

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX87/21 – Flight Operations Regulations – SMS, HFP/NTS and T&C Systems – Supplementary Exemptions and Directions Instrument 2021

Purpose

The purpose of this instrument is to make a number of exemptions against provisions of various Parts of the *Civil Aviation Safety Regulations 1998 (CASR)* that relate to the requirements for Australian air transport operators and certificated aerial work operators to have safety management systems, human factors principles and non-technical skill (*HFP/NTS*) training programs, and training and checking (*T&C*) systems. A range of safety conditions must be complied with in order to obtain the benefit of any exemption.

In general terms, the exemptions in almost all cases are available to existing charter and aerial work operators who, immediately before 2 December 2021, were not required to have the systems and programs mentioned above.

CASA's new Flight Operations Regulations (*FOR*) commence on 2 December 2021. The exemptions are designed to provide a transitional period for Australian air transport operators before full implementation of the FOR.

Thus, the exemptions have the effect of deferring implementation dates of certain new regulatory requirements for specified maximum periods of time ranging from 15 months to 3 years. The exemptions provide additional time for operators to implement the requirements for a safety management system (*SMS*), HFP/NTS training program or T&C system over a staggered period of time, provided the associated safety conditions are also met.

Legislation — exemptions

Section 98 of the Act empowers the Governor-General to make regulations for the *Civil Aviation Act 1988* (the *Act*) and the safety of air navigation.

Subpart 11.F of CASR deals with exemptions. Under subregulation 11.160 (1), and for subsection 98 (5A) of 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. Under subregulation 11.170 (3), 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.).

Legislation — directions

Under paragraph 11.245 (1) (a) of CASR, for subsection (5A) of the Act, CASA may, by instrument, issue a direction about any matter affecting the safe navigation and operation of aircraft. Under subregulation 11.245 (2), CASA may issue such a direction only if CASA is satisfied that it is necessary in the interests of safety, only if the direction is not inconsistent with the Act, and only for the purposes of CASA's functions.

Under regulation 11.250, a direction ceases to be in force on a day specified in the instrument or, if no day is specified, 1 year after the instrument commences. Under subregulation 11.255 (1), it is an offence to contravene a direction under regulation 11.245 that is applicable to the person.

Description of supplementary exemptions

Part 1 — Preliminary, Definitions and Application

Section 2 — Duration provides that the instrument commences on 2 December 2021 and is repealed at the end of 1 December 2024.

Section 3 — Definitions provides definitions for the instrument.

Section 4 — Application provides that the instrument applies according to its terms.

Part 2 — Safety management systems – Australian air transport operations – excluding certain Part 142 activities – exemptions

Section 5 — Application of Part 2

This section provides that Part 2 about SMS applies to an Australian air transport operator (the **relevant operator**) who immediately before 2 December 2021 held an AOC or was an “early applicant” for an AOC or AOC variation that authorised charter operations or aerial work (air ambulance) operations, **and did not** authorise regular public transport operations or Part 142 activities in an aircraft (that is, flight training), and was not subject to a direction under regulation 11.245 (CASA's power to give safety directions) to have an SMS.

An **early applicant** for an AOC or AOC variation is defined in Part 1 of the instrument as an applicant who applied for an AOC or AOC variation under the civil aviation legislation then in force at least 90 days before the commencement date (2 December 2021) but whose application was still under consideration by CASA on the commencement date.

The reference in this section to an aerial work (air ambulance) operation is necessary because such operations are Australian air transport operations under CASR.

Operators who conducted regular public transport operations or Part 142 activities in an aircraft immediately before 2 December 2021 do not benefit from the exemptions under this Part because they were, and continue to be, required to have an SMS for those operations.

Section 6 — Exemptions

This section lists the provisions of Part 119, dealing with SMS requirements, from which a relevant operator is exempted.

Section 7 — Conditions of the exemptions – safety

Section 7 provides safety conditions for the operation of the exemptions in section 6. Under subsection 7 (1), the operator must not commence scheduled air transport operations until CASA approves the operator's SMS exposition content for the operations.

Subsection 7 (2) sets out other safety conditions, for example, the safety roles of operational safety-critical personnel and key personnel, and that the operator's exposition must provide for the identification of safety risks and the implementation of safety controls to address those risks.

Section 8 — Conditions of the exemptions – preparation for exemption to end

Section 8 provides further conditions for the operation of the exemptions in section 6 in relation to preparation for the exemptions to end.

