

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA 35/24 — Amendment of CASA 62/20 (Multi-crew Pilot Training Endorsement) Instrument 2024

Purpose

The purpose of *CASA 35/24 — Amendment of CASA 62/20 (Multi-crew Pilot Training Endorsement) Instrument 2024* (the **instrument**) is to impose conditions on a multi-crew pilot training endorsement (an **MCP-TE**). The instrument effects this in a new section that the instrument inserts in *CASA 62/20 — Conditions on Flight Crew Authorisations (Edition 3) Instrument 2020* (the **principal 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 the *Civil Aviation Safety Regulations 1998* (**CASR**).

Part 61 of CASR

References in this explanatory statement to provisions that commence with the number “61” are to provisions of Part 61 of CASR (**Part 61**).

Part 61 sets out the licensing scheme for pilots of registered aircraft. The term **registered**, in relation to an Australian aircraft, is defined in Part 1 of the CASR Dictionary. The term **Australian aircraft** is defined in section 3 of the Act.

Regulation 61.010 includes the following definitions:

multi-crew, in relation to an aircraft, means that the aircraft is certificated for operation by a crew of at least 2 pilots.

multi-crew operation means an operation that requires at least 2 pilots in:

- (a) a multi-crew aircraft; or
- (b) an aircraft that is equipped, and required by these Regulations, to be operated by a crew of at least 2 pilots.

Regulation 61.195 states how a requirement in Part 61 for an applicant for a flight crew licence, flight crew rating, or flight crew endorsement, other than a design feature endorsement or flight activity endorsement, to have completed flight training for the licence, rating or endorsement is met. Under paragraph 61.195(2)(a), the applicant must have received training in all the units of competency mentioned in the *Part 61 Manual of Standards Instrument 2014* (the **Part 61 MOS**) for the licence, rating or endorsement.

Under paragraph 61.655(2)(b), an applicant for a multi-crew pilot licence (an **MPL**) is required to have completed an MPL training course. The term **multi-crew pilot licence training course** is defined in regulation 61.010 to mean a course of training for the grant of an MPL conducted by a Part 142 operator. The term **Part 142 operator** is defined in subregulation 142.015(4) of CASR.

Under paragraph 61.700(3)(b), an applicant for an air transport pilot licence (an **ATPL**) is required to have completed flight training for the licence and associated aircraft category

rating. As far as is relevant, under regulation 61.010, an aircraft category rating is *associated* with a pilot licence if, for an application for the pilot licence, the application includes an application for the rating. Under regulation 61.725, subject to Subpart 61.E, the holder of an aircraft category rating is authorised to exercise the privileges of the pilot licence with which the category rating is associated in an aircraft of that category. The term *category* of aircraft is defined in regulation 61.015.

The following provisions of Part 61 each impose a requirement for a person to complete an approved course of training in multi-crew cooperation (*MCC training*) in stated circumstances:

- (a) subparagraph 61.285(f)(ii);
- (b) subregulation 61.510(1);
- (c) subregulation 61.575(1);
- (d) paragraph 61.700(3)(e);
- (e) paragraph 61.785(1)(b);
- (f) subregulation 61.845(3A);
- (g) subregulation 61.1360(3A).

The term *approved course of training* is defined in regulation 61.010.

Under subregulation 61.1175(1), a flight instructor is authorised to conduct flight training mentioned in column 2 of an item in table 61.1235 only if the instructor also holds the endorsement mentioned in column 1 of the item. The term *flight instructor* is defined in regulation 61.010 to mean the holder of a flight instructor rating.

Under subregulation 61.1200(1), a simulator instructor is authorised to conduct flight training mentioned in column 2 of an item in table 61.1235 only if the instructor also holds the endorsement mentioned in column 1 of the item. The term *simulator instructor* is defined in regulation 61.010 to mean the holder of a simulator instructor rating.

The term *training endorsement* is defined in regulation 61.010 to mean an endorsement mentioned in column 1 of table 61.1235. An MCP-TE is a kind of training endorsement, which is mentioned in column 1 of item 4 in table 61.1235.

As far as is relevant, under regulation 61.1240 and item 4 of table 61.1235, the holder of an MCP-TE is authorised to conduct the following activities:

- (a) flight training for an MPL or ATPL;
- (b) MCC training.

Part 142 of CASR

The term *Part 142 activity* is defined in subregulation 142.015(1) of CASR to mean any of the activities stated in the definition, which are conducted in an aircraft or flight simulation training device (an *FSTD*). The stated activities include Part 142 flight training. The term *Part 142 flight training* is defined in subregulation 142.015(2) to include MCC training. The term *flight simulation training device* is defined in regulation 61.010.

The term *authorised Part 142 activity* is defined in subregulation 142.015(3). The term *Part 142 operator* is defined in subregulation 142.015(4).

