

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### CASA EX97/20 — Aircraft Engineer Licence and Rating Training and Qualification (Extension of Time Due to COVID-19) Exemption 2020

##### Purpose

The purpose of *CASA EX97/20 — Aircraft Engineer Licence and Rating Training and Qualification (Extension of Time Due to COVID-19) Exemption 2020* (the **instrument**) is to provide temporary relief for aircraft engineer licence and ratings candidates whose training, examination and qualification have been affected by the Government's response to control the spread of COVID-19.

The instrument provides exemptions from timeframes prescribed under civil aviation legislation for the following persons who may not be able to complete the relevant training program or course within the prescribed timeframes due to the impact of COVID-19 social distancing and travel restrictions:

- persons who have passed before 22 March 2020 at least 1 subject module of a license training and examination program for the grant of an aircraft engineer licence
- persons who have started, or intend to start, an aircraft type training course for the grant of a rating for an aircraft type on a licence.

##### 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 66 of CASR deals with aircraft engineer licences and ratings for the performance of maintenance certification for maintenance carried out on aircraft and issuing certificates of release to service for aircraft in relation to maintenance carried out on aircraft. Subpart 66.B deals with applications for, and grants of, aircraft engineer licences. Subpart 66.C deals with applications for, and grants of, ratings for an aircraft type on an aircraft engineer licence.

The term **aircraft engineer licence** is defined in Part 1 of the CASR Dictionary as meaning any of the following licences granted under regulation 66.025 or 66.026:

- (a) subcategory A1;
- (b) subcategory A2;
- (c) subcategory A3;
- (d) subcategory A4;
- (e) subcategory B1.1;
- (f) subcategory B1.2;
- (g) subcategory B1.3;
- (h) subcategory B1.4;
- (i) category B2;
- (j) category C.

The term **rating** is defined in Part 3 of the CASR Dictionary as meaning an authorisation granted under regulation 66.080 or 66.095, being a permission:

- (a) to perform maintenance certification, under a category B1 or B2 licence, for maintenance carried out on a particular aircraft type; or

- (b) to issue a certificate of release to service, under a category B1, B2 or C licence, for aircraft of a particular aircraft type in relation to maintenance carried out on the aircraft.

The term **Part 145 organisation** is defined in Part 1 of the CASR Dictionary as meaning a person who holds an approval under regulation 145.030 that is in force.

Under regulation 66.015 of CASR, the Civil Aviation Safety Authority (**CASA**) may issue a Manual of Standards prescribing matters for Part 66 of CASR.

Under subregulation 66.025 (1) of CASR, subject to regulation 11.055, CASA must grant an aircraft engineer licence to an applicant if:

- (a) the applicant is not a licensed aircraft maintenance engineer at the time of making the application; and
- (b) CASA is satisfied that the applicant meets the requirements mentioned in subregulation (3).

Under subregulation 66.025 (2) of CASR, subject to regulation 11.055, CASA must grant an aircraft engineer licence to an applicant if:

- (a) the applicant is a licensed aircraft maintenance engineer at the time of the application; and
- (b) CASA is satisfied that the applicant meets the requirements mentioned in paragraphs (3) (d) and (e).

For this instrument, subparagraph 66.025 (3) (e) (i) is of relevance and requires the applicant to meet the requirements of sections 66.A.25 and 66.A.30 of the *Part 66 Manual of Standards* (the **Part 66 MOS**) for the licence applied for.

Under subregulation 66.080 (1) of CASR, subject to regulation 11.055, CASA must grant to an applicant a rating on an aircraft engineer licence if CASA is satisfied that:

- (a) the applicant meets the requirements specified in the Part 66 MOS for the rating applied for; and
- (b) if subregulation 66.075 (4) applies to the applicant — the applicant can safely exercise at least one of the privileges specified in the Part 66 MOS for the rating applied for; and
- (c) if the application is for a rating that requires aircraft type training — the applicant meets the requirements mentioned in subregulation 66.080 (2), (3) or (4).

