

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX41/22 – Amendment of CASA EX82/21 – Instrument (No. 1) 2022

Purpose

The purpose of *CASA EX41/22 – Amendment of CASA EX82/21 – Instrument (No. 1) 2022* (the **exemptions instrument**) is principally to insert 2 additional exemptions into *CASA EX82/21 – Part 119 of CASR – Supplementary Exemptions and Directions Instrument 2021 (CASA EX82/21* or the **principal exemptions instrument**).

CASA EX82/21 makes a number of exemptions and directions relating to Part 119 of the *Civil Aviation Safety Regulations 1998 (CASR)*. Part 119 of CASR is one of CASA’s recent Flight Operations Regulations that commenced on 2 December 2021.

Unintended consequences have been identified in relation to: (a) whether an AOC is required for certain aircraft operations that, previously, were considered to be private operations; and (b) whether certain leasing or “cross-hire” arrangements, where the operator is not the registered operator of a relevant aircraft, may continue.

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 of CASR.

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.).

Background

First exemption

The first exemption is designed to relieve certain aircraft operators who, immediately before 2 December 2021, did **not** hold an AOC authorising passenger carriage, but who had reasonably considered that they were conducting private operations carrying non-paying passengers on board the aircraft, from the obligation under Part 119 of CASR to obtain an air operator's certificate (**AOC**), and from the duty to otherwise comply with the other requirements of the provisions in Part 119.

The instructions for, and the drafting of, Part 119 of CASR, and the definitions associated with Australian air transport operations, were not intended to require many of the affected operators to hold an Australian air transport AOC. Considerable feedback from relevant industry has drawn CASA's attention to this anomaly.

With the benefit of the exemption, as private operators engaged in private operations with non-paying passengers on board the aircraft, the relevant operators will only be obliged to comply with the requirements of Part 91 of CASR. This will provide time for CASA to further consult the aviation industry regarding possible changes to Part 119 or to the definitions associated with Australian air transport operations.

Immediately before 2 December 2021, subparagraph 2 (7) (d) (v) of the *Civil Aviation Regulations 1988 (CAR)* relevantly provided that an aircraft flying or operating for the purposes of, or in the course of, "the carriage of persons... without a charge for the carriage being made... shall be taken to be employed in private operations".

On and after 2 December 2021, under the CASR Dictionary, an aircraft is ***employed in private operations*** if the aircraft is used to conduct an operation that is a private operation. Under the Dictionary, an operation of an aircraft is a ***private operation*** if the operation is, relevantly, **not** "(a) an operation that is required to be conducted under the authority of an AOC under Part 119...".

Under subsection 27 (2) of the Act, "[e]xcept as authorised by an AOC...: (a) an aircraft shall not fly into or out of Australian territory; and (b) an aircraft shall not operate in Australian territory; and (c) an Australian aircraft shall not operate outside Australian territory". Under subsection 27 (9), subsection 27 (2) applies only to the flying or operation of an aircraft "for such purposes as are prescribed".

Under regulation 119.030 of CASR, for the purposes of subsection 27 (9) of the Act, the flying or operating of an aeroplane for an ***Australian air transport operation*** is a prescribed purpose.

Under regulation 119.010 of CASR, an operation is an Australian air transport operation if the operation is an air transport operation conducted by an Australian operator using a registered aeroplane or rotorcraft.

Under clause 3 in Part 2 of the CASR Dictionary, an ***air transport operation*** is, relevantly, a passenger transport operation that "(a) is conducted for hire or reward".

The expression "for hire or reward" is not defined but it is considered that it may well have a broader meaning than the CAR expression "without a charge... being made".

Under clause 75 in Part 2 of the CASR Dictionary, a *passenger transport operation* does *not*, relevantly, include the operation of an aircraft where *the registered operator* of an aircraft is *an individual* and the operation either: (a) involves the carriage of that individual and does *not* also involve the carriage of other passengers; or (b) *involves the carriage of that individual, and involves the carriage of other passengers, and for which no payment or reward is made or given in relation to the carriage of the other passengers.*

Thus, a person who is not the registered operator of the aircraft would not be covered by the exclusion, nor would a corporate entity who is the registered operator of the aircraft.

The unintended consequence of these provisions is that many passenger-carrying operations that, before 2 December 2021, were considered to be private operations not requiring an AOC because they were considered to be “without a charge... being made”, may, on and after 2 December 2021, legally have become Australian air transport operations because they could be construed as involving a “reward”, in its widest sense, for the aircraft operator.

