NOTICE OF PROPOSED RULE MAKING

Regulatory requirements for scenic flights in small aircraft
Audience

This Notice of Proposed Rule Making (NPRM) will be of interest to:

- existing scenic flight operators
- persons contemplating scenic flights
- pilots engaged in scenic flight operations.

Amendment

This NPRM proposes an amendment to proposed Part 119 of the Civil Aviation Safety Regulations 1998 (CASR 1998) to provide appropriately simplified operator certification requirements for scenic flight operations using small aircraft.

Key dates

The Civil Aviation Safety Authority (CASA) is responsible under the Civil Aviation Act 1988 (the Act) for, amongst other functions, developing and promulgating appropriate, clear and concise aviation safety standards. CASA must, where appropriate, consult with government, commercial, industrial, consumer and other relevant bodies and organisations in the performance of this function and the exercise of its powers.

Civil Aviation Act 1988 Subsection 9(1)(c) and Section 16

This NPRM describes a proposed amendment to an already consulted, but not yet made regulation, which may be pursued as a future regulatory change.

No action will be taken until all responses and submissions have been considered. To ensure clear and relevant safety standards, CASA needs the benefit of your knowledge as an aviator, aviation consumer and/or provider of related products and services.

CASA will allow an 8 week response period for public comment. If the decision is made to proceed with the proposed amendments, a Notice of Final Rule Making (NFRM) would be published in the second quarter of 2015. The proposed amendments would be implemented in conjunction with Part 119 (still under development).

You can help by completing the NPRM Response Form and returning it to CASA by 19 March 2015.
Foreword

This NPRM is issued by CASA with a view to ensuring that Australian aviation safety requirements are current and appropriately address safety risks.

CASA’s policies require that the aviation safety regulations must:

- be necessary to address known or likely safety risks
- provide for the most efficient allocation of Industry and CASA resources
- be clear and concise
- where appropriate, be aligned with international standards and drafted in outcome based terms.

Proposed Part 91 of CASR 1998 will establish the general operating and flight rules that will apply to flights in Australia, and will apply in conjunction with one or more other CASR Parts that will apply to the transport of passengers and/or cargo by an air transport operator.

For example:

- Part 119 of CASR 1998 will address overarching operator certification and management requirements for Australian air transport operators
- Part 135 of CASR 1998 will address the operational standards requirements for Australian air transport operations in small aeroplanes
- Part 133 of CASR 1988 address the operational standards requirements for Australian air transport operations in rotorcraft.

This amendment to the proposed Part 119 of CASR 1998 would introduce reduced certification requirements for scenic flight operations in small aircraft.

I would like to thank you for your interest in this proposal. I emphasise that no rule changes will be undertaken until CASA has considered all NPRM responses and submissions received by the closing date.

Peter Boyd
Executive Manager
Standards Division
January 2015
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Annex A Summary of responses to DP 1210OS A1
1 Reference material

1.1 Acronyms and abbreviations

The acronyms and abbreviations used in this NPRM are listed in the table below.

<table>
<thead>
<tr>
<th>Acronym / abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>AC</td>
<td>Advisory Circular</td>
</tr>
<tr>
<td>AOC</td>
<td>Air Operator’s Certificate</td>
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<tr>
<td>ATPL</td>
<td>Air Transport Pilot Licence</td>
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<tr>
<td>CAO</td>
<td>Civil Aviation Order</td>
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<tr>
<td>CAR 1988</td>
<td>Civil Aviation Regulations 1988</td>
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<tr>
<td>CASA</td>
<td>Civil Aviation Safety Authority</td>
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<td>CASR 1998</td>
<td>Civil Aviation Safety Regulations 1998</td>
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<tr>
<td>CPL</td>
<td>Commercial Pilot Licence</td>
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<tr>
<td>DP</td>
<td>Discussion Paper</td>
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<tr>
<td>LCRPT</td>
<td>Low Capacity Regular Public Transport</td>
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<tr>
<td>MTOW</td>
<td>Maximum take-off weight</td>
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<tr>
<td>NFRM</td>
<td>Notice of Final Rule Making</td>
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<tr>
<td>NPRM</td>
<td>Notice of Proposed Rule Making</td>
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<tr>
<td>POB</td>
<td>Persons on Board</td>
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<tr>
<td>RPT</td>
<td>Regular Public Transport</td>
</tr>
<tr>
<td>SCC</td>
<td>Standards Consultation Committee</td>
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<tr>
<td>SMS</td>
<td>Safety Management System</td>
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<tr>
<td>SOR</td>
<td>Summary of Responses</td>
</tr>
<tr>
<td>VFR</td>
<td>Visual Flight Rules</td>
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</tbody>
</table>

1.2 Definitions

Terms that have specific meaning within this NPRM are defined in the table below.

