

2.1.1 Instruments that Empower CASA to Regulate Flight Crew Licensing

This section describes the instruments empowering the Civil Aviation Safety Authority Australia (CASA) to regulate flight crew licensing. These instruments define what flight crew licensing is, and specify what activities come under the ambit of flight crew licensing, how the powers can be exercised and who can exercise them. Broadly speaking, the instruments comprise:

- Legislative instruments
- Instruments of delegation and authority.

Legislative instruments include acts, regulations and orders. The Act is made by the Parliament, Regulations are made by the Governor-General and Orders are made by CASA.

2.1.2 Civil Aviation Act

The *Civil Aviation Act 1988* is the principal piece of legislation governing aviation in Australia. It specifies the conventions and agreements relating to international civil aviation and the functions of the Civil Aviation Safety Authority Australia. It gives the Authority discretionary powers to regulate the safety of civil aviation operations in Australia. Among these powers is the authority to regulate flight crew.

2.1.3 Civil Aviation Regulations

The *Civil Aviation Act* empowers the Civil Aviation Safety Authority Australia to make regulations in the form of *Civil Aviation Regulations* (CARs). CARs specify the rules and practices that members of the aviation industry must adhere to.

CARs have three important aspects in relation to flight crew licensing. They enable the Civil Aviation Safety Authority Australia to:

- Make Civil Aviation Orders affecting flight crew licensing
- Specify the requirements for flight crew
- Levy financial penalties for breaches of CARs and Civil Aviation Orders.

CAR [Part 5](#) You will find most CARs that are relevant to flight crew licensing in [Part 5](#) of the Regulations. [Part 5](#) contains 17 divisions detailing the qualifications required for each licence and the privileges accorded to licence holders.

The index at the rear of the CARs provides a quick and easy means of finding out which regulations affect different aspects of aviation safety, including flight crew licensing. The index lists the regulations under subject headings. So, for example, if you want to find out what regulations specify the duties, responsibilities or powers of the person acting as pilot in command, you look up “Pilot in Command”.

Regulations and amendments to regulations are drafted by the Office of Legislative Drafting in the Attorney General’s Department in accordance with technical instructions provided. Once signed by the Governor General, notification is gazetted¹ (merely an acknowledgment that the regulation has been made), and they are then tabled in both Houses of Parliament.

Where appropriate, a draft of the proposed legislation is published as a Notice of Proposed Rule Making (NPRM) and distributed for comment. For major changes, more than one NPRM may be distributed and details are usually also published on the CASA website. The draft is amended to incorporate valid comments. Not all proposed changes to legislation are published as NPRMs prior to their making. Those that are minor in nature may not be put forward for public debate.

The Civil Aviation Safety Authority Australia usually advises the aviation industry in advance of any new regulations or rules. The *Statutory Rules Publications Act 1903* requires the Authority to publish a notice describing any legislative amendments or to provide details of where the document may be inspected or purchased, and the date on which the rule/amendment will become effective.

2.1.4 Civil Aviation Orders

CAR 5 of Part 2, 5.02 of Part 5

Civil Aviation Orders (CAOs) relating to flight crew licensing are issued under the authority of CAR 5 of Part 2 and CAR 5.02 of Part 5 and specify requirements that are too detailed to include or are not yet incorporated in the CARs—for example, orders listing the flight crew ratings a licence holder may apply for and orders specifying the requirements for each rating. The information in the CAOs will eventually be transferred to the CARs.

Orders and amendments to orders are drafted by the Civil Aviation Safety Authority Australia. They become effective when they are gazetted after being signed by the Director. They are tabled in both Houses of Parliament. However, Parliament may disallow them.

If an order has been made, but is subsequently disallowed by Parliament, any decisions made based on it during its effective period shall stand.

¹ “Gazetted” means published in the AGPS Gazette.

2.1.5 Air Navigation (Aviation Security Status Checking) Regulations 2004

AN (ASSC) R 2004 The Air Navigation (Aviation Security Status Checking) Regulations 2004 were introduced as a result of a Federal Government decision to require photographs on pilot licences and associated security, background and Immigration checks. These regulations were introduced in July 2004 to provide a mechanism for this to occur.

The Regulations require all applicants for a flight crew licence to undergo a security check and gives DOTARS the power to make a decision based on the assessment of ASIO, AFP and DIMIA. A security assessment is required before being eligible for the issue of a licence.

As part of this process CASA collects information to be passed onto the other agencies and DOTARS provides a security assessment response to CASA.