This section provides that an operator benefitting from the exemptions must:

- provide CASA with an SMS implementation plan by not later than 2 December 2022
- provide CASA with the operator's proposed SMS exposition content by not later than 3 June 2024
- obtain CASA's approval of the SMS exposition content by not later than 1 December 2024.

Section 9 — Expiry of the exemptions

This section provides that the exemptions under section 6 expire at the earlier of:

- the end of 1 December 2024
- the day CASA's approval of the operator's SMS exposition content takes effect.

Part 3 — Safety management systems – Australian air transport operators – including certain Part 142 activities – exemptions

Section 10 — Application of Part 3

This section provides that Part 3 applies to a relevant operator who immediately before 2 December 2021 held an AOC or was an early applicant for an AOC or AOC variation that **authorised** charter operations or aerial work (air ambulance) operations, **and authorised** Part 142 activities in an aircraft, and did not authorise regular public transport operations, and was not subject to a direction under regulation 11.245 to have an SMS.

An **early applicant** for an AOC or AOC variation is defined in Part 1 of the instrument as an applicant who applied for an AOC or AOC variation under the civil aviation legislation then in force at least 90 days before the commencement date (2 December 2021) but whose application was still under consideration by CASA on the commencement date.

The reference in this section to an aerial work (air ambulance) operation is necessary because such operations are Australian air transport operations under CASR.

Operators who conducted regular public transport operations or Part 142 activities in an aircraft immediately before 2 December 2021 do not benefit from the exemptions under this Part because they were, and continue to be, required to have an SMS for those operations.

Section 11 — Exemptions

This section lists the provisions of Part 119, dealing with SMS requirements, from which a relevant operator is exempted.

Section 12 — Conditions of the exemptions – safety

Section 12 provides safety conditions for the operation of the exemptions in section 11. Under subsection 12 (1) the operator must not commence scheduled air transport operations until CASA approves the operator's SMS exposition content for the operations.

Subsection 12 (2) sets out other safety conditions, for example, the safety roles of operational safety-critical personnel and key personnel, and that the operator's exposition must provide for the identification of safety risks and the implementation of safety controls to address those risks.

Section 13 — Conditions of the exemptions – preparation for exemption to end

Section 13 provides further conditions for the operation of the exemptions in section 11 in relation to preparation for the exemptions to end.

This section provides that an operator benefitting from the exemptions must:

- provide CASA with the operator's proposed SMS exposition content by not later than 2 September 2022
- obtain CASA's approval of the SMS exposition content by not later than 1 December 2022.

Section 14 — Expiry of the exemptions

This section provides that the exemptions under section 11 expire at the earlier of:

- the end of 1 December 2022
- the day CASA's approval of the operator's SMS exposition content takes effect.

Part 4 — Safety management systems – aerial work operations – excluding certain Part 142 activities – exemptions

Section 15 — Definition and application of Part 4

Subsection 15 (1) provides that a relevant aerial work operation for this Part is one for which an aerial work operator (that is an aerial work certificate holder) is required to have an SMS under regulation 138.140.

Subsection 15 (2) provides that Part 4 applies to an aerial work operator who immediately before 2 December 2021 held an AOC or was an early applicant for an AOC or AOC variation that authorised an aerial work operation (other than an air ambulance operation), and did not authorise regular public transport operations or Part 142 activities in an aircraft, and was not subject to a direction under regulation 11.245 to have an SMS.

An **early applicant** for an AOC or AOC variation is defined in Part 1 of the instrument as an applicant who applied for an AOC or AOC variation under the civil aviation legislation then in force at least 90 days before the commencement date (2 December 2021) but whose application was still under consideration by CASA on the commencement date.

The reference in this section to an aerial work (air ambulance) operation is necessary because such operations are Australian air transport operations under CASR.

Operators who conducted regular public transport operations or Part 142 activities in an aircraft immediately before 2 December 2021 do not benefit from the exemptions under this Part because they were, and continue to be, required to have an SMS for those operations.

Section 16 — Exemptions

This section lists the provisions of Part 138, dealing with SMS, from which a relevant operator is exempted.

Section 17 — Conditions of the exemptions – safety

Section 17 provides safety conditions for the operation of the exemptions in section 16. Under subsection 17 (1), the operator must not commence an aerial work operation that requires an SMS and is of a kind that the operator was not authorised to conduct immediately before 2 December 2021 until CASA approves the operator's SMS manual content for the operation.

