

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX68/22 – Amendment of CASA EX66/21 (Significant Change Approval Requirements – Part 141 Operators and Relevant Part 142 Operators) Instrument 2022

Purpose

*CASA EX68/22 – Amendment of CASA EX66/21 (Significant Change Approval Requirements – Part 141 Operators and Relevant Part 142 Operators) Instrument 2022 (the **amending instrument**) amends CASA EX66/21 – Flight Crew Licensing (Miscellaneous Exemptions) Exemption 2021 (the **principal instrument**) by inserting a new Part (**Part 14**). Part 14 replaces the measures in instrument CASA EX100/20 – Particular Significant Changes Approval Requirements (Part 141 Operators and Relevant Part 142 Operators) Exemption 2020 (the **previous instrument**) which expired at the end of 31 August 2022.*

Part 14 exempts each of the following kinds of persons from the requirement to obtain CASA's approval for a significant change before adding aircraft to their fleet of training aircraft that are the same kind, or similar in kind, as aircraft they are already using to conduct training:

- (a) a **Part 141 operator** — the holder of **Part 141 certificate** (a certificate issued under regulation 141.060 of the *Civil Aviation Safety Regulations 1998 (CASR)*);
- (b) a **relevant Part 142 operator** — the holder of an Air Operator's Certificate (**AOC**) that authorises a particular activity (a **Part 142 activity**) to be conducted in an aircraft.

The opportunity was also taken to make minor drafting improvements to the provisions of the previous instrument.

Legislation

Exemptions

Section 98 of the *Civil Aviation Act 1988* (the **Act**) empowers the Governor-General to make regulations for the Act and in the interests of the safety of air navigation. Relevantly, the Governor-General has made CASR.

Subpart 11.F of CASR provides for the granting of exemptions from particular provisions of the regulations. Subregulation 11.160 (1) of CASR provides that, for subsection 98 (5A) of the Act, the Civil Aviation Safety Authority (**CASA**) may grant an exemption from compliance with a provision of the regulations.

Under subregulation 11.160 (2) of CASR, an exemption may be granted to a person or a class of persons and may specify the class by reference to membership of a specified body or any other characteristic.

Under subregulation 11.160 (3) of CASR, an exemption may be granted on application by a person or on CASA's own initiative.

Under subregulation 11.170 (3) of CASR, in deciding whether to grant an exemption on application, CASA must regard as paramount the preservation of at least an acceptable level

of aviation safety. CASA has regard to the same test when deciding whether to grant an exemption on its own initiative.

Regulation 11.225 of CASR requires an exemption to be published on the internet. Under subregulation 11.230 (1), the maximum duration of an exemption is 3 years.

Subsection 98 (5D) of the Act provides that a legislative instrument made under the Act or the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time, even if the other instrument or writing does not yet exist when the legislative instrument is made.

Part 141 of CASR

Part 141 deals with the conduct of recreational, private and commercial pilot flight training, other than certain integrated training courses and makes provision for applicants for, and holders of, Part 141 certificates.

Subregulation 141.010 (1) sets out the aircraft and flight simulation devices to which Part 141 applies which include the following:

- (a) an aeroplane, rotorcraft or airship that is permitted by its flight manual to be flown by one pilot;
- (b) an aeroplane, rotorcraft or airship covered by a type rating mentioned in a legislative instrument under regulation 142.045;
- (c) a flight simulation training device for an aircraft mentioned in paragraph (a) or (b).

Subregulation 141.010 (2) provides that a reference in Part 141 to an **aircraft** is a reference to an aeroplane, rotorcraft or airship mentioned in paragraph (1) (a) or (b).

The current version of the legislative instrument mentioned in paragraph 141.010 (1) (b) is the *Prescription of Aircraft and Ratings — CASR Part 61 (Edition 8) Instrument 2021*.

Subregulation 141.015 (3) defines a **Part 141 operator** as the holder of a Part 141 certificate.

Subregulation 141.015 (1) defines **Part 141 flight training** as any of several kinds of training, listed in paragraphs 141.015 (1) (a) to (g), that is conducted in an aircraft or a flight simulation training device.

Subregulation 141.015 (2) provides that **authorised Part 141 flight training**, for a Part 141 operator, is Part 141 flight training mentioned in the operator's Part 141 certificate.

Regulation 141.025 provides that a **significant change**, for a Part 141 operator, means a change in relation to any of several kinds of information, processes and training including, relevantly, in subparagraph (a) (ix), "if the operator conducts the training in aircraft—the kinds of aircraft used to conduct the training".

Part 1 of the CASR Dictionary provides that a **kind** of aircraft means:

- (a) for an aircraft that is covered by an aircraft type rating—the aircraft type rating; and
- (b) for an aircraft that is not covered by an aircraft type rating—the type of aircraft.

Under subregulation 141.085 (1), a Part 141 operator commits an offence if the operator makes a certain kind of significant change without the approval of CASA.

