

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### CASA 05/24 — Prescription and Approval of Japan as a Recognised Foreign State Instrument 2024

##### Purpose

The purpose of *CASA 05/24 — Prescription and Approval of Japan as a Recognised Foreign State Instrument 2024* (the **instrument**) is to enable Australian operators to continue to use flight simulation training devices, or flight simulators, that are located in Japan, to meet their training and checking obligations.

This is achieved by:

- prescribing Japan as a recognised foreign State for the purposes of Part 61 of the *Civil Aviation Safety Regulations 1998 (CASR)*, which will mean that a pilot can gain aeronautical experience and complete instrument proficiency checks on flight simulation training devices or flight simulators that are qualified, and approved for the purpose, by the national aviation authority of Japan; and
- approving Japan as a recognised foreign State for paragraph (a) of the definition of **available** in subsection 12.13(6) of the *Part 133 Manual of Standards* (the **Part 133 MOS**), which will mean that a flight crew member who is required to undertake a rotorcraft operator's conversion training, and flight crew member proficiency check, for a rotorcraft in an approved flight simulator will be able to do so in an approved flight simulator that is located in Japan.

The instrument continues the effect of an instrument that will be repealed at the end of 31 January 2024: *CASA 14/22 — Prescription and Approval of Japan as a Recognised Foreign State Instrument 2022* (the **expiring instrument**).

##### 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 CASR. Paragraph 98(5A)(a) of the Act provides that CASR may empower the Civil Aviation Safety Authority (**CASA**) to issue instruments in relation to matters affecting the safe navigation and operation, or the maintenance, of aircraft.

##### Part 61 of CASR

Part 61 of CASR sets out the licensing scheme for pilots of registered aircraft. The scheme includes provisions for pilots to gain aeronautical experience and complete instrument proficiency checks using an approved flight simulation training device or approved flight simulator.

Under regulation 61.010 of CASR, **approved flight simulation training device** is defined to include a flight simulation training device that is qualified, and approved for the purpose, by the national authority of a recognised foreign State. Also, under regulation 61.010, **approved flight simulator** is defined to include a flight simulator that is qualified, and approved for the purpose, by the national authority of a recognised foreign State.

Under regulation 61.010, **recognised foreign State** is defined to mean any of the countries listed in the definition and any other foreign country prescribed by a legislative instrument

under regulation 61.047 of CASR. Under regulation 61.047, CASA may, by legislative instrument, prescribe foreign countries as recognised foreign States for paragraph 98(5A)(a) of the Act.

### Part 133 MOS

The Part 133 MOS prescribes requirements relating to training and checking that must be completed by a flight crew member for a flight for the purposes of regulation 133.370 of CASR. This includes requirements, under section 12.13 of the Part 133 MOS, about the use of available approved flight simulators that exist in Australia or a recognised foreign country.

The term ***recognised foreign State*** is defined in subsection 1.04(2) of the Part 133 MOS to mean any of the foreign States listed in the definition or “another foreign State approved for this instrument”.

### **Background**

In late 2020, Japan was prescribed as a recognised foreign State under regulation 61.047 of CASR to provide urgent temporary access to flight simulators for Australian operators: *CASA 69/20 — Prescription and Approval of United Kingdom and Japan as Recognised Foreign States Instrument 2020*. At that time, other off-shore flight simulators had been unavailable or impracticable to use due to COVID-19 restrictions. That instrument expired at the end of June 2021.

The expiring instrument was made in March 2022, as the issue of Australian operators accessing flight simulators had not been resolved at that time. The expiring instrument prescribes Japan as a recognised foreign State for regulation 61.047 of CASR and approves Japan as a recognised foreign State for section 12.13 of the Part 133 MOS.

The expiring instrument will be repealed at the end of 31 January 2024, but operators have expressed an ongoing need to access flight simulators located in Japan for normal operations or as back-up to Australian flight simulators.

### **Overview of instrument**

The instrument continues the effect of the expiring instrument by remaking it in substantially the same terms for a one-year period ending at the end of 31 January 2025.

### **Content of instrument**

Section 1 sets out the name of the instrument.

