

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX92/21 — Flight Reviews, Proficiency Checks and Related Matters (Extensions of Time Due to COVID-19) Exemptions Instrument 2021

Purpose

The purpose of this instrument is to use a series of exemptions from certain provisions of the *Civil Aviation Regulations 1988 (CAR)*, the *Civil Aviation Safety Regulations 1998 (CASR)* and Civil Aviation Order 40.7 (*CAO 40.7*) to extend the time-limits for compliance with pilot proficiency check and flight review obligations.

Those who are subject to the prescribed time limits for completion of these checks and reviews are currently exposed to the risk of being in breach of them, essentially through no fault of their own. This is because action to avoid any such breach may involve checking, training or other activity that would break, weaken or undermine the social distancing, stay-at-home and lock-down rules applicable in parts of Australia because of the COVID-19 pandemic.

Some of the time-based limits can, in practice, relate to using flight simulators, whether in Australia or overseas, which are not currently available due to COVID-19 related travel restrictions and the need to maximise the remedial effects of the social distancing rules. Some other obligations are imposed on operators, like having an up-to-date operations manual, which would be prohibitively expensive to achieve if it were to take account of all of the exemptions in the instrument for the short period of duration of the instrument.

Legislation — exemptions

Subpart 11.F of CASR deals with exemptions. Under subregulation 11.160 (1), and for subsection 98 (5A) of the *Civil Aviation Act 1988* (the *Act*), CASA may, by instrument, grant an exemption from a provision of CASR in relation to a matter mentioned in subsection 98 (5A). Subsection 98 (5A) matters are, in effect, those affecting the safety, airworthiness or design of aircraft.

Under subregulation 11.160 (2), an exemption may be granted to a person or a class of persons. Under subregulation 11.160 (3), CASA may grant an exemption on application, or on its own initiative. For an application for an exemption, CASA must regard as paramount the preservation of an acceptable level of safety. For making a decision on its own initiative, CASA is guided by the requirement in subsection 9A (1) of the Act that in exercising its powers and functions CASA must regard the safety of air navigation as the most important consideration.

Under regulation 11.205, CASA may impose conditions on an exemption, if this is 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. Under regulation 11.225, CASA must, as soon as practicable, publish on the Internet details of all exemptions under Subpart 11.F.

Under subregulation 11.230 (1), an exemption may remain in force for 3 years or for a shorter period specified in the instrument.

Under subregulation 11.230 (3), an exemption, in force in relation to a particular aircraft owned by a particular person, ceases to be in force when the aircraft ceases to be owned by that person. Under regulation 11.235, an exemption is not transferable (as between operators, aircraft etc.).

In making the instrument, CASA has arrived at exemption provisions which will preserve the highest level of aviation safety that is reasonably practicable in the circumstances of the COVID-19 pandemic. Thus, both the paramountcy of aviation safety, and the practicability of achieving it as the most important consideration in CASA's assessment, have been preserved in the proportionate approach adopted and the conditions imposed.

Legislation — CASR, CAR and CAO 20.11

Section 98 of the Act empowers the Governor-General to make regulations for the Act and the safety of air navigation.

The regulations in Part 61 set out flight crew licensing requirements. References below to provisions that commence with the numerals “61”, “137”, “141” and “142” are to Parts 61, 137, 141 and 142 of CASR, respectively. The abbreviation “reg” is used to cover sub-provisions in a regulation. The following sections are numbered to cross-reference to the sections of the exemption instrument.

The exemption instrument

1 Name

This section names the instrument as *CASA EX92/21 — Flight Reviews, Proficiency Checks and Related Matters (Extensions of Time Due to COVID-19) Exemptions Instrument 2021*.

2 Duration

This section provides that the instrument commences on the day of registration. It is repealed at the end of 31 October 2021.

3 Definitions

This section provides for useful definitions.

