**Explanatory Statement**

**Civil Aviation Safety Regulations 1998**

**CASA EX126/20 — Repeal of CASA Part 61 Exemptions Instrument 2020**

**Purpose**

The purpose of *CASA EX126/20 — Repeal of CASA Part 61 Exemptions Instrument 2020* (the ***instrument***) is to repeal various exemptions that are no longer required as a consequence of the commencement of the *Civil Aviation Safety Amendment (Flight Crew Licensing Measures No. 1) Regulations 2020* (the ***amending Regulations***). The amending Regulations amend Part 61 of the *Civil Aviation Safety Regulations 1998* (***CASR***) to incorporate the provisions of the exemptions.

**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 and the *Civil Aviation Regulations 1988* (***CAR***).

Part 61 of CASR commenced on 1 September 2014 and sets out the licensing scheme for pilots and flight engineers, including the standards for the issuance of flight crew licences. Part 61 arose from the function of the Civil Aviation Safety Authority (***CASA***) to develop and promulgate appropriate, clear and concise aviation safety standards.

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 a provision of the regulations.

CASA has registered the following legislative instruments, which granted exemptions from various provisions of Part 61 of CASR:

* *CASA EX15/20 — Aeronautical Experience Requirements for Grant of Commercial Pilot Licence (Aeroplane Category) Exemption 2020* (***CASA EX15/20***)
* *CASA EX107/19 — Solo Flight Time Exceeding 3 Hours Between Dual Flight Checks (Student Pilots) Exemption 2019* (***CASA EX107/19***)
* *CASA EX101/19 — Helicopter Aerial Application Endorsements Exemption 2019* (***CASA EX101/19***)
* *CASA EX33/19 — Flight Test Prerequisites (Certain Applicants for Air Transport Pilot Licence) Exemption 2019* (***CASA EX33/19***)
* *CASA EX159/18 — Authorised Flight Examiners Exemption 2018* (***CASA EX159/18***)
* *CASA EX114/18 — Flight Instructors (Training in Principles and Methods of Instruction) Exemption 2018* (***CASA EX114/18***)
* *CASA EX105/18 — Aeronautical Experience for NVIS Rating or Endorsement Exemption 2018* (***CASA EX105/18***)
* *CASA EX46/18 — Dual Flight Checks before Solo Flights (Student Pilots) Exemption 2018* (***CASA EX46/18***)

(the ***8 exemptions***).

The amending Regulations amend Part 61 of CASR so as to incorporate the provisions of the 8 exemptions. The amending Regulations are anticipated to commence by 1 September 2020.

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.

**Background**

Since the commencement of Part 61 of CASR, numerous minor errors and unintended consequences have been identified. CASA issued the 8 exemptions to temporarily address or provide relief from these errors and unintended consequences, pending amendment to CASR.

Set out below is a description of each of the 8 exemptions, and of how the amending Regulations incorporate the 8 exemptions.

*CASA EX15/20*

CASA EX15/20 provides alternate aeronautical experience requirements for some applicants for a commercial pilot licence (***CPL***). The amending Regulations incorporate the provisions of CASA EX15/20 by amending paragraph 61.610 (1) (b) of CASR to allow an applicant holding a CPL, or air transport pilot licence (***ATPL***), with the helicopter category rating to have 60 hours’ flight time as pilot in command of an aeroplane rather than 100 hours.

*CASA EX107/19*

CASA EX107/19 exempts certain student pilots from the limitation in paragraph 61.115 (1) (b) of CASR that limits the amount of solo flight time a student pilot can accrue between dual flight checks to 3 hours. The amending Regulations incorporate the provisions of CASA EX107/19 by amending regulation 61.115 to remove the solo flight requirement in paragraph 61.115 (1) (b) from applying to certain student pilots undergoing training, conducted by a Part 141 operator, for the grant of a private pilot licence or CPL, and who demonstrate competency to the recreational pilot licence standard.

*CASA EX101/19*

CASA EX101/19 provides for alternative aeronautical experience and supervision requirements for the grant of a helicopter aerial application endorsement. The amending Regulations incorporate the provisions of CASA EX101/19 by amending regulation 61.1120 and subregulation 61.1130 (2) of CASR to allow an applicant for a helicopter aerial application endorsement to have 10 hours of dual flight in a helicopter while receiving training in aerial application operations and require the holder of a helicopter aerial application endorsement to have a combination of direct and indirect supervision for the first 110 hours of aerial application operations. The holder is required to have direct supervision for the first 10 hours, and a combination of direct and indirect supervision for the next 100 hours, 10 hours of which must be direct supervision.

*CASA EX33/19*

CASA EX33/19 exempts an applicant for an ATPL from the requirement in paragraph 61.235 (2) (b) of CASR that the applicant be assessed as competent in any standard mentioned in the applicant’s knowledge deficiency report before attempting the flight test. CASA EX33/19 also exempts the holder of an overseas flight crew licence who is an applicant for a multi-crew pilot licence or ATPL from the requirement in subparagraph 61.275 (1) (e) (i) to receive written certification that the applicant is competent in each unit of competency mentioned in the Part 61 Manual of Standards for the Australian licence. The amending Regulations incorporate the effect of CASA EX33/19 by repealing paragraph 61.235 (2) (b) and subparagraph 61.275 (1) (e) (i).

