

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX119/21 — Flight Crew Licensing (Further Miscellaneous Exemptions) Amendment Instrument 2021

Purpose

The purpose of instrument *CASA EX119/21 — Flight Crew Licensing (Further Miscellaneous Exemptions) Amendment Instrument 2021* (the **instrument**) is to amend instrument *CASA EX66/21 — Flight Crew Licensing (Miscellaneous Exemptions) Exemption 2021 (CASA EX66/21)*. The amendments effectively remake 2 instruments, which contain exemptions from various requirements of the *Civil Aviation Safety Regulations 1998 (CASR)* to:

- allow persons, other than delegates of the Civil Aviation Safety Authority (**CASA**) and flight examiners, to conduct English language proficiency assessments
- allow applicants to obtain an aeronautical radio operator certificate (**AROC**) if they have been assessed as meeting the general English language proficiency (**GELP**) standard in lieu of the aviation English language proficiency (**AELP**) standard, and recognise that a person who meets the AELP standard also meets the GELP standard
- exempt certain applicants for an air transport pilot licence with the aeroplane category rating (**ATPL(A)**) from the requirement, under Part 61 of CASR, to have completed the instrument rating examination identified in the Part 61 Manual of Standards (**Part 61 MOS**) as “IREX”. The exemption applies to applicants who were granted a commercial pilot licence, with an aeroplane category rating and an instrument rating, in accordance with the terms of the *Trans-Tasman Mutual Recognition Act 1997 (TTMRA)*.

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.

Part 61 of CASR deals with the licensing of aircraft flight crew.

Subregulation 61.035 (1) of CASR empowers CASA to issue the Part 61 MOS that sets matters relating to flight crew licences. Under subregulation 61.035 (2), the Part 61 MOS may set out standards for aviation and general English language proficiency. The Part 61 MOS includes the AELP standard, and the GELP standard.

Regulation 61.160 of CASR prescribes the criteria for the grant of a flight crew licence. In relation to an ATPL(A), an applicant must meet the requirements mentioned in Part 61 for the grant of the licence. Under subparagraph 61.160 (b) (ii), for a flight crew licence, other than a recreational pilot licence (**RPL**), the requirements include that the applicant has a current AELP assessment. Under subparagraph 61.160 (b) (iii), for an RPL, the requirements include that the applicant meets the GELP requirements mentioned in regulation 61.265.

Regulation 61.235 of CASR prescribes requirements for when an applicant for a flight crew licence is eligible to take the flight test for the licence. Relevantly for present purposes, subparagraph 61.235 (2) (a) (ii) requires the applicant to have passed the aeronautical knowledge examination for the licence. Under subparagraph 61.235 (2) (a) (v), for a flight

crew licence, other than an RPL, the requirements include that the applicant has a current AELP assessment. Under subparagraph 61.235 (2) (a) (vi), for an RPL, the requirements include that the applicant meets the GELP requirements mentioned in regulation 61.265. Regulation 61.240 of CASR deems a person to have failed a flight test if the person was not eligible to take the flight test under regulation 61.235.

Division 61.B.5 (regulations 61.255 to 61.270) of CASR prescribes requirements for English language proficiency.

Regulation 61.255 sets out how AELP assessments are conducted. Under subregulation 61.255 (1), a person may apply, in writing to CASA or an examiner, for an assessment of the person's AELP. Under subregulation 61.255 (2), the applicant passes the assessment if CASA or the examiner is satisfied that the applicant meets the International Civil Aviation Organization (*ICAO*) level 6 AELP standards mentioned in the Part 61 MOS. Under subregulation 61.255 (3), if CASA or the examiner is not satisfied that the applicant meets those standards, CASA or the examiner must refer the application to an AELP assessor, that is, a person approved under regulation 61.270.

Regulation 61.260 specifies the period that a person's AELP assessment is current. For a person whose AELP is assessed as meeting the ICAO level 4 (operational) standards, the AELP assessment is current for 3 years. For a person whose AELP is assessed as meeting the ICAO level 5 (extended) standards, the AELP assessment is current for 6 years. For a person whose AELP is assessed as meeting the ICAO level 6 (expert) standards, the AELP assessment is current indefinitely. Those ICAO AELP standards are prescribed in Annex 1 to the International Convention on Civil Aviation (Chicago Convention) and set out in section 2 of Schedule 8 of the Part 61 MOS.

