

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### CASA EX145/21 – Amendment of CASA EX87/21 – Instrument 2021 (No. 1)

##### Purpose

The purpose of this exemption instrument is to insert a number of additional exemptions into *CASA EX87/21 – Flight Operations Regulations – SMS, HFP&NTS and T&C Systems – Supplementary Exemptions and Directions Instrument 2021 (CASA EX87/21* or the *principal exemptions instrument*). CASA EX87/21 makes 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 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 this instrument are available to former regular public transport (*RPT*), charter and aerial work (air ambulance) operators who, immediately before 2 December 2021, were required to have a training and checking organisation (*TCO*) under regulation 217 of the *Civil Aviation Regulations 1988 (CAR)*.

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.

The intent of the new exemptions is to enable an existing operator with a CAR 217 training and checking organisation to be able to conduct the training and checking events encompassed by the training and checking manual for such a training and checking organisation for an additional 15 months beyond 2 December. However, the persons conducting the training and checking events must meet the new requirements in Part 121 where relevant for a person doing certain kinds of training or checking events.

Thus, the exemptions in this instrument have the effect of deferring implementation dates of certain new regulatory requirements for a maximum time period of 15 months. The exemptions provide additional time for operators to implement the specific Part 121 training and checking event requirements, 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.

Although no new directions are included in the exemption instrument, the empowerment is retained for consistency with the empowerment of the principal exemptions instrument.

### **Description of supplementary exemptions**

Section 1 provides for the naming of the *CASA EX145/21 – Amendment of CASA EX87/21 – Instrument 2021 (No. 1)*.

Section 2 provides for the commencement of the instrument on 2 December 2021.

Section 3 provides that the instrument amends *CASA EX87/21 – Flight Operations Regulations – SMS, HFP&NTS and T&C Systems – Supplementary Exemptions and Directions Instrument 2021*.

### **Schedule 1 – Amendments**

Schedule 1 provides for additional exemptions for Australian air transport operators who conducted RPT, charter and aerial work (air ambulance) operations and who were required under subregulation 217 (1) of CAR to provide a TCO. Schedule 1 contains a new Part 7A and includes sections 34A to 34E.

Part 7A Former RPT, charter and aerial work (air ambulance) operators under a CAR 217 training and checking organisation – exemptions as Australian air transport operators

34A Application of Part 7A

Section 34A provides that Part 7A applies to Australian air transport operators for a Part 121 operation (the *relevant operator*) who, immediately before 2 December 2021, held an AOC or was an early applicant for an AOC or an AOC variation that authorised the conducted of RPT, charter or aerial work (air ambulance) operations and was subject to a requirement under subregulation 217 (1) of CAR to provide a TCO for the operations or for an aeroplane used in the operations.

34B Exemptions — scope and related conditions

Section 34B lists the provisions of Part 121, dealing with T&C requirements, from which a relevant operator is exempted and the relevant conditions applicable for each exemption.

34C Condition — no change to training and checking manual unless approved

Section 34C provides each exemption in Part 7A is subject to the condition that, unless approved in writing by CASA, the relevant operator must not amend or change its approved TCO training and checking manual as in force immediately before 2 December 2021.

34D Conditions of the exemptions — preparation for exemptions to end

Section 34D provides further conditions for the operation of the exemptions in section 34B 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.

34E Expiry of the exemptions

Section 34E provides that the exemptions under section 34B 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.

***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.

## **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.

For the *principal exemptions instrument*, 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 the *principal exemptions 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. The 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, and has also received and considered additional input provided directly by Part 121 operators, in finalising this exemption instrument. CASA advised the TWG of its responses and comments regarding all input from the TWG, and considers that no further consultation is necessary or appropriate.

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

A Regulation Impact Statement (*RIS*) is not required because the instrument is 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 2 December 2021.

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 EX145/21 – Amendment of CASA EX87/21 – Instrument 2021 (No. 1)

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 exemption instrument is to insert a number of additional exemptions into *CASA EX87/21 – Flight Operations Regulations – SMS, HFP&NTS and T&C Systems – Supplementary Exemptions and Directions Instrument 2021 (CASA EX87/21)*. CASA EX87/21 makes 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 training programs, and training and checking systems. A range of safety conditions must be complied with in order to obtain the benefit of any exemption.

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Thus, the exemptions in this instrument have the effect of deferring implementation dates of certain new regulatory requirements for a maximum time period of 15 months. The exemptions provide additional time for operators to implement the specific Part 121 training and checking event requirements, 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**