4 Application

- (1) Under subsection (1), the instrument is expressed to apply:
 - (a) to a person:
 - (i) who is the holder of a flight crew licence that was in force on 1 July 2021; and
 - (ii) whose licence is not:
 - (A) surrendered, suspended or cancelled; or
 - (B) the subject of a show cause notice that was active immediately before the person purports to take the benefit of an exemption under this instrument (an active show cause notice); and
 - (b) to a person who:
 - (i) is the holder of an AOC that was in force immediately before the commencement of this instrument; and
 - (ii) is not the subject of an active show cause notice; and

- (c) to a person who:
 - (i) is the holder of a Part 141 certificate or a Part 142 authorisation that was in force immediately before the commencement of this instrument; and
 - (ii) is not the subject of an active show cause notice; and
 - (d) to a person who:
 - (i) is the holder of a balloon flight crew licence that was in force immediately before the commencement of this instrument; and
 - (ii) is not the subject of an active show cause notice; and
 - (iii) must hold a flight instructor (balloon) rating that is in force on 1 July 2021, in order to engage in any of the activities (*balloon training and checking etc.*) mentioned in paragraph 16.5 of Civil Aviation Order 40.7; and
 - (e) to a person to whom section 11 or section 12 applies; and
 - (f) to any other person on whom an obligation is imposed under a provision of this instrument, provided the person is not the subject of an active show cause notice.
- (2) This subsection provides that an exemption under the instrument does not apply to or for a person who, before the expiry of any period to which an applicable exemption would otherwise apply, has attempted or attempts, but without completion and success, any relevant proficiency check, flight review, recent experience or test.
 - (3) This subsection provides that an exemption under the instrument does not apply to or for a person who is exercising the privileges of a rating to which an applicable exemption would otherwise apply, if the person operates an aircraft outside Australian territory, other than in an operation that leaves Australian territory and returns to Australian territory without entering the territory of another State.
 - (4) This subsection provides that the instrument may be repealed, or repealed and replaced, or amended, by CASA sooner than the end of 31 October 2021 if CASA considers that such action is required and safe in the context of any ongoing COVID-19 pandemic.
 - (5) This subsection provides that exemption from the requirements of a provision to which the instrument applies ceases to apply to a person if the person is unable to demonstrate to CASA, on request, that Australian or foreign laws in response to the COVID-19 pandemic make it impossible, impracticable or unreasonable for the person to comply with the requirements of the provision.

5 Exemptions — regulation 61.065

Reg 61.065 makes the conduct of unauthorised Part 61 activities an offence. The exemption instrument exempts from reg 61.065 in order to permit certain otherwise unauthorised activities under the terms of the other provisions of the instrument.

6 Exemptions — Part 61 proficiency checks

A series of provisions in Part 61 require that relevant pilots complete proficiency checks appropriate to their licence and rating, within certain time cycles which

create expiry dates and the need to renew the proficiency check. The provisions are the following:

- (a) 61.650 — in relation to the requirement for the holder of a multi-crew pilot licence to have an instrument proficiency check;
- (b) 61.695 — in relation to the requirement for the holder of an air transport pilot licence to have an instrument proficiency check;
- (c) 61.805 — in relation to the requirement for the holder of a pilot type rating to have an instrument proficiency check;
- (d) 61.880 — in relation to the requirement for the holder of an instrument rating to have an instrument proficiency check;
- (e) 61.1015 — in relation to the requirement for the holder of a night vision imaging system (*NVIS*) rating to have an NVIS proficiency check;
- (f) 61.1110 — in relation to the requirement for the holder of an aerial application rating to have an aerial application rating instrument proficiency check;
- (g) 61.1180 — in relation to the requirement for the holder of a flight instructor rating to have an instructor proficiency check;
- (h) 61.1205 — in relation to the requirement for the holder of a simulator instructor rating to have an instructor proficiency check;
- (i) 61.1410 — in relation to the requirement for the holder of a flight engineer instructor rating to have an instructor proficiency check.

The exemption would apply only to the extent that the provision has the effect of imposing an expiry date on the validity of the holder's required proficiency check under the applicable regulation. Subsection 6 (5) then provides for the particular exemption to expire at certain times:

Thus:

- (a) for a proficiency check that expires after 31 July 2021 but on or before 31 August 2021 — the extension period is 2 months from the expiry date; and
- (b) for a proficiency check that expires after 31 August 2021 but on or before 30 September 2021 — the extension period is 1 month from the expiry date.

Another CASA exemption instrument, *CASA EX93/18 — Instrument Proficiency Checks for Aircraft Type Ratings Exemption 2018 (CASA EX93/18)*, exempts certain aircraft rating holders from regulation 61.805. It expires at the end of 18 August 2021 and will be renewed. Paragraph 6 (3) (c) of the current exemption instrument also exempts from regulation 61.805. It is necessary to provide, therefore, that to avoid doubt, the current exemption does not (impliedly) repeal or otherwise affect *CASA EX93/18* or any successor instrument which is in substantially the same terms as *CASA EX93/18*. The exemptions may operate in parallel with each other insofar as a person elects to take the benefit of one or other exemption instrument at any relevant time.