2.1.6 Airworthiness Directives

CAO Part 105 Part 105 of the CAO empowers CASA to issue Airworthiness Directives (ADs). ADs notify the aviation industry of a fault in an aircraft component or engine and the action that operators are required to take—for example, immediate repair or more frequent maintenance checks to monitor the problem. Operators must comply with all Australian and international ADs affecting aircraft.

2.1.7 Civil Aviation Advisory Publications

CASA issues *Civil Aviation Advisory Publications* (CAAPs) to explain in simple language why a regulation or order is required and actions the industry can take to comply with it. For example, both the pilot in command of an aircraft and the operator are required to take reasonable steps to ensure that the aircraft is carrying sufficient fuel to enable the flight to be undertaken safely. To help ensure compliance with the regulation, a CAAP has been produced that provides guidance on how to calculate fuel requirements under different circumstances.

2.1.8 Flying Operations Instructions and Policy Statements

Flying Operations Instructions (FOIs) and Policy Statements were previously issued to CASA staff to:

- Advise staff of policy
- Document administrative procedures.

Until 1992, FOIs and Policy Statements relating to flight crew licensing were issued as separate documents. From this time, the information is either:

- Incorporated in this manual
 - Issued as a Policy Notice
 - Issued as CAAPs
- or
- Reflected in a legislative instrument.

FOIs were not legal instruments and do **not** represent current CASA policy.

2.1.9 Aeronautical Information Publications

Aeronautical Information Publications (AIPs) specify the operating procedures that all persons flying aircraft in Australia must follow with regard to planning flights, navigation and radio communication. They are issued to ensure that Australian operators comply with the standard for international aviation airways operating procedures determined by the International Civil Aviation Organisation (ICAO).

2.1.10 ICAO

ICAO sets standards and recommended practices applicable to flight crew licences.

Australian licences largely comply with ICAO standards. However, there are some differences that CASA has notified to ICAO and these are listed on the [Australian Flight Crew Licences and ICAO Differences](#) page on the CASA website. The website lists the more important pilot licence differences for the information of Australian pilots operating overseas and to assist overseas licensing authorities in recognition of Australian flight crew qualifications. Some of the differences are also printed on the flight crew licence.

2.2.1 Privacy Act

The *Privacy Act 1988* establishes the Information Privacy Principles which apply to the collection, storage, use and security of “personal information” by Commonwealth authorities, including CASA.

For guidelines on releasing information about flight crew, see also [8.3 Releasing Information](#).

2.2.2 Freedom of Information Act

FOI Act The *Freedom of Information Act 1982* (FOI Act) creates a legally enforceable right of public access to documents held by Commonwealth authorities, including CASA.

For guidelines and information about the application of the FOI Act, see also [8.3 Releasing Information](#).

2.2.3 Archives Act

Archives Act The *Archives Act 1983* specifies how long records kept by Commonwealth departments are retained, how they are destroyed and who is responsible for their retention or destruction. The Act applies to the personal history files and Company Operations Manuals of flight crew. In most cases, these records:

- Are transferred to Archives if no new information has been added to them for at least five years
- May be destroyed “80 years after date of birth of the licence holder”.

Note: The Archives Act is currently being reviewed and may be amended in the near future.

2.3.1 Use of Instruments of Delegation and Approval

Instruments of delegation and approval are used to:

- Remove the need for Civil Aviation Safety Authority Australia staff to deal with routine matters when they can be handled more efficiently by the aviation industry
- Enable Civil Aviation Safety Authority Australia staff and certain other members of the aviation industry to make decisions more quickly by reducing the need to refer a matter to a more senior officer or a higher authority
- Ensure that decisions are made only by those with the required specialist knowledge and skills.

2.3.2 What Are Instruments of Delegation or Approval?

Instruments of delegation or approval are the legal mechanism whereby CASA transfers the right to exercise the powers to another individual or organisation. The delegation or approval is tied to the function to be performed.

Instruments of Delegation

An instrument of delegation is issued when the Director of CASA wishes to transfer powers delegated to him or her under the Civil Aviation Regulations to another person or organisation.

CAR 7
CAR 5.19

For example, CAR 5.19 empowers “the Authority” to conduct flight tests for flight crew ratings. The Authority is deemed to be the Director or his or her delegates. As the Director cannot personally conduct all flight tests, he or she delegates the responsibility to others by issuing them with an instrument of delegation under CAR 7 for the purposes of conducting a flight test under CAR 5.19 for a particular class or grade of rating. The Director must sign all instruments of delegation.