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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</thead>
<tbody>
<tr>
<td>CASR operational regulations suite</td>
<td>Proposed CASR Parts 91, 119, 121, 133 and 135.</td>
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</tbody>
</table>
### Term | Definition
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Low capacity regular public transport | Regular public transport operations in other than high capacity aircraft, being an aircraft that is certified as having a maximum seating capacity not exceeding 38 seats or a maximum payload not exceeding 4,200 kg.\(^1\)
Operational control | The exercise of authority over the initiation, continuation, diversion or termination of a flight in the interest of the safety of the aircraft and the regularity and efficiency of the flight.\(^2\)
Passenger(s) | In relation to an aircraft, means a person who intends to travel on a particular flight on the aircraft; or is on board the aircraft for the flight; or has disembarked from the aircraft following a flight; and who is not a member of the crew of the aircraft for the flight.
Regular public transport (RPT) | Transporting persons, or transporting cargo for persons generally, for hire or reward in accordance with fixed schedules to and from fixed terminals over specific routes with or without intermediate stopping places between terminals.\(^3\)
Scenic flight | A flight conducted for the purpose of viewing something from the air. It does not include flights conducted for the purpose of flying training, carrying cargo from one place to another or moving passengers from one place to another except as a stop-off during a scenic flight, and does not include flights in limited category aircraft.
Scenic flight authorisation | An authorisation issued by CASA, which could be applied for in place of an Air Operator's Certificate (AOC) and is subject to simplified application and approval requirements. A scenic flight authorisation would not have full AOC privileges, such as transporting passengers from A to B.

### 1.3 References

**Regulations**


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<tr>
<th>Document</th>
<th>Title</th>
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\(^1\) See Civil Aviation Order 82.0.

\(^2\) See Part I of Annex 6, Operation of Aircraft to the Convention on International Civil Aviation (the Chicago Convention).

\(^3\) See paragraph 206 (1)(c) of CAR 1988.
<table>
<thead>
<tr>
<th>Document</th>
<th>Title</th>
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<tbody>
<tr>
<td>Part 141 of CASR</td>
<td>Recreational, private and commercial pilot flight training other than integrated training</td>
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<tr>
<td>Part 142 of CASR</td>
<td>Integrated and multi-crew pilot flight training and contracted recurrent training and checking.</td>
</tr>
<tr>
<td>Paragraph 206(1)(b) of the <em>Civil Aviation Regulations 1988</em> (CAR 1988)</td>
<td>Charter operations (Act, s 27(9))</td>
</tr>
<tr>
<td>Civil Aviation Order (CAO) 82.0</td>
<td>Air Operators’ Certificates – applications for certificates and general requirements.</td>
</tr>
<tr>
<td>CAO 82.1</td>
<td>Conditions on Air Operators’ Certificates authorising charter operations and aerial work operations.</td>
</tr>
<tr>
<td>Part 3 of the CASR Dictionary</td>
<td></td>
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</tbody>
</table>

**Advisory material**


<table>
<thead>
<tr>
<th>Document</th>
<th>Title</th>
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<tr>
<td>Annex 6 to the Chicago Convention</td>
<td>Operation of aircraft</td>
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</table>
2 Industry consultation

2.1 Previous consultation

In order to stimulate discussion and invite comment from interested members of the aviation industry, the wider aviation community and the public, CASA published DP 1210OS on the CASA website on 27 September 2012. In the DP, CASA presented a number of regulatory options for consideration and a number of possible conditions that might be imposed in conjunction with any relaxation of proposed Part 119 operator certification requirements. The DP was available for public comment until 23 November 2012.

