

EXPLANATORY STATEMENT

Issued by the authority of the Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development

Civil Aviation Legislation Amendment (Flight Operations – Fees and Other Consequential Amendments) Regulations 2021

The *Civil Aviation Act 1988* (the Act) establishes the regulatory framework for maintaining, enhancing and promoting the safety of civil aviation, with particular emphasis on preventing accidents and incidents.

Subsection 98(1) of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act. Subsection 98(1) also provides that the Governor-General may make regulations for the carrying out of, and giving effect to, the provisions of the *Convention on International Civil Aviation* relating to aviation safety, and in relation to the safety of air navigation, being regulations with respect to any other matters to which the Parliament has power to make laws. Subsection 98(1) further provides that the Governor General may make regulations prescribing fees in relation to services, applications or requests under the Act, regulations and Civil Aviation Orders.

The Act also confers on the Civil Aviation Safety Authority (CASA) the function of conducting the safety regulation of civil air operations for Australia by developing and promulgating appropriate, clear and concise aviation safety standards and issuing certificates, licences, registrations and permits.

Parts 91, 119, 121, 133, 135 and 138 of the CASR were made on 6 December 2018. Parts 103, 105 and 131 of CASR were made on 12 December 2019. Related amendments to the CASR Dictionary were made on 4 April 2019. Collectively these instruments comprise the Flight Operations Regulations (FOR). The FOR were amended by the *Civil Aviation Legislation Amendment (Flight Operations—Miscellaneous Amendments) Regulations 2020*. The FOR are legislated to commence on 2 December 2021.

The *Civil Aviation Legislation Amendment (Flight Operations – Fees and Other Consequential Amendments) Regulations 2021* (the Regulations) make consequential amendments to regulations, following on from amendments made to the *Civil Aviation Regulations 1988* (CAR) and *Civil Aviation Safety Regulations 1998* (CASR). The Regulations update the *Civil Aviation (Fees) Regulations 1995* (Fees Regulations) to align the fees for services provided by CASA with provisions of the CASR that are replacing provisions of the CAR. The amendments otherwise update legislative cross-references in the following Commonwealth regulations:

- *Air Navigation (Aircraft Noise) Regulations 2018*
- *Air Navigation (Essendon Fields Airport) Regulations 2018*
- *Air Navigation (Gold Coast Airport Curfew) Regulations 2018*
- *Air Services Regulations 2019*
- *Aviation Transport Security Regulations 2005*
- *Disability Discrimination Regulations 2019*

Related *Civil Aviation Legislation Amendment (Flight Operations – Consequential Amendments and Transitional Provisions) Regulations 2021* were made on 2 March 2021. The consequential amendments in those regulations are internal to the CAR and CASR. The consequential amendments in these Regulations make necessary consequential amendments to other Commonwealth regulations.

Consultation

The Department of Home Affairs was consulted on and supports the amendment to the *Aviation Transport Security Regulations 2005*. The Attorney General's Department was consulted on and supports the amendment to the *Disability Discrimination Regulations 2019*. The Australian Human Rights Commission was also consulted on the amendment to the *Disability Discrimination Regulations 2019*.

The policy document that underpins the transitional arrangements in the proposed instrument was publicly consulted in June 2020. 18 responses were received on the policy, in response to which CASA made appropriate changes. The amendments otherwise were not consulted as they are consequential and of a legal technical nature.

Regulation Impact Statement/Cost Recovery Implementation Statement

The Regulations update regulatory references in the Fees Regulations administered by CASA and update cross-references in other regulations administered by the Department of Infrastructure, Transport, Regional Development and Communications, the Department of Home Affairs and the Attorney-General's Department, all amendments being consequential to the FOR or FOR related. Regulation Impact Statements were prepared for the FOR (OBPR id: 23625, 24505 and 25643).

A new or amended Cost Recovery Implementation Statement (CRIS) is not being published in relation to the minor and consequential changes to the Fee Regulations. The changes to the Fees Regulations will be addressed, as appropriate, when any new CRIS is published based on Government decisions on future funding arrangements for CASA.