Regulation 61.265 sets out the requirement for an applicant for an RPL to satisfy the GELP standard. Subregulation 61.265 (1) provides 2 pathways for satisfying the standard. The first pathway is for the applicant to be assessed by CASA or an examiner as meeting the GELP standard in the Part 61 MOS. The second pathway is for the applicant to satisfy the head of operations, or an instructor authorised by the head of operations, of a Part 141 or 142 operator that the applicant has passed 1 of the recognised GELP tests prescribed in the Part 61 MOS, and that the applicant has sufficient GELP to safely exercise the privileges of the licence.

Under regulation 61.270, CASA can approve people who have successfully completed an approved course of training in assessment of aviation English language, to conduct AELP assessments.

Under paragraph 61.275 (1) (d) of CASR, the holder of an overseas flight crew licence is taken to meet the requirements for the grant of an Australian licence with an aircraft category rating if, amongst other things, the applicant's overseas licence states that the applicant meets the ICAO level 4, 5 or 6 AELP standards, or the applicant has a current AELP assessment.

Under subparagraph 61.285 (b) (ii) of CASR, a member or former member of the Australian Defence Force is taken to meet the requirements for the grant of a flight crew licence, rating or endorsement, other than an examiner rating, if, amongst other things, the person has a current AELP assessment.

Under subregulation 61.422 (1) of CASR, the holder of a pilot licence, other than an RPL, is authorised to exercise the privileges of the licence only if the holder has a current AELP assessment.

Under paragraphs 61.495 (2) (d) and 61.500 (4) (c) of CASR, an applicant for a flight radio endorsement must have a current AELP assessment.

Regulation 61.700 of CASR prescribes the general requirements to be satisfied by an applicant for an air transport pilot licence. Relevantly for an ATPL(A), paragraph 61.700 (3) (a) requires the applicant to have passed the aeronautical knowledge examination for the ATPL(A). Also, paragraph 61.700 (3) (c) requires the applicant to have passed the flight test mentioned in the Part 61 MOS for the ATPL(A).

Regulation 61.1225 of CASR sets out obligations of flight instructors in relation to approving a person to pilot an aircraft as a student pilot. Subparagraph 61.1225 (2) (b) (iii) makes it an offence for a flight instructor to approve a student pilot to conduct a solo flight if the instructor is not satisfied that the student pilot, amongst other things, meets the requirements in subregulation 61.1225 (3). Subregulation 61.1225 (3) requires that the student has either been assessed by CASA or an examiner as meeting the GELP standard, or completed an approved course of training in English language proficiency.

Regulation 61.1227 of CASR sets out obligations of pilot instructors in relation to approving a person to use an aeronautical radio. The regulation makes it an offence if the instructor approves a person who does not hold a flight crew licence, or holds an RPL but does not hold a flight radio endorsement, to transmit on an aeronautical radio unless the person meets the requirements in subregulation 61.1227 (2). Subregulation 61.1227 (2) requires that the person has either been assessed by CASA or an examiner as meeting the GELP standard, or completed an approved course of training in English language proficiency.

Regulation 61.1300 of CASR prescribes offences in relation to the conduct of flights by, among other persons, the holder of a flight examiner rating granted under Part 61. Relevantly for present purposes, an examiner commits an offence in relation to a flight test for the ATPL(A) if the examiner is not satisfied when the flight test begins that the applicant has passed the aeronautical knowledge examination for the licence, including the IREX.

Part 64 of CASR establishes the scheme for authorising non-licensed personnel to transmit on aeronautical radios and to taxi aeroplanes.

Regulation 64.015 of CASR sets out the requirements for obtaining an AROC. Under paragraphs 64.015 (1) (d) and 64.015 (5) (c), a person is eligible for the grant of an AROC if, amongst other things, the person has a current AELP assessment.