Subsection 17 (2) sets out other safety conditions, for example, the safety roles of operational safety-critical personnel and key personnel, and that the operator's exposition must provide for the identification of safety risks and the implementation of safety controls to address those risks.

Section 18 — Conditions of the exemptions – preparation for exemption to end

Section 18 provides further conditions for the operation of the exemptions in section 16 in relation to preparation for the exemptions to end.

This section provides that an operator benefitting from the exemptions must:

- provide CASA with an SMS implementation plan by not later than 2 December 2022
- provide CASA with the operator's proposed SMS manual content by not later than 3 June 2024
- obtain CASA's approval of the SMS manual content by not later than the end of 1 December 2024.

Section 19 — Expiry of the exemptions

This section provides that the exemptions under section 16 expire at the earlier of:

- the end of 1 December 2024
- the day CASA's approval of the operator's SMS manual content takes effect.

Part 5 — Safety management systems – aerial work operations – including certain Part 142 activities – exemptions

Section 20 — Definition and application of Part 5

Subsection 20 (1) provides that a relevant aerial work operation for this Part is one for which an aerial work operator is required to have an SMS under regulation 138.140.

Subsection 20 (2) provides that Part 5 applies to an aerial work operator who immediately before 2 December 2021 held an AOC or was an early applicant for an AOC or AOC variation that authorised an aerial work operation (other than an air ambulance operation), and did not authorise regular public transport operations, authorised Part 142 activities in an aircraft, and was not subject to a direction under regulation 11.245 to have an SMS.

An **early applicant** for an AOC or AOC variation is defined in Part 1 of the instrument as an applicant who applied for an AOC or AOC variation under the civil aviation legislation then in force at least 90 days before the commencement date (2 December 2021) but whose application was still under consideration by CASA on the commencement date.

The reference in this section to an aerial work (air ambulance) operation is necessary because such operations are Australian air transport operations under CASR.

Section 21 — Exemptions

This section lists the provisions of Part 138 dealing with SMS requirements from which a relevant operator is exempted.

Section 22 — Conditions of the exemptions – safety

Section 22 provides safety conditions for the operation of the exemptions in section 21. Under subsection 22 (1), the operator must not commence an aerial work operation that requires an SMS and is of a kind that the operator was not authorised to conduct immediately before 2 December 2021 until CASA approves the operator's SMS manual content for the operation.

Subsection 22 (2) sets out other safety conditions, for example, the safety roles of operational safety-critical personnel and key personnel, and that the operator's exposition must provide for the identification of safety risks and the implementation of safety controls to address those risks.

Section 23 — Conditions of the exemptions – preparation for exemption to end

Section 23 provides further conditions for the operation of the exemptions in section 21 in relation to preparation for the exemptions to end.

This section provides that an operator benefitting from the exemptions must:

- provide CASA with the operator's proposed SMS manual content by not later than 2 September 2022
- obtain CASA's approval of the SMS manual content by not later than 1 December 2022.

Section 24 — Expiry of the exemptions

This section provides that the exemptions under section 21 expire at the earlier of:

- the end of 1 December 2022
- the day CASA's approval of the operator's SMS manual content takes effect.

Part 6 — Human factors principles and non-technical skills – Australian air transport operators – exemptions

Section 25 — Application of Part 6

Section 25 provides that Part 6 applies to a relevant operator who immediately before 2 December 2021 held, or was an early applicant for, an AOC or AOC variation that authorised charter operations or aerial work (air ambulance) operations, and did not authorise regular public transport operations, and was not subject to a direction under regulation 11.245 to have a HFP&NTS training program.

An *early applicant* for an AOC or AOC variation is defined in Part 1 of the instrument as an applicant who applied for an AOC or AOC variation under the civil aviation legislation then in force at least 90 days before the commencement date (2 December 2021) but whose application was still under consideration by CASA on the commencement date.

The reference in this section to an aerial work (air ambulance) operation is necessary because such operations are Australian air transport operations under CASR.

Section 26 — Exemptions

This section lists the provisions of Part 119, dealing with the HFP&NTS training program requirements, from which a relevant operator is exempted.

Section 27 — Conditions of the exemptions – safety

Section 27 provides safety conditions for the operation of the exemptions in section 26.

This section provides that it is condition of the exemptions that the operator must not commence scheduled air transport operations until CASA approves the operator's HFP&NTS program exposition content for the operations.