Subregulation 66.080 (2) of CASR provides that the requirements are that:

- (a) at the time of making the application, the applicant has evidence of the successful completion of the aircraft type training, or an element of the aircraft type training, for the rating; and
- (b) within the 5 years immediately before the time of making the application, the applicant has successfully completed:
  - (i) the theoretical elements of the aircraft type training for the rating; and
  - (ii) the assessment for the training; and
- (c) within the 3 years immediately before the time of making the application, the applicant has successfully completed:
  - (i) the practical elements of the aircraft type training for the rating; and
  - (ii) the assessment for the training.

Subregulation 66.080 (3) of CASR provides that the requirements are that:

- (a) at the time of making the application, the applicant has a notice in relation to the rating, issued under paragraph 145.A.37 (d) of the Part 145 Manual of Standards by a Part 145 organisation; and
- (b) within the 5 years immediately before the time of making the application, the applicant has successfully completed:
  - (i) the theoretical elements of the aircraft type training for the rating; and
  - (ii) the assessment for the training; and
- (c) within the 3 years immediately before the time of making the application, the applicant has successfully completed:
  - (i) the practical elements of the aircraft type training for the rating; and
  - (ii) the assessment for the training.

Section 66.A.25 of the Part 66 MOS sets out requirements that must be met by a person who applies for:

1. an aircraft engineer licence in a category or subcategory; or
2. the addition of a category or subcategory to the person's licence.

Paragraph 66.A.25 (h) of the Part 66 MOS provides that the qualification (comprised of knowledge, competence and assessments) must have been gained within 5 years of making an application for an aircraft maintenance licence or the addition of a category or subcategory to an aircraft maintenance licence.

Subclause 1.11 of Appendix II to the Part 66 MOS provides, among other matters, that all Part 66 modules that make up a complete Part 66 aircraft maintenance licence category or subcategory must be passed within a 10-year time period of passing the first module except in the case specified in subclause 1.12.

Subclause 1.12 of Appendix II provides that the 10-year time period mentioned in subclause 1.11 does not apply to those modules which are common to more than one Part 66 aircraft maintenance licence category or subcategory and which were previously passed as part of another such category or subcategory examination.

Subpart 11.F of CASR provides for the granting of exemptions from particular provisions of the regulations. Subregulation 11.160 (1) of CASR provides that, for subsection 98 (5A) of the Act, CASA may grant an exemption from compliance with a provision of the regulations.

Under subregulation 11.160 (2) of CASR, an exemption may be granted to a person or a class of persons.

Under subregulation 11.160 (3) of CASR, 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, CASA must regard as paramount the preservation of at least an acceptable level of aviation safety. CASA has regard to the same test when deciding whether to grant an exemption on its own initiative.

Regulation 11.205 provides that CASA may impose conditions on an exemption if necessary in the interests of the safety of air navigation. Under regulation 11.210, it is a strict liability offence not to comply with the obligations imposed by a condition.

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

Subsection 98 (5D) of the Act provides that a legislative instrument made under the Act or the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time, even if the other instrument or writing does not yet exist when the legislative instrument is made.

### **Background**

Due to the impact of the coronavirus pandemic, Government-imposed COVID-19 travel and social distancing restrictions have affected the ability of persons to undertake the aircraft engineer practical training required, and sit exams for subject modules that must be passed, to gain the qualification necessary for CASA to grant them an aircraft engineer licence, or to complete the aircraft type training and assessment for the grant of a rating, for an aircraft type, on such a licence.

To address this issue, CASA has decided that those persons who commenced a license training and examination program for an aircraft engineer licence, or for the addition of a category or subcategory to their licence, and who have passed a subject module before 22 March 2020, be given additional time to complete their qualification and subject modules. Also, that those persons who apply for a rating on a licence that requires aircraft type training have additional time to complete the aircraft type training and assessment.

The addition of a category or subcategory of a licence to a person's existing licence (see paragraph 66.A.25 (a) of the Part 66 MOS) is granted as a licence under regulation 66.025 of CASR.

CASA has also granted *CASA EX82/20 — Non-Destructive Testing and Aircraft Welding Authorities (Visual Testing) Exemption 2020* to help some non-destructive testing (NDT) and aircraft weld authority holders who have been impacted by the COVID-19 restrictions.