For example, a maintenance organisation (an individual) that is the registered operator of an aircraft, and which, before 2 December 2021, did not hold an AOC, may carry aircraft maintenance engineers to a remote location to service or repair an aircraft. Clearly, the maintenance organisation will be paid for the work of its engineers, giving rise to the possibility that the operation has been conducted for “reward” and hence, as a passenger-carrying operation, requires the operator to hold an AOC and comply with Part 119 of CASR.

There are other examples, including: carriage of passengers, by an aircraft operator who is an individual and the registered operator of the aircraft, and who, before 2 December 2021, was not required to hold an AOC for passenger carriage, where the purpose was to inspect rural land for sale, where the land was owned by the aircraft operator, or the aircraft operator was the agent for the sale; carriage, by a similar kind of aircraft operator without an AOC, of passengers to work in regional areas in commercial enterprises owned by the aircraft operator or owned by others contracting with the aircraft operator. These kinds of operations might be construed as involving an ultimate reward for the aircraft operator, thereby require the holding of an AOC, in contradistinction to the position as it was immediately before 2 December 2021.

Detailed discussions with the aviation industry on the appropriate safety controls for these kinds of operations need to be held before CASA determines an enduring policy.

While steps are taken to consult with the industry, develop drafting instructions, and draft regulatory amendments, to appropriately address the issue by not later than the end of 1 June 2023 (when the exemption is expressed to expire), the exemption is necessary to preserve the pre-2 December 2021 status quo for the relevant operators until then.

The exemption is subject to safety conditions. Thus, if, immediately before 2 December 2021, aeroplane weight and performance requirements under Civil Aviation Order (CAO) 20.7.1B applied to the aircraft, or if the aircraft was one described in CAO 20.7.4, the aircraft must comply with the most restrictive combination of the requirements imposed by the relevantly applicable respective CAOs (as if they applied and continued to apply), and the performance requirements under Subpart 91.F of CASR (Australian aircraft performance requirements).

The aeroplanes subject to these safety conditions are the following:

For CAO 20.7.1B:

- (a) all aeroplanes driven by 2 or more jet engines having a maximum take-off weight in excess of 2 722 kg;
- (b) all aeroplanes driven by 2 or more turbine propeller engines having a maximum take-off weight in excess of 5 700 kg;
- (c) all new types of aeroplanes first registered in Australia after 1 June 1963, driven by 2 or more piston engines and having a maximum take-off weight in excess of 5 700 kg.

And for CAO 20.7.4, the following:

- (a) propeller-driven aeroplanes having a maximum take-off weight not in excess of 5 700 kg;
- (b) jet-engined aeroplanes having a maximum take-off weight not in excess of 2 722 kg.

No material question of aviation safety arises because the operations in question were those that up to 2 December 2021 were actually being conducted by the relevant class of operators and were regarded as involving a level of aviation safety that was at least acceptable (within the meaning of regulation 11.160).

The exemption is, in effect, a temporary grandfathering measure and only applies to operators who immediately before 2 December 2021 were already engaged in conducting the relevant operations.

Second exemption

The second exemption is designed to relieve Australian air transport operators, who hold AOCs for medical transport operations and non-scheduled transport operations, from the obligation to also be the registered operator of the aircraft if: the operation is an Australian air transport operation in an aircraft for which the relevant operator is not also the registered operator, or the holder of an approval under regulation 119.025 of CASR for subparagraph 119.080 (1) (h) (ii) of CASR; and the relevant aircraft does not conduct scheduled air transport operations. (Under subparagraph 119.080 (1) (h) (ii), a CASA approval may relieve a relevant operator from the obligation to also be the registered operator of the relevant aircraft.)

These are operators who participate in what are colloquially described as “cross-hire” arrangements in which they lease or hire the relevant aircraft from an operator who is the registered operator of the aircraft but who is not operating the aircraft.

Under paragraph 28BA (1) (b) of the Act, an AOC has effect subject to any conditions specified in the regulations.

On and from 2 December 2021, under paragraph 119.080 (1) (h), for the purposes of paragraph 28BA (1) (b), it is a condition on an Australian air transport AOC that, for each registered aircraft operated by the operator under the AOC, the operator must be the registered operator of the aircraft, or hold an approval under regulation 119.025 for the intended operation of the aircraft.

This requirement inadvertently affects existing cross-hire arrangements that were lawful before 2 December 2021 because there was no equivalent of paragraph 119.080 (1) (h) but would now require specific CASA approvals. Paragraph 119.080 (1) (h) is,

therefore, exempted from, along with the effect of the offence provision in regulation 119.060 of CASR in relation to the paragraph.