CAR 5.19,
5.14(2)

Instruments of delegation can be issued to persons employed by CASA or by the aviation industry. It is important to remember that the instruments of delegation are very specific in the powers they delegate. For example, an instrument of delegation under CAR 5.19 does not authorise the delegate to issue the actual rating. To issue a rating, a delegate requires a separate delegation under CAR 5.14(2).



Instrument of Approval

An instrument of approval is issued when the CARs or CAOs permit CASA to approve a person to perform a particular function. For example, CAR 5.20(1) allows “the Authority to approve a person to conduct flying training for a rating”. The Chief Executive Officer (CEO) does not need to sign Instruments of Approval. They can be signed by a delegate under CAR 5.20 (1).

Who Is Appointed as a Delegate or Approved Person?

Civil Aviation Safety Authority Australia staff members with the appropriate expertise may be appointed as delegated or approved persons.

In the case of members of the aviation industry, the CEO appoints persons as flight crew licensing delegates on the recommendation of the Field Office responsible for the area in which the delegates will be operating.

Approvals can be issued by a Civil Aviation Safety Authority Australia officer who holds a delegation under the relevant regulation—usually the Team Leader Flying Operations (TLFO). The TLFO also issues approvals under the CAOs.

Responsibilities of a Delegation or Approval

Delegates or approved persons are required to use their professional judgment when exercising the delegated powers. To arrive at decisions, delegates must take into account all pertinent factors, including the policy of the Civil Aviation Safety Authority Australia. However, they cannot be directed or instructed by other persons to come to a particular conclusion or to decide matters in a particular way.

When industry delegates act, they do so as the Civil Aviation Safety Authority Australia—that is, they are the Authority for the purposes of that function. Their decisions carry the same authority and liability as decisions made by Civil Aviation Safety Authority Australia delegates.

More information about delegations and processes for approving delegates is available in the [Industry Delegates and Authorised Persons Management Manual](#), covering:

- The definition of a delegation
- How a person becomes a delegate
- The powers a delegate can exercise and the authority that is retained by the Civil Aviation Safety Authority Australia
- The limitations that are placed on a delegate’s discretion to act
- How a delegate may exercise his or her delegated powers.

2.4.1 Introduction

Flight crew who are dissatisfied with a decision made by a delegate may appeal the decision to any of the organisations described below.

2.4.2 Internal Review

An internal review is usually the first course of action pursued by a person. The review is usually conducted as an informal conference by an officer senior to the delegate who made the original decision.

If the officer hearing the appeal overturns the original decision, he or she must exercise his or her delegation to do so. The officer cannot give a direction to the original decision maker on how to exercise his or her delegation.

2.4.3 Administrative Appeals Tribunal Review

The Administrative Appeals Tribunal's (AAT) has the power to review administrative decisions made by Commonwealth department or agencies.

CAR 297A,
CAA 31

Decisions subject to review by the AAT are listed in CAA 31 and CAR 297A.

Properly prepared documentation will assist CASA in supporting a process and the decision made, and may assist to overcome the need for an appeal to the AAT.

An applicant before the AAT must lodge the request for a review with the registrar of the AAT within 60 days of notification of a decision of an internal review. Appeals against decisions to suspend, vary or cancel a licence must be lodged within 28 days.

2.4.4 Commonwealth Ombudsman

The Ombudsman has the power to enquire whether action taken by Commonwealth departments and agencies is contrary to law, unreasonable, unjust or discriminatory. The Ombudsman has no power to set aside decisions or to issue orders to persons administering legislation and can only express an opinion about the decisions under consideration.

2.4.5 Administrative Decision (Judicial Review)

This avenue of appeal is rarely used. An Administrative Decision (Judicial Review) occurs only where matters of law are involved, cases are referred to it by the AAT or a delegation has been exercised under duress.

For more information about this avenue of appeal, see *Legal Issues for CASA Officers—Seminar and Workshop Part 2 1994*.