Under subregulation 64.025 (2) of CASR, an application for the grant of an AROC to a person who does not have a foreign qualification must be accompanied by evidence of the applicant's AELP assessment. Under paragraph 64.025 (3) (b), an application for the grant of an AROC to a person who has a foreign qualification must be accompanied by evidence of the applicant's ICAO English language proficiency assessment.

Under subregulation 64.035 (2) of CASR, the holder of an AROC is authorised to make a transmission on an aeronautical radio only if the holder has a current AELP assessment.

Parts 141 and 142 of CASR deal with the conduct of specified types of flight training, including by operators, known as Part 141 operators and Part 142 operators.

Regulation 141.306 of CASR sets out obligations of Part 141 operators when conducting certain solo flights. An operator commits an offence if a person, who is undertaking authorised Part 141 flight training with the operator, conducts a solo flight for the first time and does not meet all the requirements in subregulation 141.306 (2).

Paragraph 141.306 (2) (c) requires that the person has either been assessed by CASA or an examiner as meeting the GELP standard, or has completed an approved course of training in English language proficiency.

Regulation 142.386 of CASR sets out obligations of Part 142 operators when conducting certain solo flights. An operator commits an offence if a person, who is undertaking authorised Part 142 flight training with the operator, conducts a solo flight for the first time and does not meet all the requirements in subregulation 142.386 (2).

Paragraph 142.386 (2) (c) requires that the person has either been assessed by CASA or an examiner as meeting the GELP standard, or has completed an approved course of training in English language proficiency.

Manual of Standards

The GELP standard is prescribed in the unit entitled *GEL General English language proficiency* in Section 1 of Schedule 2 of the Part 61 MOS (the **GELP unit**).

Subsection 6.2 of the Part 61 MOS provides that the assessment mentioned in subclause 5.1.1 of Section 1 of Schedule 2, and the requirement specified in subclause 5.1.2, are each part of the GELP standard.

Subclause 5.1 of Section 1 of Schedule 2 of the Part 61 MOS provides that a person meets the standard for the GELP unit if the person provided “the following evidence”, referring to subclauses 5.1.1 and 5.1.2.

For subclause 5.1.1, the evidence is an assessment report, completed by a person authorised under Part 61 of CASR to perform general English language assessments, that states the candidate satisfies the GELP elements prescribed in clause 2 of the GELP unit. The GELP elements include, for example, the demonstrated ability to pronounce words clearly, use an extensive vocabulary, convey information and speak fluently.

Subclause 5.1.2 requires evidence of meeting 1 of several requirements. Those requirements include, for example, that the person had completed a course of secondary education conducted in an Australian or New Zealand educational institution, has worked in specified English-speaking countries for at least 3 of the previous 5 years, or has completed 1 of the several specified English proficiency tests with the specified minimum grade.

Section 2 of Schedule 8 of the Part 61 MOS contains the rating scales for ICAO levels 4, 5 and 6 AELP standards to be used for AELP assessments.

Exemptions

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, and may specify the class by reference to membership of a specified body or any other characteristic.

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 11.175 (4) of CASR, in deciding whether to reissue an exemption, on application by a person, 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 reissue 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.

The TTMRA provides a scheme by which a person who is registered to carry on an "occupation" in New Zealand can be certified to carry on the occupation in Australia, and vice versa.

Background

The instrument effectively remakes instruments *CASA EX111/18 — English Language Proficiency Assessments Exemption 2018 (CASA EX111/18)* and *CASA EX160/18 — Instrument Rating Aeronautical Knowledge Examination (IREX) (Certain Applicants for an Air Transport Pilot Licence) Exemption 2018 (CASA EX160/18)*.

Remake of CASA EX111/18

CASA has been working with industry to resolve difficulties conducting English language proficiency assessments that have arisen since the introduction of the flight crew licensing regulations in 2014. In certain situations, there is a shortage of examiners available to conduct the assessments.

Language proficiency assessors approved under regulation 61.270 of CASR are authorised to conduct an assessment only if CASA, or the examiner conducting the assessment under regulation 61.255, is not satisfied the applicant meets the ICAO level 6 standard. However, these assessors are competent conducting assessments at all ICAO levels. An applicant should be able to apply to the holder of a regulation 61.270 approval for an assessment without first being assessed by CASA or an examiner.