Incorporation by Reference

The Regulations apply, adopt or incorporate matters contained in the following instruments:

- *Civil Aviation Safety Regulations 1998 (CASR)*
 - by general references, in various Commonwealth regulations amended by the Regulations, to the CASR, in order to adopt definitions contained in the CASR
 - by references in the Fees Regulations to specific CASR provisions under which regulatory services are provided by CASA and for which a fee is prescribed under the Fees Regulations
 - by references in the *Disability Discrimination Regulations 2019* to specific CASR provisions, compliance with which is not an unlawful act of discrimination under the *Disability Discrimination Act 1992*;
- Part 131 (of CASR) Manual of Standards
 - by reference in the *Disability Discrimination Regulations 2019* to the Part 131 Manual of Standards made under regulation 131.405 of CASR, compliance with which is not an unlawful act of discrimination under the *Disability Discrimination Act 1992*.

The CASR and Part 131 Manual of Standards are legislative instruments. The CASR are freely available on the Federal Register of Legislation. The Part 131 Manual of Standards when made will also be freely available on the Federal Register of Legislation.

Criminal law issues

The Regulations do not raise any criminal law issues.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights for the Regulations is at Attachment A.

Commencement and making

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*. Details of the Regulations are set out at Attachment B.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised. The provisions of the Regulations commence as follows:

- Sections 1 to 4: the day after registration
- Schedule 1 Part 1 and Schedule 2 Part 1: the day after registration
- Schedule 1 Part 2 and Schedule 2 Part 2: 2 December 2021, to coincide with the commencement of the FOR.

Authority: Subsection 98(1) of the
Civil Aviation Act 1988
Subsection 26(1) of the
Air Navigation Act 1920
Subsection 77(1) of the
Air Services Act 1995
Subsection 133(1) of the
Aviation Transport Security Act 2004
Subsection 132(1) of the
Disability Discrimination Act 1992

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Civil Aviation Legislation Amendment (Flight Operations—Fees and Consequential Amendments) Regulations 2021

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 Disallowable Legislative Instrument

The instrument makes consequential amendments to regulations, following on from amendments made to the *Civil Aviation Regulations 1988 (CAR)* and *Civil Aviation Safety Regulations 1998 (CASR)*. The amendments update the *Civil Aviation (Fees) Regulations 1995* to align the fees for services provided by CASA with provisions of the CASR that are replacing provisions of the CAR. The amendments otherwise update legislative cross-references in several other Commonwealth regulations.

The instrument amends paragraph 6(1)(b) of the *Disability Discrimination Regulations 2019 (DDR)*, by repealing the reference to Civil Aviation Order 20.16.3 and replacing it with the relevant references to carriage of persons or passengers who require assistance due to sickness, injury or disability contained in regulations 121.270, 121.275, 133.225, 133.230, 135.265 and 135.270 of the *Civil Aviation Safety Regulations 1998 (CASR)*.

The instrument also inserts paragraph 6(1)(c) into the DDR, to refer to regulation 131.405 (Carriage of persons requiring assistance) of the CASR and the related Manual of Standards.

The purpose of these amendments is to prescribe these laws for the purposes of subsection 47(2) of the *Disability Discrimination Act 1992 (DDA)*. Subsection 47(2) of the DDA provides that acts done by a person in direct compliance with a prescribed law is not unlawful discrimination under Part 2 of the DDA.

Related to this, the instrument will make small but important amendments to regulations 121.275, 133.230 and 135.270 (carriage of passengers with reduced mobility) of the CASR to clarify that duties undertaken by aircraft crew under these Parts and in respect of which discrimination is not unlawful, are those duties which are “safety duties”, i.e. duties that relate to the safety of the aircraft and persons on board.

Human rights implications

The instrument engages the following rights:

- Right to equality and non-discrimination in Article 26 of the International Covenant on Civil and Political Rights (ICCPR) and Article 5 of the Convention on the Rights of Persons with Disabilities (CRPD);
- Right to an effective remedy in Article 2(3) of the ICCPR.