Section 28 — Conditions of the exemptions – preparation for the exemptions to end

Section 28 provides further conditions for the operation of the exemptions in section 26 in relation to preparation for the exemptions to end.

This section provides that an operator benefitting from the exemptions must:

- provide CASA with the operator's proposed HFP&NTS program exposition content by not later than 2 June 2023
- obtain CASA's approval of the HFP&NTS program exposition content by not later than the end of 3 December 2023.

Section 29 — Expiry of the exemptions

This section provides that the exemptions under section 26 expire at the earlier of:

- the end of 3 December 2023
- the day CASA's approval of the operator's HFP&NTS program exposition content takes effect.

Part 7 — Training and checking systems – Australian air transport operators – Part 121 operators – aeroplanes – exemptions

Section 30 — Application of Part 7

This section provides that Part 7 applies to a relevant operator for a Part 121 operation who, immediately before the commencement date, held an AOC or was an early applicant for an AOC or AOC variation that authorised charter operations or aerial work (air ambulance) operations and was not subject to a requirement under CAR 217 to provide a T&CO for the operations or an aeroplane used in the operations.

An *early applicant* for an AOC or AOC variation is defined in Part 1 of the instrument as an applicant who applied for an AOC or AOC variation under the civil aviation legislation then in force at least 90 days before the commencement date (2 December 2021) but whose application was still under consideration by CASA on the commencement date.

The reference in this section to an aerial work (air ambulance) operation is necessary because such operations are Australian air transport operations) under CASR.

Section 31 — Exemptions

This section lists the provisions of Part 119 and Part 121, dealing with T&C requirements, from which a relevant operator is exempted.

Section 32 — Conditions of the exemptions – safety

Section 32 provides safety conditions for the operation of the exemptions in section 31.

Under subsection 32 (1), the relevant operator must not commence scheduled air transport operations, or the use of an aeroplane for an air transport operation, that would have required a T&CO under regulation 217 of CAR, until CASA approves the operator's T&C exposition content for the operations or aeroplane.

Subsection 32 (2) provides other safety conditions for the exemptions, including that the operator's head of flying operations must assume the responsibilities of the head of training and checking, and that a training record must be maintained for each crew member.

Section 33 — Conditions of the exemptions – preparations for exemptions to end

Section 33 provides further conditions for the operation of the exemptions in section 31 in relation to preparation for the exemptions to end.

This section provides that an operator benefitting from the exemptions must:

- provide CASA with the operator's proposed T&C system exposition content by not later than 2 September 2022
- obtain CASA's approval of the exposition content by not later than the end of 1 March 2023.

Section 34 — Expiry of the exemptions

This section provides that the exemptions under section 31 expire at the earlier of:

- the end of 1 March 2023
- the day CASA's approval of the operator's T&C system exposition content takes effect.

Part 8 — Training and checking systems – Australian air transport operators – Part 133 operators – rotorcraft – exemptions

Section 35 — Application of Part 8

This section provides that Part 8 applies to a relevant operator for the conduct of a Part 133 operation if, immediately before the commencement date, the operator held an AOC or was an early applicant for an AOC or AOC variation that authorised charter operations or aerial work (air ambulance) operations and was not subject to a requirement under CAR 217 to provide a T&CO for the operations of a rotorcraft used in the operations.

An **early applicant** for an AOC or AOC variation is defined in Part 1 of the instrument as an applicant who applied for an AOC or AOC variation under the civil aviation legislation then in force at least 90 days before the commencement date (2 December 2021) but whose application was still under consideration by CASA on the commencement date.

The reference in this section to an aerial work (air ambulance) operation is necessary because such operations are Australian air transport operations under CASR.

Section 36 — Exemptions

This section lists the provisions of Part 119 and Part 133, dealing with T&C requirements, from which a relevant operator is exempted.

Section 37 — Conditions of the exemptions – safety

Section 37 provides safety conditions for the operation of the exemptions in section 36.

Under subsection 37 (1), the relevant operator must not commence scheduled air transport operations, or the use of an rotorcraft for an air transport operation, that would have required a T&CO under regulation 217 of CAR, until CASA approves the operator's T&C exposition content for the operations or rotorcraft.

Subsection 37 (2) provides other safety conditions for the exemptions, including that the operator's head of flying operations must assume the responsibilities of the head of training and checking, and that a comprehensive training record must be maintained for each crew member.