Consideration has been given to expanding the group of competent persons who are authorised to conduct the GELP assessment.

CASA considers that it should be able to approve persons such as schoolteachers, previously qualified instructors and examiners, and others in the aviation community to conduct GELP assessments. By expanding the network of assessors, the cost of administering the assessments is expected to reduce.

A person needs to satisfy the GELP standards for the purposes of undertaking solo flights and when applying for an RPL. According to the regulations, holding a current AELP assessment does not satisfy the GELP standard. Consequently, the holder of an AELP assessment is required to satisfy the GELP standard to conduct solo flights and apply for an RPL. The AELP standard is considered an acceptable means of satisfying the GELP standard.

The language proficiency standard for the AROC is currently the AELP standard, and that includes testing in aeronautical terminology. Terminology that is relevant to the AROC is addressed in the AROC specific training course that is mandated by Part 64 of CASR. Therefore, the AELP standard is considered unnecessary for the AROC and the GELP standard would be more appropriate.

The GELP standard in the Part 61 MOS does not clearly state whether a person is required to provide the evidence mentioned in both subclauses 5.1.1 and 5.1.2 of Section 1 of Schedule 2 to meet the standard. It is CASA's view that a person meets the GELP standard if the person provides evidence mentioned in either, and not necessarily both, of those subclauses.

These issues were previously addressed in CASA EX111/18, which expires at the end of 30 September 2021, and instrument number CASA EX146/15.

Remake of CASA EX160/18

Part 61 of CASR operates so that an applicant for an ATPL(A) must have passed the IREX in order to be eligible to take the flight test for the licence and to be granted the licence. In addition, Part 61 prohibits a flight examiner from conducting a flight test for an applicant for an ATPL(A) unless the flight examiner is satisfied that the applicant has passed the IREX.

The occupation of a commercial pilot is one that falls within the scope of the TTMRA scheme.

Pilots holding an Australian commercial pilot licence with an instrument rating, granted in accordance with the TTMRA, may apply for an ATPL(A) in accordance with the requirements of Part 61 (in the instrument referred to as *exempted applicants*). Applicants for the ATPL(A) would normally have passed the IREX for the grant of an instrument rating. However, exempted applicants will not have passed the IREX, because their instrument rating training was conducted in New Zealand in connection with their New Zealand flight crew licence and instrument rating.

In addition, a small number of exempted applicants have already completed the ATPL(A) flight test. Such applicants will not be eligible to be granted the ATPL(A) because, in addition to not having passed the IREX, they were ineligible to take the flight test by operation of regulations 61.235 and 61.240.

CASA considers that the IREX requirement is unnecessary for exempted applicants, on the basis of their New Zealand training, including exempted applicants who have taken the

ATPL(A) flight test. CASA has determined to exempt such applicants from the relevant requirements pertaining to passing the IREX.

These issues were previously addressed in CASA EX160/18, which expires at the end of 31 October 2021.

Overview of instrument

In accordance with subsection 33 (3) of the *Acts Interpretation Act 1901*, the instrument amends CASA EX66/21. Each of the exemptions under CASA EX111/18 and CASA EX160/18, and the condition applying to the exemption under CASA EX111/18, are inserted as 2 new Parts of CASA EX66/21.

Remake of CASA EX111/18

The instrument allows persons, other than CASA delegates and flight examiners, to conduct English language proficiency assessments. The instrument also allows applicants to obtain an AROC if they have been assessed as meeting the GELP standard in lieu of the AELP standard. The condition on the exemption is that the applicant must ensure that the application for the grant of an AROC is accompanied by evidence of the applicant's AELP or GELP.

It also recognises that a person who meets the AELP standard also meets the GELP standard.

Remake of CASA EX160/18

The instrument provides exemptions to exempt applicants, and flight examiners conducting the ATPL(A) flight test for exempt applicants, from the requirements of Part 61 that require a person to have passed the IREX.

In accordance with subsection 33 (3) of the *Acts Interpretation Act 1901*, the instrument repeals CASA EX160/18, which expires on 31 October 2021, and is no longer required with the making of this instrument.