*CASA EX159/18*

CASA EX159/18 removes the requirement in subregulation 61.245 (3) of CASR that a flight test for a CPL not be conducted by the same person who provided the certification under paragraph 61.235 (2) (aa). The amending Regulations repeal subregulations 61.245 (3) and 61.1295 (2) to remove the certification limitation and associated offence provision.

*CASA EX114/18*

CASA EX114/18 exempts the holder of a flight instructor rating or simulator instructor rating granted on the basis of regulation 202.272 or 202.274 of CASR from the requirement in regulations 61.1172 and 61.1197 of CASR, respectively, to have completed either an approved course of training in principles and methods of instruction, hold a Certificate IV in training and assessment or hold a tertiary qualification in teaching in order to exercise the privileges of the rating. The amending Regulations incorporate the effect of CASA EX114/18 by repealing regulations 61.1172 and 61.1197.

*CASA EX105/18*

CASA EX105/18 provides for alternative experience for the grant of a Grade 1 or a Grade 2 night vision imaging system (***NVIS***) endorsement. Rather than the requirement to have at least 20 hours of (unaided) flight at night as pilot in command of a helicopter under regulation 61.1025 of CASR, an applicant is required to have at least 20 hours of aeronautical experience at night as pilot of a helicopter or an approved flight simulation training device (***FSTD***). The amending Regulations amend regulation 61.1025 to substantively reflect the provisions of CASA EX105/18 and allow an applicant for a Grade 1 or 2 NVIS endorsement to have at least 20 hours of aeronautical experience at night as pilot of a helicopter or an approved FSTD, of which a maximum of 10 hours of the required aeronautical experience can be accumulated in an approved FSTD.

*CASA EX46/18*

CASA EX46/18 extends the mandatory period between dual flight checks for student pilots contained in paragraph 61.115 (1) (a) of CASR from 14 to 30 days. The amending Regulations incorporate the provisions of CASA EX46/18 by amending paragraph 61.115 (1) (a) to extend the mandatory period between dual flight checks for student pilots from 14 to 30 days.

On the basis of the amendments described above, the 8 exemptions are no longer required and should be repealed.

**Overview of instrument**

In accordance with subsection 33 (3) of the *Acts Interpretation Act 1901*, the instrument repeals the 8 exemptions, which are no longer required as a consequence of the commencement of the amending Regulations.

The repeal of the 8 exemptions will have no impact on aviation safety because their provisions have been incorporated into CASR.

***Content of instrument***

Section 1 sets out the name of the instrument.

Section 2 sets out the commencement of the instrument, to provide that its commencement aligns with the commencement of the amending Regulations.

Section 3 repeals the 8 exemptions.

***Legislation Act 2003* (the *LA*)**

Paragraph 10 (1) (d) of the LA provides that an instrument will be a legislative instrument if it includes a provision that amends or repeals another legislative instrument.The instrumentrepeals the 8 exemptions, that were all registered as legislative instruments and is, therefore, also a legislative instrument, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

**Consultation**

No consultation has been undertaken for this instrument. For the reasons given above, the repeal of the 8 exemptions is necessary because of their incorporation into CASR by the amending Regulations.

In these circumstances, it is CASA’s view that it is not necessary or appropriate to undertake any consultation under section 17 of the LA.

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

A Regulation Impact Statement (***RIS***) is not required because the instrument is covered by standing agreements between CASA and OBPR under which a RIS is not required (OBPR id: 14507 and OBPR id: 24429).

**Statement of Compatibility with Human Rights**

The Statement of Compatibility with Human Rights at Attachment 1 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The instrument does not engage any of the applicable rights or freedoms, and is compatible with human rights, as it does not raise any human rights issues.

**Making and commencement**

The instrument has been made by a delegate of CASA relying on the power of delegation under subregulation 11.260 (1) of CASR.

The instrument commences on the later of: the day after registration; or the commencement of the amending Regulations. It is automatically repealed in accordance with section 48A of the LA.

**Attachment 1**

**Statement of Compatibility with Human Rights**

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

**CASA EX126/20 — Repeal of CASA Part 61 Exemptions Instrument 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**

*CASA EX126/20 — Repeal of CASA Part 61 Exemptions Instrument 2020* repeals the following exemptions that are no longer required as a consequence of the commencement of the *Civil Aviation Safety Amendment (Flight Crew Licensing Measures No. 1) Regulations 2020* (the ***amending Regulations***):

* *CASA EX15/20 — Aeronautical Experience Requirements for Grant of Commercial Pilot Licence (Aeroplane Category) Exemption 2020*
* *CASA EX107/19 — Solo Flight Time Exceeding 3 Hours Between Dual Flight Checks (Student Pilots) Exemption 2019*
* *CASA EX101/19 — Helicopter Aerial Application Endorsements Exemption 2019*
* *CASA EX33/19 — Flight Test Prerequisites (Certain Applicants for Air Transport Pilot Licence) Exemption 2019*
* *CASA EX159/18 — Authorised Flight Examiners Exemption 2018*
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* *CASA EX105/18 — Aeronautical Experience for NVIS Rating or Endorsement Exemption 2018*
* *CASA EX46/18 — Dual Flight Checks before Solo Flights (Student Pilots) Exemption 2018*

The amending Regulations amend Part 61 of CASR to incorporate the provisions of the 8 exemptions.

**Human rights implications**

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

**Conclusion**

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

**Civil Aviation Safety Authority**