

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX41/24 – Amendment of CASA EX32/24 (Application for Multi-crew Pilot Training Endorsement) Instrument 2024

Purpose

The purpose of *CASA EX41/24 – Amendment of CASA EX32/24 (Application for Multi-crew Pilot Training Endorsement) Instrument 2024* (the **instrument**) is to exempt, in the stated circumstances, an applicant for a multi-crew pilot training endorsement (an **MCP-TE**) from compliance with certain requirements, under regulation 61.1250 of the *Civil Aviation Safety Regulations 1998 (CASR)*, for the grant by the Civil Aviation Safety Authority (**CASA**) of the training endorsement to the applicant. The instrument effects this in a new Part that the instrument inserts in *CASA EX32/24 – Flight Crew Licensing and Other Matters (Miscellaneous Exemptions) Instrument 2024* (the **principal instrument**).

Also, the instrument makes a minor amendment of 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 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.

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 training 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. A flight instructor rating is granted under regulation 61.165.

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 training 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. A simulator instructor rating is granted under regulation 61.165.

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 a multi-crew pilot licence or air transport pilot licence;

- (b) training in multi-crew cooperation (*MCC training*).

A person may apply for a training endorsement under regulation 61.155. A training endorsement is a kind of flight crew endorsement.

The term *flight crew endorsement* is defined in regulation 61.010 to mean an endorsement granted under Part 61 on a flight crew licence. The term *flight crew licence* is defined in regulation 61.010. Regulation 61.170 states the requirements for the grant of a flight crew endorsement to an applicant for the endorsement. The requirements include a requirement that the applicant meet the requirements stated in Part 61 for the grant of the endorsement.

Regulation 61.1250 states the requirements for the grant of a training endorsement to an applicant for the endorsement. As far as is relevant, under paragraphs 61.1250(2)(b) to (d), an applicant for an MCP-TE must have done all the following:

- completed flight training for an MCP-TE
- passed the flight test mentioned in the *Part 61 Manual of Standards Instrument 2014* (the *Part 61 MOS*) for an MCP-TE
- completed an approved course of training in multi-crew cooperation.

Also, the applicant must meet the other requirements stated in regulation 61.1250.

As far as is relevant, under subregulation 61.195(2), a requirement in Part 61 for an applicant for a flight crew endorsement to have completed flight training for the endorsement is met only if the requirements stated in the subregulation are met. As far as is relevant, the requirements include the following:

- (a) the applicant must have received training in all the units of competency mentioned in the Part 61 MOS for the endorsement;
- (b) the applicant must have been assessed as competent in each unit of competency by a person mentioned in paragraph 61.195(2)(b).

Appendix T.4 in Schedule 1 of the Part 61 MOS sets out the units of competency relevant to an MCP-TE.

The terms *flight test* and *approved course of training* are defined in regulation 61.010.

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 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.

Regulation 11.130 of CASR

As far as is relevant, under regulation 11.130, the holder of an authorisation may apply to CASA, in writing, for the authorisation to be cancelled. The term *authorisation* is defined in regulation 11.015 of CASR, which definition includes an approval under regulation 142.040. If such an application is made, CASA must, by written notice to the holder, cancel the authorisation.

Exemptions

Division 11.F.1 of CASR provides for the granting of exemptions from particular provisions of CASR. Subregulation 11.160(1) of CASR provides that, for subsection 98(5A) of the Act, CASA may grant an exemption under the Division from compliance with a provision of CASR in relation to a matter mentioned in that subsection.

Under subregulation 11.160(2), an exemption may be granted to a person or a class of persons and may specify the class by reference to membership of a specified body or any other characteristic.

Under subregulation 11.160(3), an exemption may be granted on application by a person or on CASA's own initiative.

Under subregulation 11.170(3) of CASR, in deciding whether to grant an exemption on application by a person, CASA must regard as paramount the preservation of at least an acceptable level of aviation safety. CASA has regard to the same criterion when deciding whether to grant an exemption on its own initiative.

Regulation 11.225 of CASR requires an exemption to be published on the internet. Under subregulation 11.230(1) of CASR, the maximum duration of an exemption is 3 years.