Right to equality and non-discrimination

Article 26 of the ICCPR and Article 5 of the CRPD provide that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Right to an effective remedy

Article 2(3) of the ICCPR provides that State Parties must ensure that any persons whose rights or freedoms are violated shall have an effective remedy and that a competent authority shall determine and enforce that remedy.

Civil Aviation Safety Regulations 1998

The *CASR Dictionary* defines a *suitable person* as:

a person is a suitable person to occupy an emergency exit row seat or a seat adjacent to an emergency exit if the person:

(a) is reasonably fit, strong, and able to assist with the rapid evacuation of the aircraft in an emergency; and

(b) would not, because of a condition or disability, including an inability to understand oral instructions, hinder:

(i) other passengers during an evacuation of the aircraft in an emergency; or

(ii) the aircraft's crew in carrying out their duties in an emergency.

Part 121 of CASR — Australian air transport operations—larger aeroplanes

Regulation 121.270 (4) requires at least one crew member for a flight to be satisfied that each person occupying an emergency exit row seat is a suitable person. Regulation 121.275 (1) as being amended provides the operator and the pilot in command of an aeroplane for a flight each contravene this subregulation if, during the flight, a passenger with reduced mobility occupies a seat where the passenger could: (a) hinder the crew in their safety duties; or (b) obstruct access to emergency equipment; or (c) hinder the evacuation of the aeroplane in an emergency.

Part 131 of CASR — Balloon operations

Regulation 131.405(1) provides the operator and the pilot in command of a Part 131 aircraft for a flight each contravene this subregulation if: (a) a passenger is carried on the flight who is likely to require assistance; and (b) a requirement prescribed by the Part 131 Manual of Standards for the purposes of this paragraph is not met for the flight.

Part 133 of CASR — Australian air transport operations—rotorcraft

Regulation 133.225 (2) requires the pilot in command of the rotorcraft for the flight to be satisfied that each person occupying a seat adjacent to an emergency exit: (a) is a suitable person; or (b) is accompanied or assisted, for the flight, by a suitable person who can access the emergency exit.

Regulation 133.230 (1) as being amended provides the operator and the pilot in command of a rotorcraft for a flight contravene this subregulation if, during the flight, a passenger with reduced mobility occupies a seat where the passenger could: (a) hinder the crew in their safety duties; or (b) obstruct access to emergency equipment; or (c) hinder the evacuation of the rotorcraft in an emergency. This does not apply in relation to a passenger with reduced mobility if: (a) the passenger is accompanied or assisted, for the flight, by a suitable person who is seated adjacent to an emergency exit; and (b) the suitable person is accompanying or assisting only that passenger for the flight; and (c) the suitable person has agreed to assist the rotorcraft's crew with the evacuation of the rotorcraft in an emergency.

Part 135 of CASR — Australian air transport operations—smaller aeroplanes

Regulation 135.265 requires that the pilot in command of the aeroplane for the flight must be satisfied that each person occupying a seat adjacent to an emergency exit: (a) is a suitable person; or (b) is accompanied or assisted, for the flight, by a suitable person who can access the emergency exit.

Regulation 135.270 (1) as being amended provides the operator and the pilot in command of an aeroplane for a flight contravene this subregulation if, during the flight, a passenger with reduced mobility occupies a seat where the passenger could: (a) hinder the crew in their safety duties; or (b) obstruct access to emergency equipment; or (c) hinder the evacuation of the aeroplane in an emergency. This does not apply in relation to a passenger with reduced mobility if: (a) the person is accompanied or assisted, for the flight, by a suitable person who is seated adjacent to an emergency exit; and (b) the suitable person is accompanying or assisting only that person for the flight; and (c) the suitable person has agreed to assist the aeroplane's crew with the evacuation of the aeroplane in an emergency.