### **Overview of instrument**

The effect of the instrument is to extend by 1 year the following timeframes:

- the 10 years from the passing of the first subject module, for persons to complete all subject modules (except those previously passed as part of another licence category or subcategory examination) for a licence category or subcategory (see subclause 1.11 of Appendix II of the Part 66 MOS)
- the 5 years immediately before the time of application for the licence, for persons to complete a qualification (comprised of knowledge, competency and assessments) for the licence, or the addition of the category or subcategory to the licence (see paragraph 66.A.25 (h) of the Part 66 MOS)
- the 5 years immediately before the time of application for a rating, to complete the aircraft type training theory, and assessment, required for the grant of the rating (see paragraphs 66.080 (2) (b) and (3) (b) of Part 66 of CASR)
- the 3 years immediately before the time of application for a rating, to complete the practical elements of the aircraft type training, and assessment, required for the grant of the rating (see paragraphs 66.080 (2) (c) and (3) (c) of CASR).

The extension of the timeframes for completion of the aircraft type training and assessment for a rating applies to training and assessment whether or not it is provided by a maintenance

training organisation approved under regulation 147.030 of CASR (known as an “MTO”) or a Part 145 organisation (known as an approved maintenance organisation or “AMO”).

The instrument applies until the end of 22 March 2021. COVID-19 Government restrictions were first imposed by some jurisdictions shortly before 22 March 2020 and the exemptions are to be provided for 1 year from the beginning of the restrictions, as an industry-relief measure in response to the COVID-19 pandemic.

In considering whether to grant the exemption, CASA has regarded as paramount the preservation of at least an acceptable level of aviation safety.

### **Documents incorporated by reference**

Under section 14 (1) of the *Legislation Act 2003* (the *LA*), if enabling legislation authorises or requires provision to be made in relation to any matter by legislative instrument, the instrument may, unless the contrary intention appears, make provision in relation to that matter by applying, adopting or incorporating, with or without modification, among other matters, the provision of a disallowable legislative instrument. Subsection 98 (5D) of the Act provides that, despite section 14 of the LA, a legislative instrument made under the Act or the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing at a particular time or as in force or existing from time to time.

This instrument incorporates the Part 66 MOS, as in force from time to time. The Part 66 MOS is a disallowable legislative instrument and is freely available on the Federal Register of Legislation.

### ***Content of instrument***

Section 1 names the instrument.

Section 2 specifies the period during which the instrument is in operation. The instrument commences on the day after it is registered and will repeal at the end of 22 March 2021.

Section 3 contains definitions of terms used in the instrument.

Section 4 provides an exemption for specified persons from the timeframes for completion of the qualification and subject modules required for the grant of an aircraft engineer licence. The exemption applies to persons who, within the 6 years before applying for a licence or the addition of a category or subcategory to a licence, have gained the qualification for the licence category or subcategory, and before 22 March 2020, have passed at least 1 subject module for that licence category or subcategory, and passed all the subject modules for it, other than modules common to more than 1 licence category or subcategory (***common modules***), within the 11 years after passing the first module.

Such persons are exempted from compliance with paragraph 66.025 (1) (b) as it relates to subparagraph 66.025 (3) (e) (i) of CASR, to the extent that they must comply with the following to be granted a licence by CASA:

- (a) paragraph 66.A.25 (h) of the Part 66 MOS;
- (b) the requirement in subclause 1.11 of Appendix II of the Part 66 MOS that the person must have passed all subject modules that make up the complete licence category or subcategory, other than common modules, within a 10-year time period of passing the first module.

Section 5 provides an exemption from the timeframes required under Part 66 of CASR for completion of aircraft type training and assessment for the grant of a rating. The exemption applies to persons who:

- (a) within the 6 years immediately before the time of making an application for a rating on a licence that requires aircraft type training, successfully completed the theoretical elements of the aircraft type training for the rating, and the assessment for the training, mentioned in paragraph 66.080 (2) (b) of CASR; and
- (b) within the 4 years immediately before the time of making the application, successfully completed the practical elements of the aircraft type training for the rating, and the assessment for the training, mentioned in paragraph 66.080 (2) (c) of CASR.