7 Exemptions — Part 61 flight reviews and recent experience

A series of provisions in Part 61 require that relevant pilots complete flight reviews appropriate to their licence and rating within certain time cycles which create expiry dates and the need to renew the flight review. The provisions are the following regulations:

- (a) 61.745 — in relation to the requirement for the holder of an aircraft class rating to have a flight review for the rating;
- (b) 61.800 — in relation to the requirement for the holder of a pilot type rating to have a flight review for the rating;
- (c) 61.925 — in relation to the requirement for the holder of a private instrument rating to have a flight review for the rating;
- (d) 61.970 — in relation to the requirement for the holder of a night VFR rating to have a flight review for the rating;
- (e) 61.1060 — in relation to the requirement for the holder of a low-level rating to have a flight review for the rating;
- (f) regulation 5.143 of CAR — in relation to a biennial balloon flight review.

The exemption would operate in the same way as for proficiency checks. The exemption would apply only to the extent that the provision has the effect of imposing an expiry date on the validity of the holder's required flight review under the applicable regulation. Subsection 7 (5) then provides for the particular exemption to expire at certain times:

- (a) for a flight review or relevant recent experience that expires after 31 July 2021 but on or before 31 August 2021 — the extension period is 2 months from the expiry date; and
- (b) for a flight review or relevant recent experience that expires after 31 August 2021 but on or before 30 September 2021 — the extension period is 1 month from the expiry date.

Another CASA exemption instrument, *CASA EX99/18 — Flight Reviews Exemption 2018 (CASA EX99/18)*, exempts certain aircraft rating holders from regulations 61.745 and 61.800. It expires at the end of 18 August 2021 and will be renewed. Paragraphs 7 (3) (a) and (b) of the current exemption instrument also exempt from regulations 61.745 and 61.800. It is necessary to provide, therefore, that to avoid doubt, the current exemption does not (impliedly) repeal or otherwise affect CASA EX99/18 or any successor instrument which is in substantially the same terms as CASA EX99/18. The exemptions may operate in parallel with each other insofar as a person elects to take the benefit of one or other exemption instrument at any relevant time.

8 Exemptions — operations manual

Provisions in reg 215 of the CAR require that relevant operators have up-to-date operations manuals and that their operations personnel comply with them. The provisions are the following:

- (a) subregulation 215 (2) — the operations manual must contain relevant information, procedures and instructions with respect to relevant flight operations and aircraft types;
- (b) subregulation 215 (5) — the operator must revise the operations manual to keep it up-to-date;

- (c) subregulation 215 (9) — the operator’s operations personnel must comply with the operations manual.

Without an exemption, these provisions would require the operations manuals to reflect all of the changes being brought about by this exemption instrument, thereby, requiring the manuals to be extensively amended and revised and, in the absence of such revision, requiring personnel to comply with the unamended manuals not reflective of the terms of the exemption instrument. Clearly, for the duration of a temporary exemption, this would be both costly and unreasonable. The exemption in section 8 relieves an operator, and their operations personnel (the *relevant person*) from these compliance obligations.

For subsection (1), the exemption applies to each provision:

- (a) only to the extent that, because of the effect of another exemption in another provision of this instrument (the *relevant exemption*):
 - (i) the operator would have to amend or revise the operations manual to comply with subregulation 215 (2) or (5); or
 - (ii) the relevant person would have to comply with instructions in the operations manual that are no longer appropriate solely because of the effect of the other exemptions; and
- (b) only if the operator ensures that the relevant person is informed of the applicable effect of this section; and
- (c) only in accordance with subsection (4).

For paragraph (3) (c), the exemption applies only for so long as a relevant person of the operator takes the benefit of the relevant exemption.

9 Exemptions — training and checking requirements

Under reg 217 of CAR, relevant operators must ensure that their operating crew members undergo 2 annual proficiency checks.

