Instrument number CASA EX92/21

I, Philippa Jillian Spence, Director of Aviation Safety, on behalf of CASA, make this instrument under regulation 11.160 of the *Civil Aviation Safety Regulations 1998*.

**[Signed P. Spence]**

Pip Spence
Director of Aviation Safety

29 July 2021

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

1 Name

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

2 Duration

 This instrument:

(a) commences on the day of registration; and

(b) is repealed at the end of 31 October 2021.

3 Definitions

 (1) In this instrument:

***active show cause notice*** means a show cause notice, under the *Civil Aviation Act 1988*, which has not been resolved by a CASA decision to take no action.

***AOC*** means air operator’s certificate.

***CAR*** means the *Civil Aviation Regulations 1988*.

***CASR*** means the *Civil Aviation Safety Regulations 1998*.

***Part 141 certificate*** means a certificate issued under regulation 141.060 of CASR.

***Part 141 operator*** is the holder of a Part 141 certificate.

***Part 142 authorisation*** has the meaning given by subregulation 142.015 (5) of CASR.

***Part 142 operator*** is the holder of a Part 142 authorisation.

 (2 In this instrument, a reference to anything approved by CASA means approved by CASA in writing.

 (3) Subject to subsection (1), in this instrument words and phrases have the same meaning as in Part 61 of CASR, unless the contrary intention appears.

 (4) In this instrument, a numerical reference to a provision that includes the number 61, 137, 141 or 142 is a reference to the provision as contained in Part 61, Part 137, Part 141 or Part 142, respectively, of CASR.

4 Application

 (1) Subject to subsections (2) and (3), this instrument applies, according to its terms:

(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) holds 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 or 16.6 of Civil Aviation Order 40.7 (***CAO 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) An exemption under this 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 or test.

 (3) An exemption under this 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 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) Exemption from the requirements of a provision to which this 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

 The holder of a flight crew licence to whom this instrument applies is exempted from the requirement in subregulation 61.065 (1) to be authorised under Part 61 of CASR but only to the extent that:

1. the requirement has been modified by this instrument; and
2. the holder complies with the modified requirement; and
3. the holder complies with each applicable condition of this instrument.

6 Exemptions — Part 61 proficiency checks

 (1) The holder of a flight crew licence to whom this instrument applies is exempted from the requirement, under a regulation mentioned in subsection (3) that applies to the holder, to have a valid proficiency check for the purposes of the regulation, but only to the extent mentioned in subsection (4).

 (2) The holder of an approval under regulation 61.040, 141.035 or 142.040 which requires (the ***requirement***) the holder to have a valid proficiency check for the purposes of a regulation mentioned in subsection (3) that applies, or under the approval is made to apply, to the holder is exempt from regulation 61.040, 141.035 or 142.040 (as the case requires), but only:

(a) to the extent that the approval imposes the requirement; and

(b) if all relevant requirements, conditions or limitations (however expressed) of the approval are otherwise complied with, and continue to be complied with, by the holder; and

(c) to the extent mentioned in subsection (4).

 (3) For subsections (1) and (2), the provisions are the following regulations:

1. 61.650;
2. 61.695;
3. 61.805;
4. 61.880;
5. 61.1015;
6. 61.1110;
7. 61.1180;
8. 61.1205;
9. 61.1410.

 (4) For subsections (1) and (2), the exemption applies to each provision mentioned in subsection (3):

(a) 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; and

(b) only for the applicable period mentioned in subsection (5) (the ***extension period***).

 (5) For paragraph (4) (b):

(a) for a proficiency check, under an applicable regulation, 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, under the applicable regulation, that expires after 31 August 2021 but on or before 30 September 2021 — the extension period is 1 month from the expiry date.

 (6) To avoid doubt, the exemption in relation to paragraph 6 (3) (c) does not repeal or otherwise affect *CASA EX93/18 — Instrument Proficiency Checks for Aircraft Type Ratings Exemption 2018* (***CASA EX93/18***) or any successor instrument which is in substantially the same terms as CASA EX93/18.

*Note*   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. 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 — Flight reviews

 (1) The holder of a flight crew licence or a balloon flight crew licence to whom this instrument applies is exempted from the requirements of the regulations mentioned in subsection (3) to have a valid flight review for the purposes of the regulation, but only to the extent mentioned in subsection (4).

 (2) The holder of an approval under regulation 61.040, 141.035 or 142.040 which requires (the ***requirement***) the holder to have a valid flight review for the purposes of a regulation mentioned in subsection (3) that applies, or under the approval is made to apply, to the holder is exempt from regulation 61.040, 141.035 or 142.040 (as the case requires), but only:

(a) to the extent that the approval imposes the requirement; and

(b) if all relevant requirements, conditions or limitations (however expressed) of the approval are otherwise complied with, and continue to be complied with, by the holder; and

(c) to the extent mentioned in subsection (4).

 (3) For subsections (1) and (2), the provisions are the following regulations:

(a) 61.745;

(b) 61.800;

(c) 61.925;

(d) 61.970;

(e) 61.1060;

(f) regulation 5.143 of CAR — in relation to a balloon flight review.

 (4) For subsections (1) and (2), the exemption applies to each provision mentioned in subsection (3):

(a) 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; and

(b) only for the applicable period mentioned in subsection (5) (the ***extension period***).

 (5) For paragraph (4) (b):

(a) for a flight review, under an applicable regulation, 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, under the applicable regulation, that expires after 31 August 2021 but on or before 30 September 2021 — the extension period is 1 month from the expiry date.