The above laws restrict a person with a disability from occupying emergency exit row seating in aircraft for safety reasons. The above laws also restrict a person with a disability from occupying a seat, the location of which could: (a) hinder the crew in their safety duties; or (b) obstruct access to emergency equipment; or (c) hinder the evacuation of the aircraft in an emergency. Regulations 133.230 and 135.270 provide that this does not apply in relation to a passenger with reduced mobility if: (a) the passenger is accompanied or assisted, for the flight, by a suitable person who is seated adjacent to an emergency exit; and (b) the suitable person is accompanying or assisting only that passenger for the flight; and (c) the suitable person has agreed to assist the aircraft's crew with the evacuation of the aircraft in an emergency.

Application

The above laws, by restricting certain access for people with a disability, limit the right to equality and non-discrimination. Further, prescribing the above laws may limit the right to an effective remedy as it protects aircraft operators, and pilots in command, when acting in direct compliance with the prescribed laws, from a claim of unlawful discrimination under the DDA.

However, the limitations are necessary, reasonable and proportionate in achieving the objective of ensuring safety of everyone on board an aircraft. Access is limited only to what is strictly necessary to achieve safety outcomes, as evidenced by restricting hindrance of crew's duties to safety duties. Further, there is an exception that will apply if the person is accompanied or assisted by a suitable person who can access the emergency exit.

Further, providing certainty that operators, and pilots in command, when acting in direct compliance with the prescribed laws, are protected from a claim of unlawful discrimination, is also reasonable, necessary and proportionate in achieving the objective of ensuring safety of everyone on board an aircraft.

The prescription of the above laws is also consistent with subsection 98(6B) of the *Civil Aviation Act 1988*, which provides that regulations made under that Act may contain provisions that are inconsistent with the *Disability Discrimination Act 1992*, if the inconsistency is necessary for the safety of air navigation.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights. To the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Details of the Civil Aviation Legislation Amendment (Flight Operations—Fees and Other Consequential Amendments) Regulations 2021

Section 1 – Name of Regulations

This section provides that the title of the Regulations is the *Civil Aviation Legislation Amendment (Flight Operations—Fees and Other Consequential Amendments) Regulations 2021*.

Section 2 – Commencement

This section provides that the provisions of the instrument commence as specified in the table following the section. Schedule 1 Part 1 and Schedule 2 Part 1 commence on the day after registration. Schedule 1 Part 2 and Schedule 2 Part 2 commence on 2 December 2021, to coincide with the commencement of the FOR, comprising Parts 91, 103, 105, 119, 121, 131, 133, 135 and 138 of the *Civil Aviation Safety Regulations 1998*.

Section 3 – Authority

This section lists the various Commonwealth Acts under which the Regulations are made.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in this Schedule, and any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1 – Fees

Part 1 – Amendments commencing day after registration

Civil Aviation (Fees) Regulations 1995

Item 1 Part 3 of Schedule 1 (table item 3.3)

This item amends table item 3.3 by clarifying its wording and stating that the approval referred to is issued under regulation 37 of CAR.

Item 2 Part 8 of Schedule 1 (table item 8.44)

This item replaces references to “Approval of a special flight authorisation – processing and consideration” in table item 8.44 with “Special flight authorisation under regulation 135A of CAR – processing and consideration of application”.

Item 3 Part 24 of Schedule 1 (at the end of the table)

This item inserts 14 new fee items (24.18 to 24.31) in the table at Part 24 and repeal 50 other fees. Items 24.18 to 24.30 relate to specific provisions of CASR that provide for the issue of an approval or other authorisation by CASA to a person, on application, and for which a fee would be assessed and charged by CASA. Early commencement of this item is necessary because the *Civil Aviation Legislation Amendment (Flight Operations – Consequential Amendments and Transitional Provisions) Regulations 2021* provide for applications to be made for approvals and other authorisations under the FOR on and from 7 June 2021. Prior to commencement of the FOR on 2 December 2021, persons may apply for flight operation approvals and other authorisations either under the FOR or under related provisions of the CAR. When the FOR commences, the relevant CARs will be repealed and all applications for flight operations approvals and other authorisations will be made under the FOR. The new fee items are effectively replacement fee items rather than additional fee items.