In implementing this requirement, it would be extremely difficult, if not impossible, for operators and operating crew members to observe social distancing or lock-down rules. The exemption applies only for so long as a member of the operator’s operations personnel takes the benefit of another exemption in another provision of this instrument

10 Exemptions — Parts 141 and 142 operators

Section 14 applies to a Part 141 operator and a Part 142 operator (an *operator*), and an operator’s head of operations and exempts them from a range of applicable offence and other provisions as follows:

- (a) subregulation 141.110 (1) — with respect to the head of operations regarding subparagraphs 141.130 (4) (b) (i) and (iv) — this offence provision applies, in the context of the exemption instrument, in relation to the head of operations not being able to carry out his or her responsibilities in relation to prescribed proficiency checks under paragraph 141.130 (2) (h) which links to subparagraphs 141.130 (4) (b) (i) and (iv);
- (b) subregulation 141.175 (1) — under this offence provision, the operator would commit an offence because, in the context of the exemption instrument, the instructors do not meet the instructor proficiency check or flight review requirements in Part 61;

- (c) subregulation 141.185 (1) — the operator would commit an offence because, in the context of the exemption instrument, the instructors might not have completed their proficiency checks under regulation 141.190;
- (d) subregulation 141.265 (1) — the operator would commit an offence if the operations manual were not complied with because, in the context of the exemption instrument, the checks it describes might not be carried out;
- (e) subregulation 141.290 (1) — the operator would commit an offence because the pilot in command, in the context of the exemption instrument, might not be authorised under Part 61 because of provisions for flight reviews and proficiency checks;
- (f) subregulation 141.300 (1) — the operator would commit an offence because, in the context of the exemption instrument, the pilot in command might not be authorised under Part 61 because of provisions for flight reviews and proficiency checks;
- (g) paragraph 142.100 (1) (d) — for the head of operations – the head of operations, in the context of the exemption instrument, might, for the purposes of the AOC authorising Part 142 activities, fail to comply with prescribed requirements from which the head is exempted;
- (h) paragraph 142.120 (1) (b) — for the head of operations – the head of operations, in the context of the exemption instrument, might, for the purposes of the certificate authorising Part 142 activities, fail to comply with prescribed requirements from which the head is exempted;
- (i) subregulation 142.165 (1) — this offence provision applies to the head of operations not being able to carry out his or her responsibilities under paragraphs 142.190 (2) (l) and (n) only because, in the context of the exemption instrument, the personnel might not comply with the requirements in Part 61 for flight reviews and proficiency checks;
- (j) subregulation 142.225 (1) — the operator would commit an offence because, in the context of the exemption, the personnel would not be complying with the exposition because they do not meet the proficiency check or flight review requirements in Part 61;
- (k) subregulation 142.230 (1) — for an instructor only – the operator would commit an offence only because the personnel would not, in the context of the exemption instrument, be authorised under Part 61 because they do not meet the proficiency check or flight review requirements in Part 61;
- (l) subregulation 142.320 (1) — the operator would commit an offence because, in the context of the exemption instrument, the instructors might not have completed their proficiency checks under regulation 142.325;
- (m) subregulation 142.345 (1) — with respect to paragraphs 142.340 (1) (i), (k), and (s) – the operator would commit an offence because, in the context of the exemption, the operator might not be compliant with its exposition because the checks it describes might not be carried out;
- (n) subregulation 142.365 (1) — the operator would commit an offence because, in the context of the exemption, the pilot in command might not be authorised under Part 61 because of provisions for flight reviews and proficiency checks;
- (o) subregulation 142.375 (1) — the operator would commit an offence because, in the context of the exemption, the pilot in command might not be authorised under Part 61 because of the other provisions such as flight reviews and proficiency checks.

The exemptions would apply only:

- (a) to the extent that a contravention of, or a failure to comply with, the applicable provision arises strictly and directly from compliance, by the operator, the operator's head of operations, or a member of the operator's operations personnel, with the terms and conditions of another exemption under this instrument; and
- (b) for so long as a member of the operator's operations personnel (the *relevant person*) takes the benefit of another exemption in another provision of this instrument (the *relevant exemption*) to which the applicable provision is relevant.

11 Exemptions – Part 137 operators – operator proficiency checks

Under this section, each person (an *operator*) who is the holder of an AOC that authorises the conduct of aerial application operations under Part 137 of CASR is exempted from:

- (a) regulation 137.235 — but only with respect to an operator proficiency check; and
- (b) regulation 137.240 — in relation to the operator proficiency check requirements.

The exemption applies to each provision only if the pilot in command of the operator's aeroplane held a valid operator proficiency check on 1 July 2021.

