrument, about the benefits of extending the operation of the instrument to helicopters. The expansion of the scope of aircraft that can be used for a community service flight to include helicopters will allow a greater number of qualified persons to volunteer their aircraft, time and skills to the community service flights sector. The instrument does not affect the operation of the community service flights instrument other than to expand the scheme to helicopters.

Legislation

Section 98 of the *Civil Aviation Act 1988* (the **Act**) empowers the Governor-General to make regulations for the Act and in the interests of the safety of air navigation. Relevantly, the Governor-General has made the *Civil Aviation Safety Regulations 1998* (**CASR**) and *Civil Aviation Regulations 1988* (**CAR**).

Regulation 11.068 of CASR allows CASA, for subsection 98 (5A) of the Act, to issue a legislative instrument that imposes a condition relating to a matter mentioned in that subsection on a specified class of authorisations. Authorisations include flight crew licences, ratings and endorsements.

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.

Background

This instrument amends the community service flights instrument, which was made on 12 February 2019 and registered on the Federal Register of Legislation on 14 February 2019.

Overview of instrument

This instrument makes the amendments necessary for a helicopter pilot to be able to conduct a community service flight in a helicopter, consistent with any applicable conditions set out in the community service flights instrument.

The detail of the instrument is set out below.

Content of instrument

Section 1

This section provides the citation of the instrument as *CASA 13/19 – Civil Aviation (Community Service Flights – Conditions on Flight Crew Licences) Amendment Instrument 2019*.

Section 2

This section provides for the instrument to commence on the day after it is registered.

The community service flights instrument commenced on 19 March 2019, and will be repealed 3 years after its commencement.

Section 3

This section provides that the community service flights instrument is amended as set out in Schedule 1.

Schedule 1

Schedule 1 sets out the amendments.

Item 1

This item amends paragraph 7 (1) (b) to alter the requirement that a community service flight must only be conducted in an aeroplane. The amendment will allow that a community service flight may be conducted in a helicopter.

Items 2 and 3

These amendments replace references in sections 7, 8, 9 and 10 of the community service flights instrument to “aeroplane” with references to “aircraft”. Although the relevant conditions in sections 7, 8, 9 and 10 will refer more generally to “aircraft”, the kinds of aircraft that a licence holder is able to use for a community service flight are limited by the condition in paragraph 7 (1) (b), which now covers both aeroplanes and helicopters.

The condition in paragraph 9 (1) (d) (requiring 25 hours of flight time in a multi-engine aeroplane) is not amended as part of this exercise. The multi-engine experience requirements are designed to ameliorate the likelihood of a multi-engine aeroplane experiencing a loss of control during asymmetric conditions, combined with an ability for pilots to operate different multi-engine aeroplanes under the multi-engine aeroplane class rating. As there is no multi-engine class rating for helicopters it is more relevant, in terms of safety assurance, for helicopter pilots to have experience on a helicopter of the same type due to the specificity and/or complexity of the aircraft’s systems. As such, the experience required under the conditions described in paragraphs 9 (1) (b) and (c) is the more relevant experience for helicopter pilots.

The condition in section 11 is also not amended as part of this exercise. This condition applies in respect of an election made under regulation 42B of the *Civil Aviation Regulations 1988* to use the CASA maintenance schedule for the aircraft's maintenance. Under its terms, regulation 42B applies only to aeroplanes.

Legislation Act 2003 (the LA)

Under subsection 8 (2) of the LA, if a primary law (such as a regulation made under an Act) gives power to do something by legislative instrument, then, if the thing is done, it must be done by instrument and that instrument is a legislative instrument. This instrument is made under regulation 11.068 of CASR, which provides that CASA may issue a legislative instrument that imposes a condition relating to a matter mentioned in subsection 98 (5A) of the Act on a specified class of authorisations.