Section 38 — Conditions of the exemptions – preparations for exemptions to end

Section 38 provides further conditions for the operation of the exemptions in section 36 in relation to preparation for the exemptions to end.

This section provides that an operator benefitting from the exemptions must:

- provide CASA with the operator's proposed T&C system exposition content by not later than 2 September 2022
- obtain CASA's approval of the exposition content by not later than the end of 1 March 2023.

Section 39 — Expiry of the exemptions

This section provides that the exemptions under section 36 expire at the earlier of:

- the end of 1 March 2023
- the day CASA's approval of the operator's T&C system exposition content takes effect.

Part 9 — Training and checking systems – Australian air transport operators – Part 135 operations – aeroplanes – exemptions

Section 40 — Application of Part 9

This section provides that Part 9 applies to a relevant operator for the conduct of a Part 135 operation if, immediately before the commencement date, the operator held an AOC or was an early applicant for an AOC or AOC variation that authorised charter operations or aerial work (air ambulance) operations and was not subject to a requirement under CAR 217 to provide a T&CO for the operations or an aeroplane used in the operations.

An **early applicant** for an AOC or AOC variation is defined in Part 1 of the instrument as an applicant who applied for an AOC or AOC variation under the civil aviation legislation then in force at least 90 days before the commencement date (2 December

2021) but whose application was still under consideration by CASA on the commencement date.

The reference in this section to an aerial work (air ambulance) operation is necessary because such operations are Australian air transport operations under CASR.

Section 41 — Exemptions

This section lists the provisions of Part 119 and Part 135, dealing with T&C requirements, from which a relevant operator is exempted.

Section 42 — Conditions of the exemptions – safety

Section 42 provides safety conditions for the operation of the exemptions in section 41.

Subsection 42 (1) provides that the relevant operator must not commence scheduled air transport operations, or the use of an aeroplane for an air transport operation, that would have required a T&CO under regulation 217 of CAR, until CASA approves the operator's T&C exposition content for the operations or aeroplane.

Subsection 42 (2) provides other safety conditions for the exemptions, including that the operator's head of flying operations must assume the responsibilities of the head of training and checking, and that a comprehensive training record must be maintained for each crew member.

Section 43 — Conditions of the exemptions – preparations for exemptions to end

Section 43 provides further conditions for the operation of the exemptions in section 41 in relation to preparation for the exemptions to end.

This section provides that an operator benefitting from the exemptions must:

- provide CASA with the operator's proposed T&C system exposition content by not later than the end of 2 September 2022
- obtain CASA's approval of the exposition content by not later than the end of 1 March 2023.

Section 44 — Expiry of the exemptions

This section provides that the exemptions under section 36 expire at the earlier of:

- the end of 1 March 2023
- the day CASA's approval of the operator's T&C system exposition content takes effect.

Part 10 — Training and checking systems – aerial work operators – exemptions

Section 45 — Definitions and application of Part 10

Subsection 45 (1) provides that a **relevant aerial work operation** for this Part means an aerial work operation that is required to have a T&C system under subregulation 138.125 (1) and not relieved of that requirement under subregulation 138.125 (2).

Subsection 45 (2) provides that Part 10 applies to an aerial work operator who immediately before 2 December 2021 held an AOC or was an early applicant for an AOC or AOC variation that authorised aerial work operations (other than aerial work (air ambulance) operations), and was not subject to a requirement under CAR 217 to provide a T&CO for the operations or for an aircraft used in the operations.

An *early applicant* for an AOC or AOC variation is defined in Part 1 of the instrument as an applicant who applied for an AOC or AOC variation under the civil aviation legislation then in force at least 90 days before the commencement date (2 December 2021) but whose application was still under consideration by CASA on the commencement date.

The reference in this section to an aerial work (air ambulance) operation is necessary because such operations are Australian air transport operations under CASR.

Section 46 — Exemptions

This section lists the provisions of Part 138, dealing with T&C requirements, from which a relevant operator is exempted.

This section also contains a direction that a relevant operator must ensure that any training required under paragraph 23.03 (2) (e) of the Manual of Standards (the *MOS*) (training in the conduct of passenger safety briefings and demonstrations) is conducted as if the requirements of the MOS applied to the operator for the training.

Section 47 — Conditions of the exemptions – safety

Section 47 provides safety conditions for the operation of the exemptions in section 46.