CASA received 41 responses to DP 1210OS. Of the respondents, 37 identified as private individuals, and 4 identified as an aircraft business owner/service provider. The following individuals and organisations consented to having their names published:

<table>
<thead>
<tr>
<th>Organisations</th>
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<tbody>
<tr>
<td>Aircraft Maintenance Repair and Overhaul Business Association (AMROBA)</td>
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<tr>
<td>Aircraft Owners and Pilots Association (AOPA)</td>
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<tr>
<td>Royal Federation of Aeroclubs of Australia (RFACA)</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Individuals</th>
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<tbody>
<tr>
<td>David Briffa</td>
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<tr>
<td>Duncan Evans</td>
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<tr>
<td>Kenneth Evers</td>
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<tr>
<td>Paul Grocott</td>
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<td>Paul Hewitt</td>
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<tr>
<td>Roy Holden</td>
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<tr>
<td>Sheldon Jones</td>
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<tr>
<td>Rod Laurie</td>
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<td>David Porta</td>
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<td>Greg Porter</td>
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<tr>
<td>Malcolm Reed</td>
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<tr>
<td>Philip Smith</td>
</tr>
<tr>
<td>Paul Starr</td>
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<tr>
<td>Glenn Talbot</td>
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<tr>
<td>Glen Tapley</td>
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<tr>
<td>Kevin Warren</td>
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<tr>
<td>Julian Yates</td>
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</table>

2.2 Consultation on this NPRM

CASA is required to register and review each comment and submission received, but will not individually acknowledge a response unless specifically requested to do so. A summary of the comments provided in each submission will be published without attribution in a Summary of Responses (SOR), typically provided as an Annex to the subsequent NFRM. If consent is provided, the contributor’s name will additionally be published as a List of Respondents, typically provided in the subsequent NFRM.
At the end of the response period for public comment, all submissions will be analysed, evaluated and considered. Subsequent to the closing date for comments, an NFRM (including an SOR) will be prepared and published in conjunction with the making of the Final Rule.
3 Proposed change

3.1 Background

Local scenic flights that involve the carriage of passengers for commercial purposes are currently regulated as charter operations under CAR 1988 and CAO 82.1. The operator certification and operating standards for charter flights are lower than those for regular public transport (RPT) flights.

Future legislation proposes to regulate operators that carry passengers to a single operator certification and management standard. That standard (Part 119 of CASR 1998) would not differentiate between operations on the basis of:

- whether they carry persons between fixed terminals on fixed schedules or not
- or
- whether seats are available generally or not (RPT or charter).

Both of the aforementioned operations would be considered air transport operations.

This means that operations, such as scenic flights, would (unless CASA provided an alternative) have to meet operator certification standards which are similar to today’s low capacity regular public transport (LCRPT) standards and are more onerous than the charter standards to which they presently operate.

On a risk management basis, CASA considers that some of the requirements included in the proposed Part 119 of CASR 1998 are not necessary for local aircraft operations in small aircraft carrying limited numbers of passengers.

This NPRM proposes the concept of certain scenic flights being operated under a simple certification structure that does not require all the certification and management systems of Part 119 of CASR 1998.

Operators who take advantage of the proposed amendment would be required to comply with Part 133 or 135 of CASR 1998 (as applicable) unless relief is otherwise provided by CASA.

Removal of the requirement for a scenic flight operator to have an Air Operator's Certificate (AOC) is at odds with standards for international flights expressed in Annex 6 to the Chicago Convention; however, the geographical limitations placed on such an operation would ensure operations remain wholly within Australia, including its territorial waters.

ICAO Annex 6 Part I - 4.2.1.1 - An operator shall not engage in commercial air transport operations unless in possession of a valid AOC issued by the State of the Operator.

Commercial air transport operation - An aircraft operation involving the transport of passengers, cargo or mail for remuneration or hire.

3.2 Case for change

On a risk management basis, CASA considers that some of the requirements proposed for Part 119 of CASR 1998 are not necessary for simple non-complex daytime scenic flight operations in small aircraft. When compared to the medium to high capacity air transport
operators (airlines), operators who provide scenic flights (sometimes referred to as joyflights) generally operate aircraft that are small, with low passenger numbers on short duration flights.

Scenic flights:

- take-off and land at the same airport
- have few (if any) stop-overs
- fly the same route or routes time and again.

Lack of pilot familiarity is not generally a safety concern, and the business model of scenic flights is that they are conducted in good weather in high visibility conditions.

The small non-complex nature of these operations (usually 1 or more unpressurised single engine aircraft with a passenger load of up to 5 passengers) does not require the same style of complex multi-layer management structure that is required to safely operate a large RPT operation with multiple large complex aircraft, operating over a wide range of scheduled routes.