Flight Crew Licensing Procedures

2. Legislation Governing Flight Crew Licensing

2.5 Summary of CARs/CAOs and their Meaning

Approved by Group General Manager Personnel, Licensing, Education and Training Version 6.1: December 2006

2.5.1 Table of CARs/CAOs Relevant to Flight Crew Licensing

This section briefly describes the CARs and CAOs relevant to flight crew licensing.

| Subject | CAR/CAO | Description |
|---------------------------|---------------|--|
| General | CAR 2 | Defines the terms used in CARs. * |
| | CAR 5.01 | Defines terms used in Part 5—that is, terms specific to flight crew licensing. * |
| AROCP | CAR 83A & E | Details the requirements for issue of an Aircraft Radiotelephone Operator Certificate of Proficiency. |
| Certificate of Validation | CAR 5.27(2) | Provides the authority for the issue or refusal of a Certificate of Validation (CV). |
| | CAR 5.29(1) | Empowers the Civil Aviation Safety Authority Australia to impose conditions on the CV. |
| Change of address | CAR 299 | Requires licence holders to notify the Civil Aviation Safety Authority Australia in writing whenever they change their residential and/or communications address. |
| Compliance | CAR 308 | Empowers the Civil Aviation Safety Authority Australia to grant exemptions against compliance with the CARs. |
| Documentation | CAR 5.51 | Requires pilots to keep a log of their hours. |
| | CAR 139 | Details the documents that must be carried by flight crew in Australian aircraft during operation. (The documents include flight crew licences and medical certificates, but not log books.) |
| | CAR 239 | Details the requirements for planning a flight. |
| Endorsement | CAR 5.23(2) | Provides the authority for the issue or refusal of a flight crew endorsement. |
| | CAO 40 series | Individual CAOs that set out the requirements for issue of the various types and classes of aircraft endorsements. |



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| Subject | CAR/CAO | Description |
|-------------------------|--|---|
| Examinations | CAR 5.41 | Sets out the types of examinations and flight tests the Civil Aviation Safety Authority Australia may conduct. |
| Flight time | CAO 48 series | Details flight time limitations for flight crew. |
| Formation flying | CAR 163AA | Specifies the requirements for formation flying. |
| Glider towing | CAR 149 | Provides the authority for the issue or refusal of a glider towing permit. |
| Legislative Instruments | CAR 5A | Defines a disallowable instrument. |
| Licence applications | CAR 298 | Details the information that an applicant must provide when applying for a licence, endorsement, etc. |
| Medical certificate | CAR Part 6 CAR 5.04 | Sets out the medical standards for flight crew licence holders. Specifies when a medical certificate is required by a flight crew licence holder. |
| Pilot licences | CAR 5.08 CAR 5.09 CAR 5.11(1) CAR. 5.12 | Sets out the types of licences available. Provides the authority for the issue or refusal of a flight crew licence. Empowers the Civil Aviation Safety Authority Australia to impose conditions on licences. Establishes the duration of flight crew licences. |
| Proof of identity | CAR 5.54 | Empowers the Civil Aviation Safety Authority Australia to require that an applicant for a licence or examination provide proof of identity. |
| Rating | CAR 5.13 CAR 5.14 CAR 5.16(1) | Sets out the types of flight crew ratings available. Provides the authority for the issue or refusal of a flight crew rating. Empowers the Civil Aviation Safety Authority Australia to impose conditions on ratings. |



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| Subject | CAR/CAO | Description |
|--|----------------------|---|
| Ratings (cont) | CAO 40 series | Individual CAOs that set out the requirements for issue of the various types and grades of ratings. |
| Reviews/appeals | CAR 297A | Sets out the decisions that may be reviewed by the AAT. |
| Security | AR (ASSC) R | Requires applicants for a licence to undergo security/background checks |
| Suspension, cancellation or variation of a licence | CAR 265 | Permits the suspension of a licence, certificate or authority until the holder passes a specified theory exam and/or a flight test. |
| | CAR 268 | Permits the suspension of a licence, certificate or authority pending an investigation. |
| | CAR 269 | Permits the variation, suspension or cancellation of a licence, certificate or authority. |
| Taxi permits | CAR 229 CAO 20.22 | Details the requirements for issuing a taxi permit to a person who is not a licensed pilot. |
| Types of operations | CAR 2(7)(d) | Provides examples of private operations. |
| | CAR 2(7A) | Provides information on cost sharing for private pilots. |
| | CAR 206 | Provides examples of commercial operations. |
| | CAO 80 series | General requirements and conditions for Air Operators Certificates, including the responsibility of Chief Pilots and the qualifications of the pilot in command of low capacity aircraft engaged in RPT operations. |
| Unmanned Aerial Vehicles | CASR 101 | Information on UAV Controller Certificates. |

* Where a term is introduced in a section or division of the regulations, or where a previously defined term is given a different definition in that section or division, the new or revised term must be defined at the beginning of the relevant section or division.