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 a multi-crew pilot licence or air transport pilot licence;
- (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. But 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 a multi-crew pilot licence or air transport pilot licence. 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). But these approvals are granted only for a stated period (usually 2 years) and need to be renewed on an ongoing basis. Also, the approval holder must pay CASA a fee for the initial approval and each subsequent renewal. Also, CASA is required to spend a lot of time administering the issuance, and renewal, of the approvals.

In granting the approval to a person, CASA was satisfied the person had been properly trained, and assessed as competent, to conduct MCC training in an FSTD.

An MCP-TE remains in force indefinitely, unless it is suspended or cancelled by CASA under Subpart 11.D of CASR, subregulation 61.180(4) or Part 16 of the *Civil Aviation Regulations 1988*. Accordingly, there is no requirement to renew an MCP-TE and no ongoing fee payable to CASA for a person to continue to hold an MCP-TE.

CASA believes it is more efficient, and cost-effective, to grant an MCP-TE to a person, rather than the person holding an approval (a *relevant 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, if the approval holder applies to CASA for an MCP-TE, the approval holder needs exemptions from compliance with paragraphs 61.1250(2)(b) to (d) in relation to the application, given the abovementioned deficiencies in the units of competency for an MCP-TE mentioned in the Part 61 MOS. The instrument grants the exemptions to the approval holder, subject to the approval not being suspended.

Under the instrument, CASA extends the application of this policy to an applicant for an MCP-TE who held a relevant approval, which was repealed other than because CASA cancelled it. The applicant is also granted the exemptions under the instrument.

The effect of the exemptions is that, in relation to the application, the applicant is taken to meet the requirements stated in paragraphs 61.1250(2)(b) to (d) for the purposes of paragraph 61.170(c). However, the applicant still needs to meet the other requirements stated in regulation 61.1250.

In granting the exemptions, CASA has regarded as paramount the preservation of at least an acceptable level of aviation safety.

Aviation safety is not adversely affected by the instrument because the applicant will, if successful in being granted an MCP-TE, be able to continue to conduct or resume conducting

MCC training, albeit under a different authorisation, namely an MCP-TE. Also, if that person holds a flight instructor rating, the person will not be limited to conducting the training in an FSTD, but rather will also be authorised to conduct the training in an aircraft.

The successful applicant will conduct the training for a Part 142 operator. In that role, the successful applicant is subject to various obligations stated in Subpart 142.E of CASR. This includes an obligation, under regulation 142.225 of CASR, to conduct an authorised Part 142 activity in accordance with the operator's exposition.

The instrument operates in conjunction with *CASA 35/24 — Amendment of CASA 62/20 (Multi-crew Pilot Training Endorsement) Instrument 2024 (CASA 35/24)*. CASA 35/24 inserts section 11 in *CASA 62/20 — Conditions on Flight Crew Authorisations (Edition 3) Instrument 2020*. That section imposes conditions on an MCP-TE under regulation 11.068 of CASR. The holder of an MCP-TE is, under that section, authorised to conduct:

- (a) flight training for a multi-crew pilot licence only in relation to the unit of competency titled "MCO Manage flight during multi-crew operations", mentioned in section 2 of Schedule 2 of 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 air transport pilot licence 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.

The conditions have been imposed to manage the abovementioned deficiencies in the units of competency for an MCP-TE mentioned in the Part 61 MOS.

Accordingly, if an applicant for an MCP-TE is successful in being granted the training endorsement, the applicant will be limited by the abovementioned conditions when exercising the privileges of the training endorsement.

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 — Amendments

Item [1] Subsection 50(1), paragraph (b) of the definition of *alternative AELP assessment holder*

Item [1] is a minor amendment of the principal instrument, which is made to assist the reader locate the ICAO level 6 aviation English language proficiency standards in the Part 61 MOS.

Item [2] After Part 18

Item [2] amends the principal instrument by inserting a new Part 19 (*new Part 19*) in the principal instrument.

Section 79 of new Part 19 provides for a definition of the term *multi-crew pilot training endorsement*.