Under subregulation 142.050(2) of CASR, a person commits a strict liability offence if:

- (a) the person conducts a Part 142 activity in an FSTD; and
- (b) the person does not meet the requirement stated in subregulation 142.050(3).

One of the alternate requirements stated in subregulation 142.050(3) is that the person hold an approval under regulation 142.040 of CASR to conduct the activity. Regulation 142.040 deals with the granting by the Civil Aviation Safety Authority (**CASA**) of an approval for Part 142 of CASR.

As far as is relevant, under subregulation 142.040(3), subregulation 11.055(1B) of CASR applies to the granting of an approval under regulation 142.040 for paragraph 142.050(3)(b). As far as is relevant, under subregulation 11.055(1B), CASA may grant the approval only if granting the approval will preserve a level of aviation safety that is at least acceptable.

Conditions imposed on class of authorisation

Subregulation 11.068(1) of CASR provides that, for subsection 98(5A) of the Act, CASA may issue a legislative instrument that imposes conditions relating to a matter mentioned in that subsection on a specified class of authorisations. Under subregulation 11.068(2), the class of authorisations may include authorisations granted before the imposition of the condition. Under subregulation 11.068(3), a condition imposed under subregulation (1) is taken to be a condition of every authorisation of the class mentioned in the instrument.

An MCP-TE is an **authorisation**, within the meaning of that term, as defined in regulation 11.015 of CASR.

As far as is relevant, under regulation 11.077 of CASR, the holder of an authorisation commits a strict liability offence if the holder contravenes a condition imposed on the authorisation under regulation 11.068.

Power to amend, modify or repeal another instrument

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. Under subsection 13(1) of the *Legislation Act 2003* (the **LA**), subsection 33(3) applies to legislative instruments as if each provision of the instrument were a section of an Act.

Background

A flight training course for a training endorsement should enable a trainee to achieve the requisite competencies to exercise the privileges of the training endorsement under regulation 61.1240. In the context of an MCP-TE, this involves the trainee achieving the requisite competencies to conduct the following activities:

- (a) flight training for an MPL or ATPL;
- (b) MCC training.

Under paragraph 61.195(2)(a), the trainee must receive training in all the units of competency mentioned in the Part 61 MOS for the training endorsement. However, the units of competency do not cover the full scope of the privileges of an MCP-TE. In particular, the units of competency do not cover the initial, and advanced, on-aircraft flight training aspects

of the competencies necessary to conduct flight training for an MPL or ATPL. The units of competency are only adequate to cover the competencies required for MCC training. This has raised aviation safety concerns.

As an interim solution, CASA has been granting approvals under regulation 142.040 to persons to conduct MCC training in an FSTD for the purposes of subregulation 142.050(2). This solution is impractical in the long term.

CASA believes it is more efficient, and cost-effective, to grant an MCP-TE to a person, rather than the person holding an approval under regulation 142.040 to conduct MCC training in an FSTD for the purposes of subregulation 142.050(2). To achieve this policy objective, CASA has made *CASA EX41/24 — Amendment of CASA EX32/24 (Application for Multi-crew Pilot Training Endorsement) Instrument 2024 (CASA EX41/24)*. That instrument facilitates the grant of an MCP-TE to an affected person.

The instrument and CASA EX41/24 address the abovementioned deficiencies in the units of competency for an MCP-TE in the Part 61 MOS. The instrument manages the deficiencies by imposing conditions on an MCP-TE. This enables the holder of an MCP-TE to exercise the full scope of the privileges of the training endorsement, subject to compliance with the conditions. CASA believes the imposition of the conditions is necessary in the interests of the safety of air navigation.

Eventually, CASA proposes to seek to amend CASR and the Part 61 MOS, to address the issue in the long term.

Instrument

Section 1 states the name of the instrument.

Section 2 states the instrument commences on the day after it is registered.

Section 3 states that Schedule 1 amends the principal instrument.

Schedule 1 amends the principal instrument by inserting a new section 11 (*new section 11*) in the principal instrument.

New section 11 applies to the holder of an MCP-TE. It imposes several conditions on the training endorsement, which apply when the holder is exercising the privileges of the training endorsement. In summary, the holder is, under new section 11, authorised to conduct:

- (a) flight training for an MPL only in relation to the unit of competency titled “MCO Manage flight during multi-crew operations”, mentioned in the Part 61 MOS, for the purposes of paragraph 61.655(2)(b); or
- (b) MCC training only in relation to the abovementioned unit of competency, for the purposes of stated provisions of CASR; or
- (c) flight training for an ATPL with the aeroplane category rating or helicopter category rating, for the purposes of paragraph 61.700(3)(b), only if the holder meets stated requirements.

A person may have held an MCP-TE immediately before the commencement of the instrument and conducted flight training for an ATPL under the training endorsement before the commencement but does not meet the requirements of the conditions imposed on the training endorsement by the instrument in relation to the conduct of the training. CASA will

consider these situations on a case-by-case basis and may grant the person an approval under regulation 142.040 to continue to conduct the training in an FSTD for the purposes of subregulation 142.050(2), on application by the person under subregulation 142.040(1).

