

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA 19/22 — Civil Aviation (Community Service Flights — Conditions on Flight Crew Licences) Amendment Instrument 2022

Purpose

CASA 09/19 — Civil Aviation (Community Service Flights — Conditions on Flight Crew Licences) Instrument 2019 (CASA 09/19) places conditions on the licences of flight crew members that conduct community service flights, and establishes safety measures in relation to pilot licensing, medical fitness, aeronautical experience, operational and notification requirements. The instrument also excludes aircraft that have a lower standard of airworthiness from community service flights. The measures were established to mitigate risk factors associated with community service flights that are not usually present in baseline private operations.

The purpose of *CASA 19/22 — Civil Aviation (Community Service Flights — Conditions on Flight Crew Licences) Amendment Instrument 2022* is to amend *CASA 09/19* to extend its operation (to the end of 18 March 2025), to provide for a mechanism whereby the approved requirements and procedures of a community service flights entity may be used by a pilot in place of certain of the conditions in *CASA 09/19*, and to clarify and modify some of the conditions based on CASA's review of relevant data and industry feedback.

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.

Subsection 5 (3) of *CASA 19/22* provides that CASA may approve a document that contains requirements and procedures established by an entity that coordinates, arranges or facilitates a community service flight. Under regulation 11.015 of CASR, an approval of this type is an authorisation under Part 11 of CASR, with Subpart 11.BA of CASR applying to the authorisation.

Under subsection 14 (1) of the *Legislation Act 2003* (the *LA*), a legislative instrument may make provision in relation to matters by applying, adopting or incorporating provisions of an Act or disallowable legislative instrument as in force at a particular time or as in force from time to time. A legislative instrument may also make provision in relation to matters by applying, adopting or incorporating any matter contained in any other instrument or writing as in force at, or before, the time the legislative instrument commences. Under subsection 14 (2) of the LA, unless the contrary intention appears, the legislative instrument may not make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

However, subsection 98 (5D) of the Act provides that, despite section 14 of the LA, a legislative instrument made under the Act or the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing 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.

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

The purpose of CASA 09/19 was to address higher risks associated with community service flights when compared to standard private flights. The risks arise by reason of, and in relation to:

- pressure on pilots, which can be self-induced, to start or complete a flight because of a passenger's medical condition or their treatment schedule
- the community service flight may require a pilot to operate at unfamiliar locations and in varying weather conditions
- the absence of organisational oversight of safety support from a certified air operator, and a lack of organisational risk mitigators
- the unique nature of the relationships between the parties differing from other non-commercial circumstances.

Since 2011, community service flight accidents have resulted in 6 fatalities. To take account of the elevated risks, CASA decided to establish appropriate minimum safety standards for community service flights. The intention of CASA 09/19 was to introduce reasonable and proportionate additional safety measures.

Following consultation with the community service flights sector during November and December 2021, CASA undertook a review of whether the conditions within the instrument remain appropriate to achieve the original policy objectives.

Overview of instrument

In accordance with subsection 33 (3) of the *Acts Interpretation Act 1901*, the instrument amends CASA 09/19, to extend its operation, provide a mechanism to allow the CASA-approved requirements and procedures of an entity to be used by a pilot as an alternative pathway to complying with conditions in the instrument, to clarify or modify conditions in the instrument following CASA's review of the instrument and feedback from industry, and to make changes consequent to the commencement of several pieces of civil aviation legislation, including the *Civil Aviation Legislation Amendment (Operations Definitions) Regulations 2019*.

The mechanism that will allow an alternative means of compliance mentioned above will require CASA to undertake a detailed assessment of whether the requirements and procedures of an entity would meet at least an equivalent level of safety outcome that would be met if a pilot complied with each condition of the instrument mentioned in subsection 5 (2). New section 7A establishes a requirement that a person (other than a crew member, a patient or a person supporting and assisting a patient) may also be on board but only for a purpose

demonstrably and directly related to the safe conduct of the community service flight or future flights.