The exemption is subject to the condition that the exposition of the operator, who is not the registered operator, must contain procedures to ensure that if the use of the relevant aircraft does *not* constitute a significant change for the operator (if it did, CASA approval of the change would be required under regulation 119.090 of CASR) then the aircraft must be safely integrated by the operator into its operations in terms of differences, training and competency, and that airworthiness, maintenance and safety requirements are met for the operator's operations.

While steps are taken to develop drafting instructions, and to draft regulatory amendments, to appropriately overcome this problem by not later than the end of 1 December 2024 (when the exemption is expressed to expire), the exemption is necessary to preserve the pre-2 December 2021 status quo for the relevant operators until then.

No material question of aviation safety arises because the operations in questions were, up to 2 December 2021, regarded as involving a level of aviation safety that was at least acceptable (within the meaning of regulation 11.160).

The operations of new operators are similarly considered as likely to involve a level of aviation safety that is at least acceptable by virtue of the impact of the conditions mentioned above and regulations relating to exposition content, responsibilities of key personnel and maintenance requirements.

Description of the new exemptions

Further details of the exemptions instrument are set out in Appendix 1.

These include a minor technical amendment to correct the misleading heading in *Section 6B Retention of historical flight crew member records — direction* of the principal exemptions instrument. The records referred to in the existing subsection 6B (2) are not limited to flight crew member operational details, but also include, for example, other operational details, landing sites, and aircraft leasing arrangements. Hence, the reference to “flight crew members” only is deleted.

Another minor technical amendment is to enable a Table of Contents for the principal exemptions instrument to be prepared.

Legislation Act 2003 (the LA)

The exemptions in the instrument are for the safe navigation and operation of aircraft and apply to classes of persons. The instrument is, therefore, 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.

Sunsetting

As the instrument relates to aviation safety and is made under CASR, that means that Part 4 of Chapter 3 of the LA (the sunset provisions) does not apply to the instrument (as per item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). The instrument deals with aviation safety matters that, once identified, require a risk response or treatment plan. Generally speaking, item 15, when invoked, is necessary in order to ensure that, in the interests of aviation

safety, a relevant instrument has enduring effect, certainty and clarity for aviation operators, both domestic and international.

In this case, the instrument amends the principal exemptions instrument and is almost immediately spent and repealed in accordance with the automatic repeal provisions in Subdivision A in Division 1 of Part 3 of Chapter 3 of the LA. The principal exemptions instrument is itself repealed at the end of 1 December 2024 by virtue of the terms of paragraph 2 (b) of the principal exemptions instrument. Thus, in practice, no sunset avoidance issues arise and there is no impact on parliamentary oversight.

Incorporations by reference

Under subsection 98 (5D) of the Act, the exemption instrument may apply, adopt or incorporate any matter contained in any instrument or other writing. A non-legislative instrument may be incorporated into a legislative instrument made under the Act, as that non-legislative instrument exists or is in force at a particular time or from time to time (including a non-legislative instrument that does not exist when the legislative instrument is made).

Under paragraph 15J (2) (c) of the LA, the Explanatory Statement must contain a description of the incorporated documents and indicate how they may be obtained.

Document	Description	Manner of incorporation	Source
Subpart 91.F of CASR	This legislation prescribes certain aircraft performance standards.	As in force from time to time.	This document is available on the Federal Register of Legislation.
CAO 20.7.1B	This legislation prescribed aeroplane weight and performance limitations for certain specified aeroplanes.	As in force immediately before 2 December 2021.	This document is available on the Federal Register of Legislation.
CAO 20.7.4	This legislation prescribed aeroplane weight and performance limitations for certain specified aeroplanes.	As in force immediately before 2 December 2021.	This document is available on the Federal Register of Legislation.

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 as far 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 affected operators, in finalising the new exemptions instrument when it was realised that the 2 matters mentioned above required additional exemptions. 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).

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.

In terms of economic and cost impacts for section 9A (3) of the Act, the exemption instrument would facilitate the continued conduct of particular operations.

Without the exemptions instrument, aircraft operations that were being safely conducted before 2 December 2021 would be precluded from continuing without obtaining an AOC or a relevant CASA approval. Thus, the exemptions will have the effect of lowering some costs for industry that might otherwise have arisen.

The instrument will particularly impact, in a positive way, on the categories of non-scheduled air transport operations and medical transport operations conducted by Australian air transport operators.