The time extension provided by the exemption is as follows:

- (a) for an operator proficiency check that expires after 1 July 2021 but on or before 31 August 2021 — 2 months from the expiry date;
- (b) for a proficiency check that expires after 31 August 2021 but on or before 30 September 2021 — 1 month from the expiry date.

12 Exemptions – Part 137 operators – operations manuals

Under this section, AOC holders for Part 137 aerial application operations, their crew member and other persons engaged on the operations are exempted from the following provisions:

- (a) regulation 137.055 — which makes it an offence if an aerial application operation is not conducted in accordance with the operations manual, which may occur in the context of the exemption instrument;
- (b) regulation 137.080 — in relation to making operations manual changes, a requirement that could be breached in the context of the exemption instrument;
- (c) regulation 137.085 — in relation to the process for changing certain procedures, a requirement that could be breached in the context of the exemption instrument.

The exemptions apply only to the extent that, because of the effect of another exemption in the exemption instrument, the operator would have to amend or revise, and make available, the operations manual to comply with regulation 137.055, or the crew member or other persons would have to comply with instructions in the operations manual that are no longer appropriate solely because of the effect of the other exemptions. In addition, the exemptions only

apply if the operator ensures that the crew members and other persons are informed of the applicable effects of the exemption instrument. The exemptions would apply only for so long as the operator, a crew member or another person takes the benefit of the relevant exemption.

13 Exemptions — balloon flight instructors

This section applies to a person (the *holder*) mentioned in subsection 4 (1) who:

- (a) held a flight instructor (balloon) rating that was in force on 1 July 2021 (for the balloon training and checking activities mentioned in paragraph 16.5 or 16.6 of Civil Aviation Order 40.7, as mentioned in subsection 4 (1)); and
- (b) is, or is employed by, a balloon AOC holder authorised to conduct balloon training and checking etc. (a *relevant AOC holder*); and
- (c) who is required to hold a flight instructor (balloon) rating to conduct a range of balloon training and checking activities mentioned in paragraphs 16.5 and 16.6 of Civil Aviation Order 40.7; and
- (d) who is not the subject of an active show cause notice.

Such a holder is exempt from the following provisions to the extent that the provision requires a person to be the holder of a flight instructor (balloon) rating that is in force:

- (a) sub-subparagraph 4.6 (b) (ii) — to be pilot in command for a holder of the Class 1 (R) endorsement who is completing requirements for the removal of a restriction on his or her endorsement; and
- (b) sub-subparagraph 5.2 (d) (ii) — to conduct Class 2 balloon endorsement proficiency check flights; and
- (c) sub-subparagraph 5.7 (b) (ii) — to be pilot in command for a holder of the Class 2 (R) endorsement who is completing requirements for the removal of a restriction on his or her endorsement.

However, the exemption applies only:

- (a) to the extent that the holder’s flight instructor (balloon) rating expired after 1 July 2021 and has not been renewed; and
- (b) provided that, since that date, an unsuccessful attempt to pass the flight test for renewal of the holder’s flight instructor (balloon) rating has not been made.

The exemptions would apply only as follows:

- (a) for a flight instructor (balloon) rating that expires after 1 July 2021 but on or before 31 August 2021 — the extension period is 2 months from the expiry date;
- (b) for a flight instructor (balloon) rating that expires after 31 August 2021 but on or before 30 September 2021 — the extension period is 1 month from the expiry date.

Legislation Act 2003 (the LA)

As noted above, exemptions under Subpart 11.F of CASR 1998 are “for subsection 98 (5A)” of the Act, that is, for regulations which empower the issue of certain instruments, like exemptions, in relation to “(a) matters affecting the safe navigation and operation, or the maintenance, of aircraft”, and “(b) the airworthiness of, or design standards for, aircraft”.

The exemption instrument is clearly one in relation to matters affecting the safe navigation and operation of aircraft. Under subsection 98 (5AA) of the Act, an exemption issued under paragraph 98 (5A) (a), for such matters, is a legislative instrument if expressed to apply in relation to a class of persons, a class of aircraft or a class of aeronautical products (as distinct from a particular person, aircraft or product).

The exemption applies to various classes of persons and is, therefore, a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under sections 15G, and 38 and 42, of the LA.

Consultation

Exemptions from regulatory requirements are considered to be beneficial for those to whom they apply, who voluntarily elect to take advantage of them, and who comply with their conditions. It is, therefore, rarely necessary to engage in extensive public consultation on a proposed exemption. However, it is CASA's policy to consult, where possible, in an appropriate way with those parts of the aviation industry most likely to avail themselves of, or be affected by, an exemption so that they may have the opportunity to comment on the possible or likely terms, scope and appropriateness of the exemption.