Documents incorporated by reference

For paragraph 15J (2) (c) of the LA, subsection 5 (2), inserted in CASA 09/19 by item [7] of the instrument, incorporates by reference a document setting out requirements and procedures established by an entity that coordinates, arranges or facilitates community service flights, if such a document is the subject of an approval made by CASA under subsection 5 (3). In accordance with paragraph 46AA (1) (b) of the *Acts Interpretation Act 1901*, a document approved under subsection 5 (3) of CASA 09/19 (inserted by item [7]), will be incorporated as existing at the date that it is approved by CASA. There are currently only 2 entities in Australia that coordinate, arrange or facilitate community service flights. Under subsection 98 (5D) of the Act, a legislative instrument made under the regulations may incorporate any matter contained in an instrument or writing even if the instrument or writing does not yet exist when the instrument is made.

A document that CASA approves under subsection 5 (3) may not be publicly available as it will be owned by the entity. Paragraph 5 (3) (a) of the instrument requires that, before granting an approval, CASA must be satisfied that the entity will make the document available to each person who operates an aircraft for a community service flight in relation to the entity. Subsection 5 (2) disappplies certain conditions in the instrument only if a pilot complies with the entity's requirements and procedures. A pilot who is unable to comply with the entity's requirements and procedures becomes subject to all of the conditions prescribed in the instrument.

The document may not otherwise be publicly available. CASA observes that some related information is available publicly on the websites of entities (for example, Angel Flight provides information to prospective patients on its website at [Frequently Asked Questions \(angelflight.org.au\)](http://angelflight.org.au)).

Content of instrument

1. Section 1 provides the name by which the instrument may be cited.
2. Section 2 provides that the instrument commences on the day after it is registered.
3. Section 3 provides that *CASA 09/19 — Civil Aviation (Community Service Flight — Conditions on Flight Crew Licences) Instrument 2019* is amended as set out in Schedule 1.

Schedule 1

Item [1]

4. Item [1] extends the operation of the instrument so that it is repealed at the end of 18 March 2025.

Items [2] to [6]

5. Items [2] to [6] amend the note to the definitions section to remove the reference to terms defined in CAR or CASR that have been repealed or are no longer used in the instrument, and to include references to new defined terms. This includes the removal of the definition in CAR of **operating crew** which was repealed by the *Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions)*

Regulations 2021, and the inclusion of a reference to the defined term **crew member** which was inserted into the CASR Dictionary by the *Civil Aviation Safety Amendment (Operations Definitions) Regulations 2019*. A number of references to defined terms are no longer required because of the repeal in the instrument of section 11 (containing the maintenance requirements).

Item [7]

6. Item [7] amends section 5 to provide, in subsections 5 (2) and (3), for a mechanism under which the conditions prescribed by the instrument in sections 7, 8 and 9 and paragraphs 10 (a) and (b) do not apply to a pilot who is operating an aircraft for a community service flight if:

- (a) the entity that coordinated, arranged or facilitated the community service flight, has established requirements and procedures for the purpose of the safe conduct of the flight; and
- (b) CASA has approved, under subsection 5 (3) a document in which the entity has set out its requirements and procedures; and
- (c) the pilot complies with each of the requirements and procedures that apply to the person in relation to the flight.

Subsection 5 (3) provides that CASA may approve a document if CASA is satisfied that:

- (a) the entity will make the document available to each person who operates an aircraft for a community service flight coordinated, arranged or facilitated by the entity; and
- (b) compliance with the requirements and procedures by a person operating an aircraft for a community service flight would meet a safety outcome that is at least equivalent to that which would be met if the person were compliant with the conditions mentioned in sections 7, 8 and 9 and paragraphs 10 (a) and (b).

An assessment by CASA of an entity's requirements and procedures will be against each of the conditions mentioned in sections 7, 8 and 9 and paragraphs 10 (a) and (b).

The conditions that are not subject to the mechanism are those relating to the pilot submitting a flight notification and the information required to be included in the flight notification, and the requirement for the pilot to record information in the pilot's personal logbook. The reason for this is to enable the collection of data to support CASA's safety functions and oversight of community service flights.

In accordance with regulation 201.004 of CASR, a decision by CASA to refuse to approve a document under subsection 5 (3) is subject to merits review by the Administrative Appeals Tribunal. Table 201.004 in that regulation contains a list of decisions that are reviewable by the AAT. Item 1 of the table includes "a decision under a provision of these Regulations ... refusing to grant or issue an authorisation". For regulation 201.004, the term **authorisation** has the meaning given by regulation 11.015, which covers the approval of a document "under these Regulations".