Item 4 Part 24 of Schedule 1 (at the end of the Part)

This item adds a note at the end of Part 24 to the effect that applications can be made for approvals and other authorisations under the FOR mentioned in fee items 24.18 to 24.30 of the table before the FOR commences, as provided for by Division 202.EAA.1 of CASR.

Part 2 – Amendments commencing 2 December 2021

Division 1 – Main amendments

Civil Aviation (Fees) Regulations 1995

Item 5 Subregulation 3(1) (definition of ASETPA)

This item repeals the definition of ASETPA (Approved Single Engine Turbine Powered Aircraft) in subregulation 3(1), as the fee items which use the term ASETPA are repealed by item 8 of this division.

Item 6 Part 3 of Schedule 1 (table item 3.3)

This item repeals table item 3.3 (minimum equipment list application processing) as it is no longer required. All minimum equipment lists will be approved under Subpart 91.Y of CASR when the FOR commences.

Item 7 Part 5 of Schedule 1 (table items 5.4, 5.5 and 5.30 to 5.33)

This item repeals table items 5.4, 5.5 and 5.30 to 5.33 under the fees for qualifications of flight crew, as these are no longer required.

Item 8 Part 8 of Schedule 1 (table items 8.1 to 8.30, 8.32 to 8.37 and 8.41 to 8.45)

This item repeals all the listed Part 8 table items under the fees for aircraft operations generally, except for items 8.31 and 8.38 to 8.40. The repealed Part 8 table items relate to provisions of the CAR that are being repealed and replaced by the FOR.

Item 9 Part 14 of Schedule 1 (table items 14.1, 14.2 and 14.3)

This item omits references to “air traffic controller licence” in the three table items and substitutes “ATC licence”, which is a defined term in the CASR Dictionary.

Division 2 – Other amendments

Civil Aviation (Fees) Regulations 1995

Item 10 Before regulation 1

This item effectively restructures the *Civil Aviation (Fees) Regulations 1995* (Fees Regulations) into parts, by inserting the title “Part 1 – Preliminary” before regulation 1.

Item 11 Before regulation 4

This item inserts the title “Part 2 – Fees” before regulation 4.

Item 12 After regulation 6

This item inserts the title “Part 3 – Application, saving and transitional provisions” after regulation 6. This item also establishes a Division 1 title for these provisions and inserts a new regulation 7 that is a transitional provision. The provision establishes the fees that apply in relation to an application for services made before 2 December 2021 but not decided upon by 2 December 2021, in circumstances where Division 202.EAA.1 of CASR provides that the old Regulations continue to apply in relation to the application.

Item 13 Part 24 of Schedule 1 (note)

This item repeals the note, as it is no longer relevant when this measure commences on 2 December 2021.

Schedule 2 – Other amendments

Part 1 – Amendments commencing day after registration

Civil Aviation Safety Amendment (Part 121) Regulations 2018

Measure 1 Item 1 of Schedule 1 (paragraph 121.275(1)(a))

This measure inserts the word ‘safety’ before “duties” in paragraph 121.275(1)(a) of CASR. This measure is directly related to measure 13 of Schedule 2 Part 2 for amendments to the *Disability Discrimination Regulations 2019* regarding exemptions against the prohibition to discriminate. The measure clarifies that the crew member duties referred to in the paragraph are safety duties and hence that the exemption provided in measure 13 for the regulation relates only to duties that are safety duties.

Civil Aviation Safety Amendment (Part 133) Regulations 2018

Measure 2 Item 1 of Schedule 1 (paragraph 133.230(1)(a))

This measure inserts the word ‘safety’ before ‘duties’ in paragraph 133.230(1)(a) of CASR. This measure is directly related to measure 13 of Schedule 2 Part 2 for amendments to the *Disability Discrimination Regulations 2019* regarding exemptions against the prohibition to discriminate. The measure clarifies that the crew member duties referred to in the paragraph are safety duties and hence that the exemption provided in measure 13 for the regulation relates only to duties that are safety duties.