CASA is satisfied that the instrument has no negative impact on aviation safety.

Documents incorporated by reference

This instrument incorporates the Part 61 MOS by reference. The Part 61 MOS is a legislative instrument that prescribes standards for the purpose of the Part 61 scheme. It is freely available on the Federal Register of Legislation. The term *Part 61 Manual of Standards* has the meaning given in the CASR Dictionary and has effect as amended from time to time in accordance with paragraphs 10A (a) of the *Acts Interpretation Act 1901* and 13 (1) (a) of the *Legislation Act 2003* (the *LA*).

Content of instrument

Section 1 states the name of the instrument.

Section 2 states that the instrument commences on 1 October 2021.

Section 3 repeals CASA EX160/18.

Section 4 states that CASA EX66/21 is amended as set out in Schedule 1.

Item 1 of Schedule 1 inserts additional terms and expressions into the the Note in section 3 of CASA EX66/21. Those terms and expressions have the same meaning as they have in the Act and regulations.

Item 2 of Schedule 1 inserts various definitions into subsection 3 (1) of CASA EX66/21 that are used throughout the new Parts inserted by item 4 of Schedule 1, including **AELP**, **alternative AELP assessment holder** and **GELP**.

ELP assessment holder is defined to mean alternative AELP assessment holders, GELP holders and people who have a current AELP assessment.

exempted applicant is defined as a person who has applied for an ATPL(A) and who has been granted a commercial pilot licence with an instrument rating in accordance with the TTMRA.

IREX is defined by reference to the examination described in the relevant Unit, Section and Appendix of Schedule 3 of the Part 61 MOS.

Item 3 of Schedule 1 inserts some signposts to definitions of the terms **aeronautical knowledge examination**, **aviation English language proficiency assessment** and **aviation English language proficiency assessor** that are defined in regulation 61.010 of CASR. **Aeronautical knowledge examination**, for a flight crew licence, rating or endorsement, is defined to mean an examination set under regulation 61.215 for the grant of the licence, rating or endorsement. **Aviation English language proficiency assessment** is defined to mean an AELP assessment conducted under regulation 61.255 of CASR. **Aviation English language proficiency assessor** is defined to mean the holder of an approval under regulation 61.270 of CASR to conduct an AELP assessment.

Item 4 of Schedule 1 inserts new Parts 11 and 12 of CASA EX66/21 as follows:

Part 11 — English Language Proficiency Assessments Exemption

Section 50 sets out when a person is a **GELP holder**. A **GELP holder** is defined as a person who: provides an assessment report described in subsection 50 (1); or provides evidence of the person meeting the requirement mentioned in subclause 5.1.2 of the GELP unit and has sufficient GELP for flight or radio communication purposes as assessed by an assessor mentioned in subsection 50 (3).

If the person provides an assessment report, the report must state that the person is able to perform each of the elements mentioned in clause 2 of the GELP unit according to the performance criteria mentioned for the element and within the range of variables mentioned in clause 3 of the GELP unit. This requirement reflects the requirements in subsection 8.5 of the Part 61 MOS and subclause 5.1.1 of the GELP unit, but does not include the requirement that the report be completed by a person authorised under Part 61 of CASR to perform general English language assessments.

Instead, under subsection 50 (1), the assessment report must have been completed by CASA, an examiner, or an approved person. Therefore, to become a GELP holder, a person can provide either the assessment report in accordance with subsection 50 (1), or evidence mentioned in subclause 5.1.2 of the GELP unit plus sufficient GELP for flight and/or radio

communication purposes in accordance with subsection 50 (2). The person is not required to provide both an assessment report and the evidence mentioned in subclause 5.1.2 of the GELP unit.

Section 51 provides for CASA to approve a person to conduct assessments of individuals' AELP or GELP. The person approved by CASA becomes an **approved person** for the purposes of the instrument. The types of people that CASA may consider approving under this section include schoolteachers, previously qualified instructors and examiners, and other suitably qualified persons in the aviation community. In accordance with regulation 201.004 of CASR, a decision by CASA to refuse to approve a person under section 51 is subject to merits review by the Administrative Appeals Tribunal.