It is not anticipated there will be any negative environmental impacts as a result of this exemption, compared to the baseline that existed on 1 December 2021, since the exemption is enabling a continuation of existing practices.

There is no significant differential sector risk arising from the exemptions instrument whose purpose is to preserve a pre-2 December 2021 status quo that was and is considered to offer an acceptable level of aviation safety.

Regional and remote Australia impacts

The Minister's Statement of Expectations states: "I expect that CASA will:... (b) fully consider the impact of new regulations on general aviation, with a particular focus on regional and remote Australia. All Explanatory Statements drafted by CASA for subordinate legislation should identify the impact on the various categories of operations as well as on communities in regional and remote Australia served by those operations and how these impacts have been considered."

The exemption related to private operations involving passenger-carrying flights is expected to have a neutral impact in regional and remote communities. While affected operators will avoid the cost of obtaining and maintaining an Australian air transport AOC, if the operators did hold this AOC they would be able to provide increased transportation services to their local regional and remote communities if this were appropriate for their business model.

The exemption concerning cross-hiring is expected to have a positive benefit for regional and remote communities because operators based in these areas have a smaller aircraft fleet to draw on in their local area, and the exemptions will enable the more flexible usage of available aircraft without CASA's formal involvement. This will result in benefits to operators and communities by reducing the likelihood of cancelled flights and services.

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.

Without the exemptions instrument, aircraft operations that were being safely conducted before 2 December 2021 would be precluded from continuing. The immediacy in the impact of this rule change, and the volume of operators affected, were unintended

consequences of provisions in Part 119 of CASR and were inadvertent effects not previously recognised.

Commencement and making

The instrument commences on the day after it is registered.

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

CASA EX41/22 – Amendment of CASA EX82/21 – Instrument (No. 1) 2022

1 Name

This section names the instrument.

2 Commencement

Under this section, the instrument commences on the day after it is registered.

3 Amendment of CASA EX82/21

Under this section, Schedule 1 amends CASA EX82/21 or the principal exemptions instrument.

Schedule 1 Amendments

[1] After section 3

This amendment makes provision for future tables of contents to assist readers of the principal exemptions instrument when it is compiled to include the instrument. Such a table is not a formal part of the instrument.

[2] Section 6, the heading

This section replaces the existing heading for section 6.

[3] Part 3, before section 7

This section inserts a new section 7AA, Certain air transport operations (business) — exemption.

- (1) Under this subsection, an *operator* is defined to mean a person, organisation or enterprise, who:
 - (a) as at the end of 1 December 2021, was engaged in aircraft operations involving the carriage of passengers on board the aircraft; and
 - (b) immediately before 2 December 2021, for the purpose of the carriage:
 - (i) did not hold an AOC authorising the carriage of passengers in regular public transport operations, charter operations or aerial work (air ambulance) operations; and
 - (ii) did not hold an AOC solely because subparagraph 2 (7) (d) (v) of CAR was reasonably taken to apply to the carriage of passengers.

A Note explains that if, before 2 December 2021, subparagraph 2 (7) (d) (v) of CAR was reasonably taken to apply to the carriage of passengers, the operation was considered to be a private operation not requiring an AOC.

A second Note explains that the effect of the definition is that the exemption instrument does not apply to an operator who, immediately before 2 December 2021, held an AOC authorising the carriage of passengers in regular public transport operations, charter operations or aerial work (air ambulance) operations.

- (2) Under this subsection, an operator, as defined, is exempted from compliance with all of Part 119 of CASR.

A Note explains that if an aircraft operation is exempted from Part 119 of CASR, Parts 121, 133 and 135 of CASR consequentially do not apply to the operation.

- (3) Under this subsection, the exemption under subsection (2) is subject to conditions.

Thus, for an aeroplane to which CAO 20.7.1B applied immediately before 2 December 2021, each flight of the aeroplane must comply with the most restrictive combination of requirements that apply to the aeroplane under Subpart 91.F — Performance of CASR, as in force from time to time, and CAO 20.7.1B as if CAO 20.7.1B, as in force immediately before 2 December 2021, continued to apply to the aeroplane.

Also, for each flight of an aeroplane that is one of the following:

- a propeller-driven aeroplane having a maximum take-off weight not in excess of 5 700 kg;
- a jet-engined aeroplane having a maximum take-off weight not in excess of 2 722 kg,

the aeroplane must comply with the most restrictive combination of requirements that apply to the aeroplane under Subpart 91.F — Performance of CASR, as in force from time to time, and subsections 3 to 10, inclusive, of CAO 20.7.4, as if these subsections, as in force immediately before 2 December 2021, applied to the aeroplane immediately before 2 December 2021, and continue to apply.