 (6) To avoid doubt, the exemption in relation to paragraphs 7 (3) (a) and (b) does not repeal or otherwise affect *CASA EX99/18 — Flight Reviews Exemption 2018* (***CASA EX99/18***) or any successor instrument which is in substantially the same terms as CASA EX99/18.

*Note*   CASA EX99/18 exempts certain aircraft rating holders from regulation 61.745 or regulation 61.800. It expires at the end of 18 August 2021 and will be renewed. 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

 (1) Each operator to whom regulation 215 of CAR applies (the ***operator***), and each member of the operator’s operations personnel (the ***relevant person***) is exempted from the applicable requirements of the provisions mentioned in subsection (2), but only to the extent mentioned in subsection (3).

 (2) For subsection (1) the provisions of CAR are:

(a) subregulation 215 (2); and

(b) subregulation 215 (5); and

(c) subregulation 215 (9).

 (3) 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).

 (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

 (1) Each operator to whom regulation 217 of CAR applies (the ***operator***) is exempt from subregulation 217 (2), but only to the extent mentioned in subsection (2).

 (2) For subsection (1), 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

 (1) This section applies, as the case requires, to:

(a) a Part 141 operator and a Part 142 operator (an ***operator***); and

(b) an operator’s head of operations.

 (2) An operator, and an operator’s head of operations, to whom a provision mentioned in subsection (3) applies, is exempt from the provision but only to the extent mentioned in subsection (4).

 (3) For subsection (2), the provisions are the following:

(a) subregulation 141.110 (1) — with respect to the head of operations regarding subparagraphs 141.130 (4) (b) (i) and (iv);

(b) subregulation 141.175 (1);

(c) subregulation 141.185 (1) — only for a proficiency check mentioned in subregulation 141.190 (2);

(d) subregulation 141.265 (1);

(e) subregulation 141.290 (1);

(f) subregulation 141.300 (1);

(g) paragraph 142.100 (1) (d) — for the head of operations;

(h) paragraph 142.120 (1) (b) — for the head of operations;

(i) subregulation 142.165 (1);

(j) subregulation 142.225 (1);

(k) subregulation 142.230 (1) — for an instructor only;

(l) subregulation 142.320 (1) — only for a proficiency check mentioned in paragraph 142.320 (2) (a);

(m) subregulation 142.345 (1) — with respect to paragraphs 142.340 (1) (i), (k), and (s);

(n) subregulation 142.365 (1);

(o) subregulation 142.375 (1).

 (4) For subsection (2), the exemption applies to each provision (the ***applicable provision***) 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 takes the benefit of another exemption in another provision of this instrument to which the applicable provision is relevant.

11 Exemptions – Part 137 operators – operator proficiency checks

 (1) This section applies to each person (an ***operator***) who is the holder of an AOC that authorises the conduct of aerial application operations under Part 137 of CASR.

 (2) An operator to whom a provision mentioned in subsection (3) applies is exempt from the provision only:

(a) if the requirement in subsection (4) is met; and

(b) for the applicable period mentioned in subsection (5).

 (3) For subsection (2), the provisions are the following:

(a) regulation 137.235 — but only with respect to an operator proficiency check;

(b) regulation 137.240.

 (4) For paragraph (2) (a), 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.

 (5) For paragraph (2) (b):

(a) for an operator proficiency check, under an applicable regulation, that expires after 31 July 2021 but on or before 31 August 2021 — the period is 2 months from the expiry date; and

(b) for a proficiency check, under the applicable regulation, that expires after 31 August 2021 but on or before 30 September 2021 — the period is 1 month from the expiry date.

12 Exemptions – Part 137 operators – operations manuals

 (1) Each of the following:

(a) an operator to whom Part 137 of CASR applies (the ***operator***);

(b) each crew member of the operator (the ***crew members***);

(c) other persons engaged on aerial application operations for the operator (***other persons***);

 is exempted from the applicable requirements of the provisions mentioned in subsection (2), but only to the extent mentioned in subsection (3).

 (2) For subsection (1), the provisions are:

(a) regulation 137.055;

(b) regulation 137.080;

(c) regulation 137.085.

 (3) 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:

 (i) the operator would have to amend or revise, and make available, the operations manual to comply with regulation 137.055; or

 (ii) 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; and

(b) only if the operator ensures that the crew members and other persons are informed of the applicable effects of this section; and

(c) only in accordance with subsection (4).

 (4) For paragraph (3) (c), the exemption applies to each provision 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

 (1) This section applies to a person mentioned in paragraph 4 (1) (d) of this instrument (a ***person***) who:

(a) on 1 July 2021 — held a flight instructor (balloon) rating that was in force; and

(b) is, or is employed by, a balloon AOC holder authorised to conduct balloon training and checking etc. (a ***relevant AOC holder***).

 (2) A person for whom a provision of CAO 40.7 mentioned in subsection (3) requires that they hold a flight instructor (balloon) rating that is in force is exempt from the provision but only to the extent mentioned in subsections (3) and (4).

 (3) For subsection (2), the provisions are each of the following provisions of CAO 40.7, to the extent that the provision requires the person to be the holder of a flight instructor (balloon) rating that is in force:

(a) sub-subparagraph 4.6 (b) (ii);

(b) sub-subparagraph 5.2 (d) (ii);

(c) sub-subparagraph 5.7 (b) (ii).

 (4) For subsection (2), the exemption applies to each provision 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; and

(c) for the period mentioned in subsection (5).

 (5) For paragraph (4) (c):

(a) for a flight instructor (balloon) rating 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 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.