The exemptions in section 52 allow a person to apply directly to an AELP assessor who has been approved under regulation 61.270 of CASR for an AELP assessment. It exempts a person who applies directly to an AELP assessor from the requirements in subregulations 61.255 (1), (2) and (3). It therefore removes the need for a person to apply to, and be assessed by, CASA or an examiner before being referred to an AELP assessor.

The exemptions in section 53 exempt a person who has a current AELP assessment from the requirements in subparagraph 61.160 (b) (iii), subparagraph 61.235 (2) (a) (vi) and regulation 61.265 of CASR. Those provisions relate to the GELP of a person seeking an RPL. In effect, the exemption removes the requirement for a person who has a current AELP assessment to meet the relevant GELP requirements.

The exemptions in section 54 apply to alternative AELP assessment holders, that is, individuals who have applied, in writing, to a person approved by CASA under section 51, and have been assessed by the approved person as meeting the ICAO level 6 standards in the Part 61 MOS. Section 54 exempts alternative AELP assessment holders from various provisions of CASR that would otherwise be satisfied by a person holding a current AELP assessment or, for the provisions relating to an RPL, meeting the GELP requirements.

The effect of the exemptions in section 54 is to deem a person as meeting the relevant English language proficiency requirement if the person has been assessed as having English language proficiency at the expert level by a person approved by CASA.

The exemptions in section 55 apply to a GELP holder, that is a person who has evidence of meeting the requirement in subclause 5.1.2 of the GELP unit, or has been assessed as meeting the elements in the GELP unit by CASA, an examiner, an approved person, the head of operations of a Part 141 or 142 operator, or the holder of a pilot instructor rating and a grade 1 training endorsement who has been nominated by the head of operations of a Part 141 or 142 operator.

Section 55 exempts a GELP holder from the requirements in subparagraph 61.160 (b) (iii), subparagraph 61.235 (2) (a) (vi) and regulation 61.265 of CASR. Those provisions relate to the GELP of a person seeking an RPL. In effect, the exemption deems that a GELP holder will have met the relevant GELP requirements in regulation 61.265 of CASR.

Section 55 also exempts a GELP holder from the requirements in regulations 64.015, 64.025 and 64.035 of CASR to have a current AELP assessment. Those provisions relate to the requirements for obtaining an AROC and transmitting on an aeronautical radio. CASA

considers that it is unnecessary for a person to have a current AELP assessment to obtain an AROC and use an aeronautical radio. The GELP standard is more appropriate.

Section 55, therefore, allows for a person's GELP to be assessed by a broader group of people, including persons approved by CASA under section 51 of this instrument. It also effectively deems a person who meets one of the requirements in paragraphs 5.1.2 (a) to (f) of the GELP unit to have met the English language proficiency requirements of the specified provisions of CASR.

Section 56 provides an exemption for flight instructors, pilot instructors and Part 141 and 142 operators in relation to ELP assessment holders. In effect, it allows flight instructors, pilot instructors and Part 141 and 142 operators to recognise English language proficiency assessments conducted by a broader range of people than is allowed by the regulations, and to recognise qualifications or work experience mentioned in subclause 5.1.2 of the GELP unit.

Subsection 56 (1) exempts a flight instructor from subparagraph 61.1225 (2) (b) (iii) of CASR. It therefore allows a flight instructor to approve a student pilot to conduct a solo flight if the student is an ELP assessment holder.

Subsection 56 (2) exempts a pilot instructor from compliance with regulation 61.1227 of CASR. It therefore allows a pilot instructor to approve a person who does not hold a flight crew licence, or the holder of an RPL who does not hold a flight radio endorsement, to use an aeronautical radio if the person is an ELP assessment holder.

Subsection 56 (3) exempts Part 141 operators from paragraph 141.306 (2) (c) of CASR, and subsection 56 (4) exempts Part 142 operators from paragraph 142.386 (2) (c) of CASR. They therefore allow Part 141 and 142 operators to permit a student pilot to conduct a solo flight for the first time if the student, amongst other things, is an ELP assessment holder.