- (4) Under this subsection, section 7AA ceases to have effect at the end of 1 June 2023.

[2] Part 3, before section 7 (continued)

This section inserts a new section 7AB, Certain air transport operations (cross-hiring) — exemption.

- (1) Under this subsection, section 7AB applies to an Australian air transport operator (the *relevant operator*) who conducts a medical transport operation; or a non-scheduled air transport operation but only if:

- the operation is an Australian air transport operation (*relevant operations*) in an aircraft (the *relevant aircraft*) for which the relevant operator is not also the registered operator or the holder of an approval under regulation 119.025 for subparagraph 119.080 (1) (h) (ii); and
- the relevant aircraft does not conduct scheduled air transport operations.

- (2) Under this subsection, the relevant operator is exempted from the following for the conduct of relevant operations in the relevant aircraft:

- (a) paragraph 119.080 (1) (h);
- (b) regulation 119.060 (the offence provision) but only in relation to paragraph 119.080 (1) (h).

A Note explains that paragraph 119.080 (1) (h) imposes an AOC condition that Australian air transport operators must be the registered operators of the relevant aircraft. “Cross-hiring” is a colloquial term to describe some common circumstances in which the relevant aircraft operator is not also the registered operator.

- (3) Under this subsection, the exemptions under subsection (2) are subject to the condition that the relevant operator’s exposition must contain procedures to ensure that the requirements expressed in subsection (4) are complied with.

- (4) For subsection (3):
- (a) if the relevant operator's use of the relevant aircraft in a relevant operation does not require CASA's approval under regulation 119.090 (Application for approval of significant changes), including as a consequence of the exemptions in section 7 of this instrument — the relevant operator must:
 - (i) before any such use, assess any differences between the relevant aircraft and other aircraft being used by the operator; and
 - (ii) determine whether additional training or competency assessment is required for any member of the operational safety-critical personnel before the relevant aircraft is used in a relevant operation; and
 - (iii) if additional training or competency assessment is so required — ensure that the relevant training or assessment or both is completed before the relevant aircraft is used in a relevant operation; and
 - (b) before the relevant aircraft is used in a relevant operation, the relevant operator must:
 - (i) be fully aware of the continuing airworthiness and maintenance status of the aircraft insofar as they are relevant to the operator's use of the aircraft; and
 - (ii) ensure that the aircraft complies with the safety requirements of the regulations for the operation; and
 - (c) the relevant operator must ensure that the arrangements between the operator and the registered operator for managing the continuing airworthiness of the relevant aircraft during the operator's use of it are recorded in the exposition.
- (5) Under this subsection, section 7AB ceases to have effect at the end of 1 December 2024.

Statement of Compatibility with Human Rights

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

CASA EX41/22 – Amendment of CASA EX82/21 – Instrument (No. 1) 2022

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 *CASA EX41/22 – Amendment of CASA EX82/21 – Instrument (No. 1) 2022* (the **exemptions instrument**) is principally to insert 2 additional exemptions into *CASA EX82/21 – Part 119 of CASR – Supplementary Exemptions and Directions Instrument 2021 (CASA EX82/21* or the **principal exemptions instrument**). *CASA EX82/21* makes a number of exemptions and directions relating to Part 119 of the *Civil Aviation Safety Regulations 1998 (CASR)*. Part 119 of CASR is one of CASA’s recent Flight Operations Regulations that commenced on 2 December 2021.

Unintended consequences have been identified in relation to: (a) whether an AOC is required for certain aircraft operations that, previously, were considered to be private operations; and (b) whether certain leasing or “cross-hire” arrangements, where the operator is not the registered operator of a relevant aircraft, may continue.

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 right to safe and healthy working conditions under Article 7 of the International Covenant on Economic, Social and Cultural Rights.

The exemption instrument may engage these rights. This engagement is in the context of CASA’s statutory purpose. The aim of CASA and its regulatory framework is to uphold aviation safety by prescribing the conduct of individuals and organisations involved in civil aviation operations, including flight operations. It is, therefore, a threshold requirement for all CASA legislative instruments that they preserve, promote and enhance aviation safety.

Without the exemptions instrument, aircraft operations that were being safely conducted before 2 December 2021 would be precluded from continuing. The immediacy in the impact of this rule change, and the volume of operators affected, were an unintended consequence of provisions in Part 119 of CASR and were inadvertent effects not previously recognised.

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