Section 80 of new Part 19 grants exemptions from compliance with paragraphs 61.1250(2)(b) to (d) to a person:

- (a) who applies to CASA, under regulation 61.155 of CASR, for an MCP-TE; and
- (b) who:
 - (i) holds a relevant approval, which is not suspended; or
 - (ii) held a relevant approval, which was repealed other than in stated circumstances.

The stated circumstances are that CASA repealed the approval, other than by cancellation under regulation 11.130 of CASR.

The exemptions only apply in relation to the application.

The person has the benefit of the exemptions regardless of when the approval was granted to the person, that is, whether it was granted before or after the commencement of the instrument.

If the holder of a relevant approval, which is not suspended, applies to CASA for an MCP-TE and CASA refuses to grant the training endorsement to the person, the person will be able to continue to conduct MCC training in an FSTD under the approval until its expiry.

If the holder of a relevant approval, which is not suspended, does not apply to CASA for an MCP-TE, the person will be able to continue to conduct MCC training in an FSTD under the approval until its expiry.

Legislation Act 2003

Paragraph 98(5A)(a) of the Act 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 exempts a class of persons from complying with specified provisions of CASR, namely certain applicants for an MCP-TE who meet stated requirements. 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 (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 is repealed at the end of 31 May 2027, as stated in paragraph 2(b) of the principal instrument. This will happen before the sunset provisions would have repealed the principal instrument, if they had applied. Any renewal 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 sunset does not affect parliamentary oversight of the instrument or principal instrument.

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, and advice, from a Technical Working Group are 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 35/24. 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 item [2] of Schedule 1 of the instrument and CASA 35/24. All the comments received by CASA from the TWG, after the consultation, 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 35/24 are minor and administrative in nature, and accordingly advised

CASA that an Impact Analysis is not required for the instrument and CASA 35/24 (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 exemptions has been determined by:

- (a) the identification of individuals and the businesses affected by the exemptions; 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.

To utilise the exemptions granted under the instrument, an exempted person would need to apply to CASA for an MCP-TE. There will be no application fee payable to CASA in relation to the application, as CASA intends to waive the fee. If CASA grants an MCP-TE to the applicant, the applicant will no longer need a relevant approval, thereby avoiding having to pay ongoing renewal fees for the renewal of the approval.

Impact on categories of operations

The instrument has a beneficial impact on training providers and flight instructors who hold a relevant approval because if they take advantage of the exemptions in the instrument and are granted an MCP-TE by CASA, they will no longer need to apply to CASA for a renewal of the approval.

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 is compatible with human rights.

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 on the Federal Register of Legislation 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 EX41/24 – Amendment of CASA EX32/24 (Application for 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 exempt, in the stated circumstances, an applicant for a multi-crew pilot training endorsement (an **MCP-TE**) from compliance with certain requirements, under regulation 61.1250 of the *Civil Aviation Safety Regulations 1998 (CASR)*, for the grant by the Civil Aviation Safety Authority of the training endorsement to the applicant. The instrument effects this in a new Part that the instrument inserts in *CASA EX32/24 — Flight Crew Licensing and Other Matters (Miscellaneous Exemptions) Instrument 2024* (the **principal instrument**).

Also, the instrument makes a minor amendment of the principal instrument.

Human rights implications

The instrument engages the right to work mentioned in Article 6(1) of the International Covenant on Economic, Social and Cultural Rights.

The right to work includes the right of everyone to the opportunity to gain their living by work, which they freely choose or accept. The beneficiaries of the instrument are persons who hold, or previously held, an approval under regulation 142.040 of CASR to conduct multi-crew cooperation training in a flight simulation training device for the purposes of subregulation 142.050(2) of CASR. Most of these persons are, or were, restricted under the approvals to conducting the training on behalf of particular aircraft operators. The instrument will facilitate each of these persons obtaining an MCP-TE, which would enable the person to conduct the training on behalf of any appropriately authorised aircraft operator. Accordingly, the right to work is promoted by the instrument.

Conclusion

The instrument is compatible with human rights.

Civil Aviation Safety Authority