The exceptions to this are when matters are urgent, and when CASA considers that the relevant state of affairs as well as informal feedback suggests that consultation would add little if anything to the proposed solution but would delay its promulgation to those who need to plan to take advantage of it.

In this case, CASA considers that no consultation is required because of the necessity to make and register the exemption as a matter of urgency in the present circumstances of the COVID-19 related lock-downs so that those in the aviation industry who are affected know as soon as possible where they stand and that relief has been provided for certain time-based obligations.

Office of Best Practice Regulation (OBPR)

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

Statement of Compatibility with Human Rights

The Statement in Appendix 1 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The exemption instrument is compatible with human rights and, to the extent that it engages certain rights, it does so in a way that, in the context of the COVID-19 pandemic, as far as practicable, promotes rather than limits those rights.

Commencement and making

The exemption commences on the day of registration and is repealed at the end of 31 October 2021.

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

Statement of Compatibility with Human Rights

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

CASA EX92/21 — Flight Reviews, Proficiency Checks and Related Matters (Extensions of Time Due to COVID-19) Exemptions Instrument 2021

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

Purpose

The purpose of this instrument is to use a series of exemptions from certain provisions of the *Civil Aviation Regulations 1988*, the *Civil Aviation Safety Regulations 1998* and Civil Aviation Order 40.7 to extend the time-limits for compliance with pilot proficiency check and flight review obligations.

Those who are subject to the prescribed time limits for completion of these checks and reviews are currently exposed to the risk of being in breach of them, essentially through no fault of their own. This is because action to avoid any such breach may involve checking, training or other activity that would break, weaken or undermine the social distancing, stay-at-home and lock-down rules applicable in parts of Australia because of the COVID-19 pandemic.

Some of the time-based limits can, in practice, depend on using flight simulators, whether in Australia or overseas, which are not currently available due to COVID-19 related travel restrictions and the need to maximise the remedial effects of the social distancing rules. Some other obligations are imposed on operators, like having an up-to-date operations manual, which would be prohibitively expensive to achieve if it were to take account of all of the exemptions in this instrument for the short period of duration of the instrument.

Human rights implications

The legislative instrument engages 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* because by offering temporary relief from legislative obligations, the instrument may be said to engage the following human rights:

- the right to life under Article 6 of the International Covenant on Civil and Political Rights (the *ICCPR*)
- the right to safe and healthy working conditions under Article 7 of the International Covenant on Economic, Social and Cultural Rights (the *ICESCR*)
- the right to work under Article 6 (1) of the *ICESCR*.

Right to life under the ICCPR***Right to safe and healthy working conditions under the ICESCR******Right to work under the ICESCR***

The COVID-19 pandemic has given rise to the need to observe Australian Government social distancing rules to prevent people contracting or spreading the virus. These rules apply to all, including to protect the life, health and safety of personnel engaged in aviation operations and associated activities like training.

At the same time, aviation safety requires pilots and others to adhere to certain regulatory requirements concerning, for example, medical certification, ongoing operational review, proficiency, training, checking, certain rating renewal and operations manual compliance.

It follows that if essential aviation services are to be safely continued, under safe and healthy working conditions, a careful and calculated balance has had to be struck between these competing objectives. Because of their temporary, calibrated and conditional nature, the range of exemptions in the exemption instrument is considered to achieve an appropriate balance.

A consequential effect of this balance is to protect the right to work of various categories of aviation personnel who might otherwise have lost that right, for example, by breaching proficiency or checking renewal requirements, and operations manual compliance requirements. Under the exemption instrument, this is avoided, for a temporary period, by extending the time within which relevant renewal may be obtained, and by not requiring revisions of operations manuals to reflect what are temporary circumstances.

Human rights implications

The exemptions in the legislative instrument are 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*. To the extent that the instrument engages certain of these rights, it does so in a way that is reasonable, necessary and proportionate to ensure the safety of relevant aviation personnel during the COVID-19 pandemic, but also in a calculated and balanced way that does not undermine aviation safety.

Conclusion

This legislative instrument is compatible with human rights, and to the extent that it engages certain rights, it does so in a way that, in the context of the COVID-19 pandemic, as far as practicable, promotes rather than limits those rights.

Civil Aviation Safety Authority