Also, immediately before the commencement of the instrument, a person may have held an approval under regulation 142.040 to conduct flight training for an ATPL in an FSTD for the purposes of subregulation 142.050(2) but does not meet the requirements of the conditions imposed on an MCP-TE by the instrument in relation to the conduct of the training. The person will be able to continue to conduct the training under the approval until its expiry.

Legislation Act 2003

Under subsection 8(2) of the LA, if a primary law (being an Act or an instrument made under an Act, or a provision of an Act or an instrument 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. The instrument is made under regulation 11.068, 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.

Paragraph 98(5A)(a) provides that CASA may issue instruments in relation to matters affecting the safe navigation and operation, or the maintenance, of aircraft. Also, paragraph 98(5AA)(a) provides that an instrument issued under paragraph 98(5A)(a) is a legislative instrument if the instrument is expressed to apply in relation to a class of persons. The instrument is made for the purpose of paragraph 98(5A)(a) and applies to a class of persons, namely persons who hold an MCP-TE.

Also, paragraph 10(1)(d) of the LA provides that an instrument is a legislative instrument if it includes a provision that amends or repeals another legislative instrument. The instrument amends the principal instrument, which is a legislative instrument.

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 does not apply to the instrument (in accordance with item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

The instrument amends the principal instrument and will be repealed in accordance with the automatic repeal provisions in section 48A of the LA.

The principal instrument does not have a repeal date. However, any remake of the principal instrument will be subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

The principal instrument deals with aviation safety matters that, once identified, require a risk response or treatment plan. Generally speaking, item 15, when invoked, is necessary in order to ensure that, in the interests of aviation safety, a relevant instrument has enduring effect, certainty and clarity for aviation operators, both domestic and international.

Consultation

Under section 17 of the LA, before a legislative instrument is made, CASA must be satisfied that it has undertaken any consultation it considers appropriate and practicable in order to draw on relevant expertise and involve persons likely to be affected by the proposals.

CASA has established the Aviation Safety Advisory Panel (the *ASAP*), to provide high-level advice to CASA's Director of Aviation Safety (the *Director*) about current, emerging and potential issues that have, or may have, significant implications for aviation safety and the way CASA performs its functions. The majority of the ASAP's members are drawn from the aviation community. The ASAP is the primary advisory body through which CASA directs its engagement with industry and seeks input on current, and future, regulatory and associated policy approaches.

The ASAP may establish Technical Working Groups for referring specific issues within an aviation industry sector, or in relation to a subject matter, for advice. Reports, or advice, from a Technical Working Group will be provided to the ASAP, to inform the ASAP's advice to the Director.

The ASAP established the Flight Crew Licensing Technical Working Group (the *TWG*), to consider and provide advice to the ASAP about the substantive policy proposals, in anticipation of the drafting of the instrument and CASA EX41/24. The TWG supported the policy proposals.

Also, the predecessor to the TWG, namely the Standards Consultation Committee Flight Crew Licensing Subcommittee, supported the policy proposals.

Also, CASA consulted with the major Australian airline training providers. The training providers supported the policy proposals.

CASA consulted the TWG in relation to the instrument and item [2] of Schedule 1 of CASA EX41/24. All the comments received by CASA, after the consultation, from the TWG were supportive of the making of the instruments.

In these circumstances, CASA is satisfied no further consultation is appropriate, or necessary, for the instrument for section 17 of the LA.

Office of Impact Analysis (the *OIA*)

OIA has made the assessment that the substantive regulatory changes effected by the instrument and CASA EX41/24 are minor and administrative in nature, and accordingly advised CASA that an Impact Analysis is not required for the instrument and CASA EX41/24 (OIA24-07142).

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) states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9(1)(c) of the Act, 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 the 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.

CASA has assessed that the economic or cost impact of the instrument is minimal. This is confirmed by the assessment made by OIA. As there is minimal economic or cost impact on individuals or businesses, the instrument will not have any economic or cost impact on the community.

Impact on categories of operations

The instrument has an impact on training providers and flight instructors, as it limits the privileges that may be exercised by a holder of an MCP-TE under the training endorsement. CASA believes this is necessary in the interests of the safety of air navigation.

Impact on regional and remote communities

The instrument does not have an impact that is specific to regional and remote communities.

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

The instrument commences on the day after it is registered and will be 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 35/24 — Amendment of CASA 62/20 (Multi-crew Pilot Training Endorsement) 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 instrument is to impose conditions on a multi-crew pilot training endorsement. The instrument effects this in a new section that the instrument inserts in *CASA 62/20 — Conditions on Flight Crew Authorisations (Edition 3) Instrument 2020*.

Human rights implications

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

Conclusion

This instrument is compatible with human rights, as it does not raise any human rights issues.

Civil Aviation Safety Authority