Section 57 imposes a condition on the exemption from compliance with subregulation 64.025 (2) or paragraph 64.025 (3) (b) of CASR. Those provisions of regulation 64.025 require that an application for an AROC is accompanied by evidence of specific types of English language proficiency assessment. Instead, under the condition, the applicant's application for the grant of an AROC must be accompanied by evidence of the applicant's AELP or GELP, which may be an assessment obtained from a broader range of persons or evidence of the qualifications or work experience mentioned in subclause 5.1.2 of the GELP unit.

Part 12 — Instrument Rating Aeronautical Knowledge Examination (IREX) (Certain Applicants for an Air Transport Pilot Licence) Exemption

Section 58 provides exemptions to exempted applicants.

Subsection 58 (1) exempts an exempted applicant who is taking the ATPL(A) flight test from subparagraph 61.235(2) (a) (ii) of CASR. The exemption is granted only to the extent that the subparagraph requires the applicant to have passed the IREX in order to be eligible to take the flight test. The effect of the exemption is intended to ensure that an exempted applicant is not deemed not to have passed the flight test by operation of regulation 61.240 of CASR, because the applicant has not passed the IREX.

Subsection 58 (2) exempts an exempted applicant from subparagraph 61.160 (b) (i), and paragraphs 61.700 (3) (a) and (c), of CASR. The exemption is granted only to the extent that the provisions require the applicant to have passed the IREX in order to be eligible to be granted the ATPL(A). The effect of the exemption is intended to ensure that an exempted applicant is eligible to be granted the ATPL(A) despite not having passed the IREX.

Notably, the exemption in subsection 58 (2) is intended to ensure that an exempted applicant meets the requirement to have passed the flight test even if the person would otherwise have been deemed not to have passed the flight test by operation of regulation 61.240 of CASR because the applicant has not passed the IREX. Further, the exemption will operate in relation to an exempted applicant whose application is being assessed by CASA after the commencement of this instrument even if the flight test was conducted before that commencement.

The exemptions are not intended to affect any other requirements for the eligibility to take the ATPL(A) flight test, or eligibility criteria for the grant of the ATPL(A).

Section 59 provides an exemption to flight examiners who conduct flight tests for exempted applicants so that the examiner does not commit the offence in subregulation 61.1300 (1) of CASR in respect of an exempted applicant who has not passed the IREX.

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. Additionally, 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. This instrument applies to several classes of persons, including exempted applicants and flight examiners conducting flight tests for exempted applicants, applicants for various civil aviation authorisations, pilot instructors, flight instructors, Part 141 operators and Part 142 operators.

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.

As the instrument relates to aviation safety and is made under CASR, Part 4 of Chapter 3 of the LA (the ***sunsetting provisions***) does not apply to the instrument (item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). However, this instrument will be repealed in accordance with section 48A of the LA and CASA EX66/21 will be repealed at the end of 31 May 2024, which will occur before the sunsetting provisions would have repealed those instruments if the sunsetting provisions had applied. Any renewal of the CASA EX66/21 will be subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA. Therefore, the exemption from sunsetting does not affect parliamentary oversight of this instrument.

Consultation

Remake of CASA EX111/18

The proposals reflected in the instrument were initially discussed with representatives of the aviation industry at meetings of the Flight Crew Licensing Subcommittee of the Standards Consultative Committee in November 2014 and March 2015. The Subcommittee supported the proposals. At the request of the aviation industry, CASA EX146/15 was issued to remove

unnecessary restrictions on the assessment of English language proficiency for student pilots, applicants for flight crew licences, and applicants for AROCs. It is of beneficial effect to the industry and only has an administrative effect, since these persons are still required to satisfy English language proficiency standards that are prescribed in the Part 61 MOS.

Without renewal of CASA EX111/18, fewer persons will be able to conduct English language proficiency assessments. This will have the effect of increasing burden on CASA delegates and flight examiners, and decreasing access to other assessors. Applicants for an AROC will be required to meet the more onerous AELP standard. Additionally, failure to renew the exemption will remove the increased flexibility and may result in increased costs in the administration of the English language proficiency standards for pilots and people operating aeronautical radios.

CASA intends to remove the need for the exemption by including its provisions in a broader package of amendments to CASR currently scheduled to commence in 2022.