Item [8]

7. Item [8] substitutes paragraph 6 (2) (c) with "(c) the transport of a patient from a treatment destination to any other place." This would ensure that a final destination flight of the patient to any location would be treated as a community service flight.

Item [9]

8. Item [9] amends subparagraph 7 (1) (c) (ii) to replace “operating crew” with “crew member”. The amendment is consequential to the repeal from CAR of the defined term ***operating crew*** (see section 5 above). Further, hearings in 2021 before the Senate Standing Committee on Rural and Regional Affairs and Transport Legislation, and consultation with industry, resulted in requests for CASA to clarify the persons (for example, additional pilots, or persons carried for the purpose of a mentoring program run by an entity) who are permitted to be carried on a flight. The amendment provides that persons who may be carried on board include a ***crew member*** (as now defined in the CASR Dictionary) and a person who is described in new section 7A.

Section 7A permits a person to also be carried on a community service flight (in addition to crew members, patients and persons supporting or providing assistance to a patient) if they are present for the purpose of the safe conduct of community service flights, including a person who is participating in a mentoring program but where the carriage of the person does not detract from the single focus of the flight as a community service flight.

Item [10]

9. The condition in paragraph 7 (1) (d) requires a pilot to have a class 1 or class 2 medical certificate. The amendment in item [10] makes it clear that this includes a person who holds a medical exemption under paragraph 61.410 (1) (g) or 61.415 (1) (b) of CASR. This does not depart from the original intention.

Items [11] and [12]

10. Subsection 7 (2) states, for the avoidance of doubt, that persons with a Basic Class 2 Medical Certificate (permitted by the Exemption instrument *CASA EX65/18 — Private Pilot Licence Medical Certification (Basis Class 2 Medical Certificate) Exemption 2018*) do not meet the condition in paragraph 7 (1) (d). The amendments in items [11] and [12] update the reference to instrument CASA EX65/18, which has subsequently expired and been replaced by *CASA EX69/21 — Medical Certification (Private Pilot Licence Holders with Basic Class 2 Medical Certificate) Exemption 2021*.

Item [13]

11. Item [13] inserts new section 7A that sets out that, for subparagraph 7 (1) (c) (iii), a person (other than a crew member) may be carried on board if the person has duties that are demonstrably and directly related to the safe conduct of the flight or of further community service flights, and the person has the ability and experience to perform those duties. The provision is not prescriptive about the functions (examples of which are shown in the note), or how the ability and experience is determined, but requires that a direct connection must be able to be drawn between the person and how they contribute to the safe conduct of the flight, and that this must be demonstrated by the pilot.

Item [14]

12. Item [14] clarifies the original intention that the period of 30 days mentioned in paragraph 9 (1) (a) includes the day of the flight.

Items [15] to [17]

13. Items [15] to [17] make typographical changes.

Item [18]

14. Item [18] adds a note to explain the amendment in item [14] and that expressions of time are dealt with under subsection 36 (1) of the *Acts Interpretation Act 1901*.

Item [19]

15. Item [19] inserts a new condition requiring aeronautical experience of at least 150 hours of flight time as pilot in command, for the holder of a commercial pilot licence (who does not also hold an air transport pilot licence). A key feature of community service flights is that, as private flights, they operate outside an AOC environment. A pilot for a community service flight is not subject to the same induction training, recurrent training and oversight that would be provided for pilots by an AOC holder.

Requiring this aeronautical experience provides an additional period of consolidation for a pilot, following their flight crew licence issue, to mitigate the reduced oversight and training the person is subject to compared to operations conducted under an AOC, while recognising that the holder of a commercial pilot licence has completed additional training and testing to that required for the issue of a private pilot licence.

Current industry practice is to require a pilot to have at least 250 hours of aeronautical experience in an aircraft as pilot in command before conducting a community service flight.

Item [20]

16. Item [20] makes a minor change to the heading of section 10.

Item [21]

17. Item [21] amends paragraph 10 (a) to provide that a person who is carried on board under section 7A is to be included within the 5 maximum passenger limit.

Item [22]

18. Item [22] makes a minor typographical correction.

Item [23]

19. Item [23] amends paragraph 10 (c) to reflect that the requirement for a private pilot to submit a flight notification is now under subsection 9.02 of the Part 91 Manual of Standards (which commenced on 2 December 2021). Paragraph (c) is further amended to provide the notification must be in writing unless the pilot has no internet access in the place they are located, and must include information on the number of persons on board. The item repeals paragraph 10 (d) that deals with the pilot's personal logbook, because that requirement is inserted as new section 11 by item [26].