Section 2 provides that the instrument commences on 1 February 2024 and is repealed at the end of 31 January 2025.

Section 3 prescribes Japan as a recognised foreign State under regulation 61.047 of CASR.

Section 4 approves Japan as a recognised foreign State under the definition of ***recognised foreign State*** in subsection 1.04(2) of the Part 133 MOS. Japan is approved only for paragraph (a) of the definition of ***available*** in subsection 12.13(6) of the Part 133 MOS.

### **Legislation Act 2003 (the LA)**

Paragraph 8(2)(b) of the LA provides that, if a primary law gives power to do something by legislative instrument, then that instrument is a legislative instrument. Regulation 61.047 of CASR provides that, for paragraph 98(5A)(a) of the Act, CASA may, by legislative

instrument, prescribe foreign countries as recognised foreign States. The instrument prescribes Japan as a recognised foreign State under that regulation.

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

### **Sunsetting**

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 (see item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

However, the instrument will be repealed at the end of 31 January 2025, which will happen before the sunseting provisions would have repealed the instrument if they had applied. Any renewal of the instrument will be subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA. Therefore, the exemption from sunseting does not affect parliamentary oversight of the instrument.

### **Consultation**

CASA consulted with the operators affected in relation to the Embraer and DH8 Q400 flight simulators before making the expiring instrument.

CASA consulted with those and other operators before making the instrument. Since the provisions of the instrument are in effect the same as those of the expiring instrument, and will continue the beneficial effects of the expiring instrument, CASA is satisfied that no further consultation is appropriate, necessary or reasonably practicable for the instrument for section 17 of the LA.

### **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 instrument replaces the provisions of the expiring instrument with, in effect, the same provisions. As such, there will be no change to the economic or cost impact on individuals, businesses or the community.

**Impact on categories of operations**

The instrument is likely to have a beneficial effect on Australian aircraft operators and pilots by enabling them to continue to use flight simulation training devices, or flight simulators, located in Japan.

**Impact on regional and remote communities**

The instrument is likely to have a beneficial effect on regional and remote communities because the aircraft to which the flight simulation training devices, or flight simulators, located in Japan relate are used by Australian operators to service regional and remote communities. Such services include, but are not limited to, charter flights for fly-in fly-out operations and use as air tankers during the bushfire season.

**Office of Impact Analysis (OIA)**

An Impact Statement (*IA*) is not required in this case as the instrument is covered by a standing agreement between CASA and OIA under which an IA is not required for approvals (OIA id: 14507).

**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*. The instrument does not engage any of the applicable rights or freedoms, and is compatible with human rights, as it does not raise any human rights issues.

**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 1 February 2024 and will be repealed at the end of 31 January 2025.

## Statement of Compatibility with Human Rights

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

### CASA 05/24 — Prescription and Approval of Japan as a Recognised Foreign State Instrument 2024

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*.

#### Overview of the legislative instrument

The purpose of the legislative instrument is to enable Australian operators to continue to use flight simulation training devices, or flight simulators, located in Japan to meet their training and checking obligations.

This is achieved by:

- prescribing Japan as a recognised foreign State for the purposes of Part 61 of the *Civil Aviation Safety Regulations 1998*, which will mean that a pilot can gain aeronautical experience and complete instrument proficiency checks on flight simulation training devices or flight simulators that are qualified, and approved for the purpose, by the national authority of Japan; and
- approving Japan as a recognised foreign State for paragraph (a) of the definition of **available** in subsection 12.13(6) of the *Part 133 Manual of Standards*, which will mean that a flight crew member who is required to undertake a rotorcraft operator's conversion training, and flight crew member proficiency check, for a rotorcraft in an approved flight simulator will be able to do so in an approved flight simulator that is located in Japan.

The instrument continues the effect of an instrument that will be repealed at the end of 31 January 2024: *CASA 14/22 — Prescription and Approval of Japan as a Recognised Foreign State Instrument 2022*.

#### Human rights implications

The legislative instrument does not engage any of the applicable rights or freedoms.

#### Conclusion

The legislative instrument is compatible with human rights as it does not raise any human rights issues.

**Civil Aviation Safety Authority**