Subsection 47 (1) provides that, until CASA approves the operator's T&C manual content for the operations or aircraft, the relevant operator must not:

- (a) commence aerial work operations (that require a T&C system) that are of a kind that the operator was not authorised to conduct immediately before 2 December 2021; or
- (b) commence aerial work operations or the use of an aircraft (that require a T&C system) that would have required a T&CO under CAR 217.

Subsection 47 (2) provides other safety conditions for the exemptions, including that the operator's head of operations must assume the responsibilities of the head of training and checking and that a comprehensive training record must be maintained for each crew member.

Section 48 — Conditions of the exemptions – preparations for exemptions to end

Section 48 provides further conditions for the operation of the exemptions in section 46 in relation to preparation for the exemptions to end.

This section provides that an operator benefitting from the exemptions must:

- provide CASA with the operator's proposed T&C manual content by not later than 1 September 2022
- obtain CASA's approval of that manual content by not later than the end of 1 March 2023.

Section 49 — Expiry of the exemptions

This section provides that the exemptions under section 46 expire at the earlier of:

- the end of 1 March 2023
- the day CASA's approval of the operator's T&C manual content takes effect.

Part 11 — Flight data analysis programs – Australian air transport operators – exemptions

Section 50 — Application of Part 11

This section provides that Part 11 applies to a relevant operator who, immediately before 2 December 2021, held an AOC or was an early applicant for an AOC or AOC variation that authorised regular public transport operations, charter operations or aerial work (air ambulance) operations, and was not subject to a requirement under CAO 82.3 or 82.5 then in force, or to a direction under regulation 11.245, to have a flight data analysis program (an *FDAP*) for the operation of the aircraft in those operations.

An *early applicant* for an AOC or AOC variation is defined in Part 1 of the instrument as an applicant who applied for an AOC or AOC variation under the civil aviation legislation then in force at least 90 days before the commencement date (2 December 2021) but whose application was still under consideration by CASA on the commencement date.

The reference in this section to an aerial work (air ambulance) operation is necessary because such operations are Australian air transport operations under CASR.

Section 51 — Exemption

This section provides that the operator is exempted from compliance with regulation 119.195 (this requires the operator to have an FDAP for certain aircraft).

Section 52 — Conditions of the exemption – safety

Section 52 provides safety conditions for the operation of the exemptions in section 51.

This section provides that it is a condition of the exemption that the operator must not commence scheduled air transport operations in an aircraft that would have required an FDAP under CAO 82.3 or 82.5 (AOC conditions for large and smaller aircraft) until CASA approves the operator's exposition content for compliance with regulation 119.195 for the aircraft.

Section 53 — Conditions of the exemption – preparations for exemption to end

This section provides that an operator benefitting from the exemption must:

- provide CASA with the operator's proposed exposition content for compliance with regulation 119.195 (as applicable) by not later than 3 June 2024
- obtain CASA's approval of the exposition content by not later than the end of 1 December 2024.

Section 54 — Expiry of the exemption

This section provides that the exemption under section 51 expires at the earlier of:

- the end of 1 December 2024
- the day CASA’s approval of the operator’s exposition content for regulation 119.195 takes effect.

Legislation Act 2003 (the LA)

The exemptions in this instrument are for the safe navigation and operation of aircraft and apply to classes of persons. The instrument is a legislative instrument under the Act and the LA and subject to registration, and tabling and disallowance in the Parliament, under sections 15G, and 38 and 42, of the LA.

Incorporation by Reference

In accordance with paragraph 15J (2) (c) of the *Legislation Act 2003* and subsection 98 (5D) of the Act, the legislative instrument applies, adopts or incorporates matters contained in the following instruments:

- exposition or operations manual, or training and checking manual, or safety managements system manual, of an operator.

Subsection 98 (5D) of the Act permits a non-legislative instrument to be incorporated as in force or existing at a particular time or from time to time, including a non-legislative instrument that does not exist when the legislative instrument is made.

Each incorporated document is described below, together with the manner of incorporation and how it may be obtained.

Exposition or operations manual or training and checking manual or safety management system manual of an operator:

An exposition or operations manual, or training and checking manual, or safety management system manual of an operator, is a document, or suite of documents, that specifies the scope of the operations and activities conducted by the operator, and sets out the plans, processes, procedures, programs and systems implemented by the operator to comply with the civil aviation legislation.