Remake of CASA EX160/18

CASA has not undertaken consultation with external stakeholders on the parts of the instrument that remake CASA EX160/18. The issue has arisen from an oversight in the making of Schedule 4 of the Part 61 MOS and the instrument is beneficial to affected industry participants. The matter is proposed to be addressed through amendments to Schedule 4 of the Part 61 MOS. Drafting of these amendments is ongoing and will be included in a broader package of amendments currently scheduled to commence in 2022.

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

Sector risk, economic and cost impact

Subsection 9A (1) of the Act states that, in exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration.

Subsection 9A (3) of the Act states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9 (1) (c), CASA must:

- (a) consider the economic and cost impact on individuals, businesses and the community of the standards; and
- (b) take into account the differing risks associated with different industry sectors.

The cost impact of a standard refers to the direct cost (in the sense of price or expense) which a standard would cause individuals, businesses and the community to incur. The economic impact of a standard refers to the impact a standard would have on the production, distribution and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly. The economic impact of a standard could also include the general financial impact of that standard on different industry sectors.

As the instrument replaces an expiring instrument with the same (or largely the same) provisions and conditions, there will be no change of economic or cost impact on individuals, businesses or the community.

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

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*.

Making and commencement

The direction 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 1 October 2021 and is automatically repealed in accordance with section 48A of the LA.

Statement of Compatibility with Human Rights

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

CASA EX119/21 — Flight Crew Licensing (Further Miscellaneous Exemptions) Amendment 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

The legislative instrument allows persons, in addition to CASA and flight examiners, to conduct English language proficiency assessments for student pilots, applicants for pilot licences, and applicants for aeronautical radio operator certificates (**AROC**). Those assessments are required under various provisions, including Part 61 (Flight crew licensing), of the *Civil Aviation Safety Regulations 1998 (CASR)*.

The instrument also provides for applicants for an AROC to meet the general English language proficiency (**GELP**) standard, instead of the aviation English language proficiency standard.

The instrument affects the GELP standard in the Part 61 Manual of Standards (the **Part 61 MOS**) made under Part 61 of CASR. The Part 61 MOS provides that a person meets the GELP standard if the person provides the evidence mentioned in subclauses 5.1.1 and 5.1.2 of the GELP unit set out in the Part 61 MOS. Subclause 5.1.1 requires an assessment report that states the person satisfies the prescribed GELP elements. Subclause 5.1.2 requires evidence of meeting 1 of several requirements relating to qualifications or work experience. Under the instrument, a person is required to provide the evidence mentioned in either subclause 5.1.1 or 5.1.2 to satisfy the GELP standard, rather than providing the evidence mentioned in both of those subclauses.

The instrument also provides corresponding exemptions for flight training organisations and instructors to allow them to recognise the English language proficiency assessments and options under the GELP standard provided for by the instrument.

The purpose of the instrument is to provide greater flexibility and potentially reduced costs in the administration of the English language proficiency standards for pilots and people operating aeronautical radios.

The instrument also exempts certain applicants for an air transport pilot licence with an aeroplane category rating (**ATPL(A)**) from the requirement, under Part 61 of CASR, to have completed the instrument rating examination identified in the Part 61 MOS as “IREX”. The instrument applies to applicants who hold a commercial pilot licence in the aeroplane category, with an instrument rating, in accordance with the terms of the *Trans-Tasman Mutual Recognition Act 1997 (exempted applicants)*.

Human rights implications

The legislative instrument engages the right to work in Article 6 (1) of the International Covenant on Economic, Social and Cultural Rights.

The right to work 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 as follows:

- the exemptions in the instrument that relate to English language proficiency standards provide administrative flexibility for pilots and aeronautical radio operators to obtain the civil aviation authorisations that are necessary to perform their duties
- the exemption from the requirement for exempted applicants to pass the IREX in order to be eligible to take the flight test for the ATPL(A) or to be eligible to be granted an ATPL(A) reduces the costs for such applicants to upgrade their qualifications to the ATPL(A) and, therefore, to choose to perform work using that qualification.

Conclusion

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

Civil Aviation Safety Authority