### 3.3 Options considered and assessed by CASA

#### 3.3.1 Options proposed in DP 1210OS

DP 1210OS sought comment on 4 key proposals and a number of optional conditions that could mitigate the removal of requirement to hold an AOC. The options were:

- **Option 1** – Status Quo Option – Full Part 119 AOC including operator management systems that are scalable to the size, nature and complexity of the operation
- **Option 2** – Part 119 AOC with reduced/fewer operator management systems than Part 119 would normally require for an air transport operation
- **Option 3** – No AOC or Part 119 operator management systems; but operator must notify/register with CASA that scenic flights are being conducted
- **Option 4** – No AOC or Part 119 operator management systems and no notification to CASA or registration system

Analysis of responses to each proposal is provided in the following sections. Details of the individual responses received to DP 1210OS are located in Annex B.

#### 3.3.2 Response to options proposed

Of the 4 key proposals put forward in DP 1210OS, keeping the full AOC (Option 1) and no AOC or operator registration (Option 4) were the least preferred options. Six respondents, in each case, indicated that these options would be unacceptable under any circumstances and one respondent indicated that Option 4 was unacceptable, but could be acceptable with changes.

The majority of respondents indicated a preference for some reduced level of CASA involvement, varying from a trimmed down AOC structure (Option 2) to a system of registration only (Option 3). The greatest number of respondents preferred Option 3, an operator registration system.
3.3.2.1 Conditions – types of flight limitations

The question about types of flights that would warrant consideration of lighter regulatory treatment was answered by 36 respondents (as shown in Figure 2). Respondents indicated a clear preference for operations limited to visual flight rules (VFR) by day.

The question regarding passenger limits drew a mixed response, with a majority selecting a maximum of 5 passengers per flight. A further 6 respondents suggested larger numbers, with some saying that the type of aircraft, rather than passenger numbers, should be considered when setting limits.
3.3.2.2 Conditions - flight profile limitations

The question about types of flight profiles was answered by 32 respondents (as shown in Figure 3). The majority preference was for flight profiles to be limited to A to A only.

![Figure 3 - Respondents' preferences for flight profile limitations](image)

3.3.2.3 Conditions – geographic and other limitations

The question about geographic and other limitations was answered by 33 respondents (as shown in Figure 4). Respondents indicated a clear preference for operations limited to a 50 NM operating radius. Some respondents also felt that there should be some flexibility with the 50 NM radius to allow operations from the nearest suitable aerodrome.

![Figure 4 - Respondents' preferences for geographic and other limitations](image)
3.4 **CASA’s preferred option for change**

Responses to DP 1210OS reveal a range of views, with an overall preference for a simplified entry control structure with minimal additional conditions. CASA shares that preference and proposes a policy based on a CASA authorisation that is simpler than, and does not fall within the AOC approval processes.

CASA agrees with industry’s preference to limit operations to VFR by day and for a maximum of 5 passengers. CASA proposes to regulate scenic flights on the basis of a VFR by day-only limitation, with operations constrained to a 50 NM radius unless otherwise approved by CASA. CASA also proposes a mandatory limit of 5 passengers for scenic flight operations.

CASA disagrees with industry’s preference for a rigid A to A flight profile. CASA proposes to proceed on the basis of A to A with no intermediate stops, unless approved by CASA. CASA would consider permitting intermediate stops within the following constraints:

- the 50 NM radius restrictions must remain unaltered unless otherwise approved by CASA
- all passengers must return to the departure point on the same day but not necessarily on the same flight (subject to CASA approval).

3.4.1 **Requirements of the person exercising operational control**

Under this condition, the person who exercises operational control in the scenic flight business would be required to:

- hold a commercial pilot licence (CPL) or air transport pilot licence (ATPL)
- be authorised under Part 61 to operate all aircraft of the class operated by the business in scenic flights (e.g. single engine aeroplane, multi engine aeroplane, single engine helicopter)

**Note:** Pilot licences and class ratings are perpetual and once obtained do not expire even if a pilot is not current or does not hold a medical. A person exercising operational control who is licenced can reasonably be expected to have adequate aeronautical knowledge in order to manage aviation operational risk. It is not the policy intent to require that the manager or business owner be checked for proficiency nor have a medical and the current ability to operate the flight in their own right.

The scenic flight business would be required to have in place an operations manual that includes a hazard and risk identification and management plan.

Access to the CASA on-line Manual Authoring and Assessment Tool (MAAT) would be expanded to include operators who elect to use the proposed simplified authorisation system. This would provide operators with a simple, low-cost means of creating an operations manual that would satisfy the proposed condition.