An “exposition”, for an operator generally means the exposition as changed from time to time, in accordance with the definition of “exposition” in the CASR Dictionary. Manuals are also incorporated as in force from time to time.

An exposition or an operations manual or a training and checking manual, or safety management system manual, is not publicly or freely available. They are proprietary to the operator and will generally include commercial in confidence information about the operator’s business. The incorporated requirements of an exposition or manual are at the operator-specific level and apply only to the operator and its personnel. Further, the operator is under obligations to make the exposition or manual available to its personnel who have obligations under the document.

Consultation

Under section 16 of the Act, in performing its functions and exercising its powers, CASA must consult government, industrial, commercial consumer and other relevant bodies and organisations insofar as CASA considers such consultation to be appropriate.

Under section 17 of the LA, before a legislative instrument is made, CASA must be satisfied that it has undertaken any consultation it considers appropriate and practicable in order to draw on relevant expertise and involve persons likely to be affected by the proposals.

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.

CASA consulted the aviation community in June 2020 when it published, and sought comments on, its policy proposals that ultimately gave rise to the exemptions and directions instrument. A summary of the consultation feedback and CASA's disposition of comments received was published on the CASA website in December 2020.

In addition, for this instrument, from 16 July to 6 August 2021, CASA consulted the aviation community by providing descriptions of the exemptions and directions to the Implementation Technical Working Group (*TWG*) of the Aviation Safety Advisory Panel (*ASAP*) for comment. ASAP is the primary advisory body through which CASA directs its engagement with industry and seeks input on current and future regulatory and associated policy approaches.

CASA considered all TWG input in finalising the exemption instrument, and advised the TWG of its responses and comments regarding all input from the TWG.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (*RIS*) is not required because the instruments are covered by a standing agreement between CASA and OBPR under which a RIS is not required for Exemption or Direction instruments (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: with its aviation safety focus, it promotes both the right to life, and the right to safe and healthy working conditions, and it does so in a way that is reasonable, necessary and proportionate in the context of aviation safety.

Commencement and making

The instrument commences on the day after it is registered and is repealed at the end of 1 December 2024.

The instrument 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 EX87/21 – Flight Operations Regulations – SMS, HFP&NTS and T&C Systems – Supplementary Exemptions and Directions 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 purpose of this instrument is to make a number of exemptions against provisions of various Parts of the *Civil Aviation Safety Regulations 1998* that relate to the requirements for Australian air transport operators and certificated aerial work operators to have safety management systems, human factors principles and non-technical skill (*HFP/NTS*) training programs, and training and checking (*T&C*) systems. A range of safety conditions must be complied with in order to obtain the benefit of any exemption.

In general terms, the exemptions in almost all cases are available to existing charter and aerial work operators who, immediately before 2 December 2021, were not required to have the systems and programs mentioned above.

CASA's new Flight Operations Regulations (*FOR*) commence on 2 December 2021. The exemptions are designed to provide a transitional period for the relevant operators before full implementation of the *FOR*.

Thus, the exemptions have the effect of deferring implementation dates of certain new regulatory requirements for specified maximum periods of time ranging from 15 months to 3 years. The exemptions provide additional time for operators to implement the requirements for a safety management system, HFP/NTS training program or T&C system over a staggered period of time, provided the associated safety conditions are also met.

Human rights implications

The legislative instrument engages with the following human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*:

- 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*).

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

The effect of the exemptions instrument is to defer implementation dates of certain new regulatory requirements over specified periods of time. For operators who voluntarily elect to take advantage of the exemption, various regulatory provisions that would otherwise apply under the FOR will not apply for the deferred period. An operator who chooses not to take the benefit of the exemption instrument is obliged to comply with the terms of the relevant FOR.

Although the instrument contains exemptions from various provisions of the relevant FOR, it does so in the context of substitute, and acceptable, conditions in the interests of aviation safety. To the extent that the conditions are expected to play a critical part in the avoidance of accidents and incidents, the instrument may reasonably be said to support the right to life, and to contribute to safe and healthy working conditions on board aircraft operated in accordance with the relevant conditions.

Human rights implications

This legislative instrument is compatible with human rights and to the extent that it may engage certain rights it does so in a way that promotes the right to life and promotes safe and healthy working conditions on board relevant aircraft. These measures are considered to be reasonable, necessary and proportionate in the interests of aviation safety.

Conclusion

This legislative instrument is compatible with human rights.

Civil Aviation Safety Authority