The instrument is, therefore, a legislative instrument subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

CASA is satisfied that no consultation is appropriate or necessary for this instrument for section 17 of the LA. The community service flights instrument that it amends underwent formal consultation from 18 December 2018 through to 31 January 2019. CASA had made significant modifications to the consultation draft of the community service flights instrument following the consultation. A Summary of Consultation document regarding that consultation has been published by CASA and can be found at the CASA website: <https://www.casa.gov.au>. The legislative instrument reflects further comments received on the community service flights instrument after the latter instrument was made.

Office of Best Practice Regulation (OBPR)

The OBPR assessed that a Regulation Impact Statement was not required for the conditions applying to community service flights (OBPR ID: 24818) in the instrument that this instrument amends.

Statement of Compatibility with Human Rights

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. The community service flights instrument will be repealed at the end of 18 March 2022.

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

The instrument expands the scope of *CASA 09/19 – Civil Aviation (Community Service Flights – Conditions on Flight Crew Licences) Instrument 2019* (the **community service flights instrument**) to allow helicopters to be used to conduct a community service flight.

The Civil Aviation Safety Authority (**CASA**) has previously assessed that community service flight operations, described in section 6 of the community service flights instrument, have a higher risk of an accident or incident due to the existence of risk factors that are not usually present in baseline private operations. The community service flights instrument mitigates this risk by placing conditions on flight crew licence holders conducting such operations that relate to requirements on the pilot (licence requirements, aeronautical experience, recency of experience and medical fitness), operational and notification requirements, and aircraft maintenance requirements.

The conditions introduced safety measures in relation to those requirements. Among other things, a pilot of a community service flight is required to submit a flight notification to Airservices Australia (**AA**). Because this amendment instrument expands the scope of the scheme to include helicopters, this requirement will now extend to helicopter pilots.

As mentioned, the amendments expand the scheme to helicopters. This follows industry and community feedback, received after the consultation process conducted for the community service flights instrument, about the benefits of extending the operation of the instrument to helicopters. The expansion of the scope of aircraft that can be used for a community service flight to include helicopters will allow a greater number of qualified persons to volunteer their aircraft, time and skills to the community service flights sector.

Human rights implications

The instrument engages the right to protection against arbitrary and unlawful interference with privacy in Article 17 of the International Covenant on Civil and Political Rights (**ICCPR**).

Right to protection against arbitrary and unlawful interference with privacy

Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, or to unlawful attacks on honour and reputation. It further provides that everyone has the right to the protection of the law against such interference or attacks.

The effect of the amendments to section 10 is that the holder of a flight crew licence who operates a helicopter for a community service flight must submit a flight notification that identifies the flight as a community service flight. A flight notification involves the provision to AA of the name of the pilot. Flight notification information is required for safety regulatory purposes so that the pilot of the helicopter can be identified if necessary. Flight notification information is also used for search and rescue and recovery operations in the event of an incident, and to investigate incidents.

Reasonableness, necessity and proportionality

The requirement to submit a flight notification involves activities of 1 or more of the collecting, recording and storing of personal information. This is reasonable as it relates to data and information that is required to promote the safety of persons on a community service flight for search and rescue purposes in the event of an incident. The flight notification requirement also upholds the integrity of the safety regulatory scheme that protects the individuals on a flight by ensuring that information is available about who is performing activities affecting safety and demonstrating that they are appropriately authorised.

There are no other sources of the information available that will adequately and efficiently serve the regulatory purposes.

The requirements are also proportionate as they operate to ensure the fulfilment of safety objectives which are required to ensure the protection and safety of the individuals on the flight, and seek only the minimum information to identify persons with safety-related responsibilities.

The protections afforded by the *Privacy Act 1988* continue to apply.

To the extent that the instrument limits the privacy-related rights in Article 17 of the ICCPR, those limitations are reasonable, necessary and proportionate for safety purposes, consistent with the objects of the Act.

Conclusion

This legislative instrument is compatible with human rights and, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate to ensure the safety of aviation operations and to promote the integrity of the aviation safety system.

Civil Aviation Safety Authority