Civil Aviation Safety Amendment (Part 135) Regulations 2018

Measure 3 Item 1 of Schedule 1 (paragraph 135.270(1)(a))

This measure inserts the word ‘safety’ before ‘duties’ in paragraph 135.270(1)(a) of CASR. This measure is directly related to measure 13 of Schedule 2 Part 2 for amendments to the *Disability Discrimination Regulations 2019* regarding exemptions against the prohibition to discriminate. The measure clarifies that the crew member duties referred to in the paragraph are safety duties and hence that the exemption provided in measure 13 for the regulation relates only to duties that are safety duties.

Part 2 – Amendments commencing 2 December 2021

Air Navigation (Aircraft Noise) Regulations 2018

Measure 4 Subsection 4(1) (definition of **maximum take-off weight**)

This measure makes an editorial amendment to the definition and omits the reference to the *Civil Aviation Regulations 1988* and substitutes a reference to the *Civil Aviation Safety Regulations 1998*.

Air Navigation (Essendon Fields Airport) Regulations 2018

Measure 5 Section 5 (definition of **maximum take-off weight**)

This measure omits the reference in the definition to the *Civil Aviation Regulations 1988* and substitutes a reference to the *Civil Aviation Safety Regulations 1998*.

Measure 6 Paragraph 11(b)

This measure omits the reference to the *Civil Aviation Regulations 1988* to and substitutes a reference to the *Civil Aviation Safety Regulations 1998*.

Air Navigation (Gold Coast Airport Curfew) Regulations 2018

Measure 7 Section 5 (definition of **maximum take-off weight**)

This measure omits the reference in the definition to the *Civil Aviation Regulations 1988* and substitutes a reference to the *Civil Aviation Safety Regulations 1998*.

Measure 8 Paragraph 14(b)

This measure omits the reference to the *Civil Aviation Regulations 1988* and substitutes a reference to the *Civil Aviation Safety Regulations 1998*.

Air Services Regulations 2019

Measure 9 Section 4 (definition of *air traffic*)

This measure omits the reference in the definition to the *Civil Aviation Regulations 1988* and substitutes a reference to the *Civil Aviation Safety Regulations 1998*.

Measure 10 Section 4 (definition of *IFR flight*)

This measure repeals the definition and substitutes a new definition that refers to the *Civil Aviation Safety Regulations 1998*.

Measure 11 Section 4 (definition of *VFR flight*)

This measure repeals the definition and substitutes a new definition that refers to the *Civil Aviation Safety Regulations 1998*.

Aviation Transport Security Regulations 2005

Measure 12 Regulation 1.03 (definition of *air traffic control*)

This measure omits the reference in the definition to the *Civil Aviation Regulations 1988* and substitutes a reference to the *Civil Aviation Safety Regulations 1998*.

Disability Discrimination Regulations 2019

Measure 13 Paragraph 6(1)(b)

This measure repeals the paragraph and substitutes a new paragraph (b) that refers to passenger emergency exit row seats and carriage of passengers with reduced mobility, under regulations 121.270, 121.275, 133.225, 133.230, 135.265 and 135.270 of the *Civil Aviation Safety Regulations 1998*, and a new paragraph (c) which refers to regulation 131.405 of the *Civil Aviation Safety Regulations 1998* and the Part 131 Manual of Standards. The effect of this measure is to ensure that actions taken by aircraft operators and pilots to comply with the listed provisions are not considered unlawful under the *Disability Discrimination Act 1992*. The listed provisions address the seating of passengers in emergency exit rows, in seats adjacent to emergency exits and in other seats at which the passenger could hinder the crew in their safety duties, obstruct access to emergency equipment or hinder the evacuation of the aircraft in an emergency.

In some cases, it would not be in the interest of safety to seat a person with reduced mobility or other disability in such a seat. The CASR provide for the accommodation of passengers with special needs by requiring crew members to discuss with passengers with reduced mobility how the crew member can best assist the passenger if the emergency evacuation of the aircraft becomes necessary.