Items [24] and [25]

20. Item [24] facilitates item [25] which adds a second note referring to the provisions of the *Electronic Transactions Act 1999* for the purposes of explaining the "in writing" requirement for a flight notification.

Item [26]

21. Item [26] substitutes section 11. The repealed section 11 made it a condition on the holder of a flight crew licence that an aeroplane could not be piloted for a community service flight if it had not had a periodic inspection either within the preceding 12 months or, if the aircraft had more than 100 hours of service in the preceding 12 months, within the preceding

100 hours. Maintenance for these aircraft that is required under CAR, for example, a periodic inspection within the preceding 12 months, is not affected by the removal of this condition.

As CASA did not have data when it made CASA 09/19 regarding which aircraft were used for community service flights, and what their level of use was, CASA took a cautious approach based on risk exposure. This reflected a position that the nature of the operation (i.e., carrying patients and support persons) required a higher level of maintenance assurance (and lower risk exposure) than was required for participants in recreational private operations. CASA has subsequently gathered data through the mechanisms available under the notification provisions of the instrument, and also conducted an industry survey in 2020. Item [26] removes the maintenance condition on the basis that the data establishes that there is significantly less utilisation of aircraft in community service flights, than would be expected of an aerial work or charter aircraft. The 2020 survey indicated only few aircraft maintained as private aircraft were flown more than 100 hours per year. CASA considers that removing the condition will not prejudice aviation safety.

Item [26] substitutes into section 11 a redrafted provision dealing with the requirement for a pilot to maintain a personal logbook that clarifies that the obligation to record information arises after the flight takes place.

Legislation Act 2003

Paragraph 10 (1) (d) of the LA provides that an instrument will be a legislative instrument if it includes a provision that amends or repeals another legislative instrument. This instrument amends CASA 09/19 that was registered as a legislative instrument and is, therefore, also a legislative instrument, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

As the instrument relates to aviation safety and is made under CASR, Part 4 of Chapter 3 of the LA (the *sunsetting provisions*) does not apply to the instrument (as per item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

The principal instrument amended by this instrument, CASA 09/19, will be repealed at the end of 18 March 2025, which will occur before the sunsetting provisions would have repealed the instrument if they had applied. Any further amendment of the principal instrument will be subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA. Therefore, the exemption from sunsetting does not affect parliamentary oversight of this instrument.

Consultation

CASA undertook formal public consultation from 17 November to 15 December 2021, with a focus on pilots who conducted community service flights. The feedback that stakeholders gave on the existing conditions informed the amendments and the modifications to the conditions in the instrument. 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>.

Sector risk, economic and cost impact

Subsection 9A (1) of the Act states that, in exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration.

Subsection 9A (3) of the Act states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9 (1) (c), CASA must:

- (a) consider the economic and cost impact on individuals, businesses and the community of the standards; and
- (b) take into account the differing risks associated with different industry sectors.

The cost impact of a standard refers to the direct cost (in the sense of price or expense) which a standard would cause individuals, businesses and the community to incur. The economic impact of a standard refers to the impact a standard would have on the production, distribution and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly. The economic impact of a standard could also include the general financial impact of that standard on different industry sectors.

The economic and cost impact of the instrument has been determined by:

- (a) the identification of individuals and businesses affected by the instrument; and
- (b) consideration of how the requirements to be imposed on individuals and businesses under the instrument will be different compared to existing requirements; and
- (c) a valuation of the impact, in terms of direct costs on individuals and businesses affected by the instrument to comply with the different requirements. This valuation is consistent with the principles of best practice regulation of the Australian Government; and
- (d) a valuation of the impact the different requirements would have on the production, distribution and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly; and
- (e) consideration of community impacts, beyond those direct impacts on individuals and businesses affected by the instrument, that are relevant if the instrument were to result in flow-on effects to other aviation businesses, or local non-aviation businesses that experience a change in their activity due to the instrument.

The requirements of the instrument apply to pilots who undertake community service flights. The amendments also affect the operations of entities that coordinate, arrange or facilitate these flights.