Such persons are exempted from compliance with paragraph 66.080 (1) (c) of CASR, to the extent that the paragraph requires them to meet the requirements in paragraphs 66.080 (2) (b) and (c).

Section 6 provides an exemption from the timeframes prescribed under Part 66 of CASR for completion of aircraft type training and assessment provided by Part 145 organisations for the grant of a rating. The exemption applies to persons who:

- (a) within the 6 years immediately before the time of making an application for a rating that requires aircraft type training, successfully completed the theoretical elements of the aircraft type training for the rating, and the assessment for the training, mentioned in paragraph 66.080 (3) (b) of CASR; and
- (b) within the 4 years immediately before the time of making the application, successfully completed the practical elements of the aircraft type training for the rating, and the assessment for the training, mentioned in paragraph 66.080 (3) (c) of CASR.

Such persons are exempted from compliance with paragraph 66.080 (1) (c) of CASR, to the extent that the paragraph requires the person to meet the requirements in paragraphs 66.080 (3) (b) and (c) of CASR.

### ***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) of the Act 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 exemptions in this instrument apply to persons who have started a license training and examination program for an aircraft engineer licence, and to persons who have started, or intend to start, an aircraft type training course for a rating on a licence. 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.

### **Consultation**

Consultation under section 17 of the LA has not been undertaken in this case. CASA has announced on its website the relief measures that this instrument puts into place to address the impacts of the COVID-19 pandemic on the aviation industry. The instrument provides support to aircraft engineer licence and ratings candidates whose training, examination and qualification is affected by the COVID-19 social distancing and travel restrictions.

CASA is, therefore, satisfied that no consultation is appropriate or reasonably practicable for this instrument for section 17 of the LA.

**Office of Best Practice Regulation (OBPR)**

A Regulation Impact Statement (*RIS*) is not required in this case, as the exemption is covered by a standing agreement between CASA and OBPR under which a RIS is not required for exemptions (OBPR id: 14507).

**Statement of Compatibility with Human Rights**

A Statement of Compatibility with Human Rights is at Attachment 1.

**Making and commencement**

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

The instrument commences on the day after it is registered and is repealed at the end of 22 March 2021.

## Statement of Compatibility with Human Rights

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

### **CASA EX97/20 — Aircraft Engineer Licence and Rating Training and Qualification (Extension of Time Due to COVID-19) Exemption 2020**

This 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**

This instrument provides temporary relief from legislative time-based obligations for completion of license training and examination programs for the grant of aircraft engineer licences and aircraft type training courses for the grant of a rating for an aircraft type on a licence. This relief is provided because candidates may not be able to meet these timeframes due to COVID-19 restrictions such as the closure of examination venues and travel restrictions.

The instrument exempts specified persons from compliance with paragraph 66.025 (1) (b) as it relates to subparagraph 66.025 (3) (e) (i) of the *Civil Aviation Safety Regulations 1998 (CASR)*, to the extent that they require the person to comply with specified provisions of the *Part 66 Manual of Standards*, to be granted an aircraft engineer licence.

The instrument also exempts specified persons from compliance with paragraph 66.080 (1) (c) of CASR, to the extent that it requires the person to meet the requirements in paragraphs 66.080 (2) (b) and (c), and other specified persons from compliance with paragraph 66.080 (1) (c) of CASR, to the extent that it requires the person to meet the requirements in paragraphs 66.080 (3) (b) and (c) of CASR.

#### **Human rights implications**

##### *Right to work*

The right to work, contained in Article 6 (1) of the International Covenant on Economic, Social and Cultural Rights, includes the right of everyone to the opportunity to gain their living by work which they freely choose or accept. The right to work is promoted by this instrument as it provides relief from prescribed timeframes for the completion of qualifications necessary for aircraft maintenance engineers to perform their duties that they would otherwise be unable to meet due to COVID-19 restrictions.

##### *Other rights*

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

#### **Conclusion**

This legislative instrument is compatible with human rights because it promotes the protection of human rights.

**Civil Aviation Safety Authority**