A hazard and risk identification and management plan for small non-complex operations would replace the proposed Part 119 of CASR 1998 AOC requirement to have a safety management system (SMS) and a safety manager. In essence, it would require an operator to have a procedure for:

- identifying hazards that could place any aspect of the operation at risk
- documenting those identified hazards
- developing processes for safely managing or eliminating the resulting risks
• allocating responsibilities for the management of each risk mitigation process
• reviewing the mitigation processes for effectiveness.

3.4.2 Part 141 and Part 142 training operators
CASA proposes that Part 141 training operators who have a documented hazard and risk identification and management plan would be granted full scenic flight authorisation if the details are included in their exposition and approved by CASA. Part 142 training operators are already required to have a full SMS and would also be granted full scenic flight authorisation, if the details are included in their exposition and approved by CASA.

This proposed condition would allow Part 142 flight training organisations and eligible Part 141 flight training operators (other than simulator-only organisations) to be granted all the privileges of an authorised scenic flight operator, contingent only on the function being detailed and approved in their exposition. This may add value for some established flight training organisations through potential addition of a complementary revenue stream with very little additional investment.

3.4.3 Regulation impact of CASA’s preferred option
CASA’s preferred option of a simplified authorisation model would provide significant savings for operators entitled to conduct operations under this proposed regulation. In the absence of the proposed regulation, a scenic flight operator would be required to obtain an AOC with the associated CASA fees and charges.

CASA has lodged a Regulatory Impact Assessment of the proposed changes with the Office of Best Practice Regulation (OBPR).

3.5 Key change proposal and conditions
CASA proposes that small aircraft scenic flight operators would not be required to have an AOC, but would instead be required to:

• apply to CASA for a scenic flight authorisation
• conduct operations under Part 133 or Part 135 rules, except as exempted or directed otherwise by CASA.

Applicable provisions under Parts 133/135 of CASR 1998 include:

• an annual VFR proficiency check (twice yearly checks for twin engine)
• flight planning and fuel management
• the requirement to have survival equipment, such as locator beacons and first aid kits
• the requirement that any flights over water would be subject to the life jacket and life raft requirement, in accordance with the applicable regulations.

The proposed supplementary conditions define eligibility criteria and operational limits that would apply under the proposed regulation. Scenic flights conducted outside these proposed conditions would be required to operate under a Part 119 AOC.
CASA’s proposed policy and conditions for eligibility to operate under a scenic flight authorisation are:

**Key Proposal:** A scenic flight operator would not be required to have an AOC, but would instead have the option to apply to CASA for a simplified scenic flight authorisation consistent with the following conditions.

- **Condition a:** Scenic flights would be restricted to VFR flights by day only entirely within Australian territory.
- **Condition b:** Scenic flights would be restricted to 50NM radius of take-off with no intermediate stops unless approved by CASA.
- **Condition c:** The person exercising operational control in a scenic flight business must hold a commercial pilot licence (CPL) or air transport pilot licence (ATPL), be authorised under Part 61 to operate an aircraft of that class, and have in place an operations manual that includes a hazard and risk identification and management plan.
- **Condition d:** All pilots conducting flights for a scenic flight operator must hold a valid CPL or ATPL.
- **Condition e:** A scenic flight operator must not operate a fleet of more than 5 aircraft unless approved by CASA.
- **Condition f:** Aeroplanes engaged in scenic flight operations must be unpressurised Class B propeller driven aeroplanes of not more than 3,500 kg MTOW and carrying not more than 5 passengers.
- **Condition g:** Helicopters engaged in scenic flight operations must be single engine helicopters with a MTOW of not more than 3,175 kg, carrying not more than 5 passengers and operate only from land or onshore pontoons (i.e. not from ships or offshore platforms).
- **Condition h:** Aircraft involved in scenic flight operations must be maintained in accordance with a system of maintenance approved by CASA.
- **Condition i:** Part 141 training operators would be granted full scenic flight privileges if the operators have a documented hazard and risk management plan, and the scenic flight details are included in their exposition and approved by CASA. Part 142 training operators would be granted scenic flight privileges if the details are included in their exposition and approved by CASA.
4 Implementation and review

4.1 Implementation timeframes

Following consideration of responses to this NPRM, CASA will prepare an SOR and make revisions to the policy where considered necessary. CASA intends to have the rules come into effect in conjunction with the commencement of Parts 119, 135 and 133.

4.2 Transition and post-implementation reviews

CASA will monitor and review the new rules on an ongoing basis thereafter, following the commencement of the rules. CASA will conduct post-implementation monitoring and reviews as required.
Additional information is available from:

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Project Leader

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