CASA has assessed that the economic and cost impact of the instrument is not significant. The new requirement for commercial pilots to have 150 hours of experience will have minimal impact as community service flights are currently arranged by Angel Flight and Little Wings who already require commercial pilots to have at least 150 hours of experience. The removal of the 100-hourly inspection requirement for aeroplanes maintained to the private standard is not expected to affect the majority of aeroplanes involved in community service flights as very few exceed this limit. However, the cost-saving to each is significant (generally in excess of \$3,000) and the removal of the requirement may encourage greater engagement in community service flights.

The instrument introduces an alternative means of compliance for organisers of community service flights. As this is a voluntary option for an entity (which would take advantage of the mechanism if it was beneficial to them) there is no negative cost or economic impact.

The Office of Best Practice Regulation (**OBPR**) has also made the assessment that the impact of the instrument is minor and that a Regulation Impact Statement (**RIS**) is not required. As

there is no significant economic or cost impact on individuals or businesses, there will be no community impacts.

Impact on categories of operations

The instrument is likely to have a beneficial effect on community service flights. The amendments have been made following a review of CASA 09/19 and CASA has responded to feedback from the community service flights sector. The amendments make available a second mechanism for compliance with safety standards which is of benefit to entities who coordinate, arrange or facilitate such flights. The amendments clarify some of the existing conditions, for example, persons who may be carried on board as part of a mentoring program run by an entity.

Impact on regional and remote communities

The instrument is likely to have a beneficial effect on the regional and remote communities that, by their nature, are more likely to be in need of community service flights as alternative means of transport may be difficult or unavailable, or prohibitively expensive. This is because it continues to support the safe conduct of community service flights, and the operations of community service flights entities.

Office of Best Practice Regulation

Overall the proposed instrument makes minor changes to the existing community service flight provisions that CASA assesses as only having a minor economic and cost impact to individuals, business and the community. To support this assessment, OBPR made the assessment that the impact of the instrument was minor and that a RIS was not required.

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights at Attachment 1 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Making and commencement

The instrument has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

The instrument commences on the day after it is registered and is automatically repealed in accordance with section 48A of the LA.

Statement of Compatibility with Human Rights

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

CASA 19/22 — Civil Aviation (Community Service Flights — Conditions on Flight Crew Licences) Amendment Instrument 2022

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 amends *CASA 09/19 — Civil Aviation (Community Service Flights — Conditions on Flight Crew Licences) Instrument 2019 (CASA 09/19)*, to extend its operation (to the end of 18 March 2025), provide for a mechanism that would allow CASA-approved requirements and procedures of an entity to be used by a pilot as an alternative pathway to complying with conditions in the instrument, clarify or modify conditions in the instrument following CASA's review of the instrument and feedback from industry, and make changes consequent on the commencement of several pieces of civil aviation legislation, including the *Civil Aviation Legislation Amendment (Operations Definitions) Regulations 2019*.

CASA 09/19 was made following CASA's assessment that community service flights have a higher risk of an accident or an incident due to the existence of risk factors that are not usually present in baseline private operations. The purpose of the instrument was to mitigate this risk by placing conditions on flight crew licences. The conditions introduced safety measures in relation to pilot licensing and medical fitness, aeronautical experience and recency of experience. The conditions also imposed operational requirements and notification requirements, including that a pilot of a community service flight is required to submit a flight notification to Airservices Australia.

The amendment instrument amends the notification requirement to reflect the new provisions in Part 91 under which a flight notification for a community service flight would be required under subsection 9.02 (3) of the Part 91 Manual of Standards, and to provide that information about persons on board must be included in the notification. The instrument also amends the requirement to record information about community service flights in a personal logbook, to clarify its operation and move it to section 11.

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 attack.

The amendment to section 10 makes it a condition on a flight crew licence that the pilot must not pilot an aeroplane operated for a community service flight unless the flight notification the pilot submits under subsection 9.02 (3) of the Part 91 Manual of Standards includes certain information, in writing. A flight notification involves the provision to Airservices Australia of the name of the pilot. Flight notification information is required for safety regulatory purposes so that the pilot of an aircraft can be identified, if necessary. Flight notification information is also used for search and rescue and recovery operations in the event of an incident, to investigate incidents and for inspections or audits.

Reasonableness, necessity and proportionality

The requirement to include information in a flight notification involves activities of one 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 as it does not raise any human rights issues.

Civil Aviation Safety Authority