Under subregulation 141.095 (1), a Part 141 operator commits an offence if the operator makes a change that is not made in accordance with the process described in the operator's operations manual.

Under subregulation 141.265 (1), a Part 141 operator commits an offence if the operator contravenes a provision of its operations manual.

Part 142 of CASR

Part 142 deals with the conduct of integrated and multi-crew pilot flight training, contracted recurrent training and contracted checking and makes provision for applicants for, and holders of, Part 142 authorisations (which are AOCs or other certificates that deal with the training and checking).

Subregulation 142.010 (1) provides that Part 142 applies only to:

- (a) an aeroplane, rotorcraft or airship; or
- (b) a flight simulation training device for an aircraft mentioned in paragraph (a).

Subregulation 142.010 (2) provides that a reference in Part 142 to an **aircraft** is a reference to an aeroplane, rotorcraft or airship.

Subregulation 142.015 (4) defines a **Part 142 operator** as the holder of a Part 142 authorisation. A **Part 142 authorisation** in subregulation 142.015 (5) includes, relevantly, in paragraph (a), an AOC that authorises the conduct of a Part 142 activity in an aircraft.

Subregulation 142.015 (1) defines a **Part 142 activity** as any of the following conducted in an aircraft or a flight simulation training device:

- (a) Part 142 flight training;
- (b) contracted recurrent training;
- (c) contracted checking.

Regulation 142.030 provides that **significant change**, for a Part 142 operator, means a change in relation to any of several kinds of information, processes, training and activities including, relevantly in subparagraph (a) (xi), "if the operator conducts the activities in aircraft—the kinds of aircraft used to conduct the activities".

Under subregulation 142.140 (1), a Part 142 operator commits an offence if the operator makes a certain kind of significant change without the approval of CASA.

Under subregulation 142.150 (1), a Part 142 operator commits an offence if the operator makes a change that is not in accordance with the process described in the operator's exposition for making changes.

Under subregulation 142.345 (1), a Part 142 operator commits an offence if the operator contravenes a provision of its exposition.

Background

The principal instrument is a collection of miscellaneous exemptions for flight crew licensing that have been issued by CASA in the past. It reflects regulatory development that is expected to be reflected in regulation.

Part 14 addresses an unintended consequence of the combined operation of the definition of *kind*, of an aircraft, in the CASR Dictionary and each of the following definitions:

- (a) the definition of *significant change*, for a Part 141 operator, in regulation 141.025 of CASR;
- (b) the definition of *significant change*, for a Part 142 operator, in regulation 142.030 of CASR.

The unintended consequence requires Part 141 operators and Part 142 operators to have or obtain CASA's approval of a particular kind of significant change, including when adding other or additional aircraft to their training fleets, even if the other or additional aircraft are the same "kind", or a similar kind, as aircraft that the operator is already using in its training operations.

In some situations, that requirement for formal CASA approval imposes administrative and cost obligations on an operator, without any off-setting justification in terms of enhancing aviation safety.

CASA has previously made exemptions that have the same effect in order to address this unintended consequence, most recently the previous instrument, which will be repealed at the end of 31 August 2022. The amending instrument effectively remakes the previous instrument in substantially the same terms.

It is expected that amendments to Parts 141 and 142 of CASR reflecting the policy in these exemptions will be made in the near future.

CASA has assessed the impact that Part 14 will have on aviation safety and is satisfied that the circumstances in which the exemptions apply will preserve an acceptable level of safety.

Overview of instrument

Part 14 exempts Part 141 and relevant Part 142 operators from complying with particular provisions of Parts 141 and 142 of CASR that would otherwise require the Part 141 or relevant Part 142 operator to obtain CASA's approval of a significant change of a particular kind. Part 14 preserves the exclusions of the previous instrument in disapplying significant changes relating to the kinds of aircraft listed in section 67 of the new Part.

Documents incorporated by reference

Part 14 incorporates (at section 67) a legislative instrument by reference, namely the legislative instrument variously referred to under paragraphs 67 (a), (c) and (f) (being an instrument made under regulations 61.055, 61.060 and 61.062 of CASR, respectively). The legislative instrument is incorporated as in force from time to time (as authorised by paragraph 14 (1) (a) of the *Legislation Act 2003* (the *LA*)).

At the commencement of Part 14, the incorporated instrument was the *Prescription of aircraft and ratings — CASR Part 61 (Edition 8) Instrument 2021* (see the Note at the foot of section 67). That instrument is freely available on the Federal Register of Legislation at <https://www.legislation.gov.au/Details/F2021L00622>.

Content of amending instrument

Section 1 sets out the name of the amending instrument.

Section 2 provides that the amending instrument commences on 1 September 2022.

Section 3 provides that Schedule 1 amends the principal instrument.

Schedule 1 inserts Part 14 into the principal instrument. Part 14 consists of sections 64 to 67.

Section 64 sets out the definitions for the Part.

Section 65 exempts a Part 141 operator from compliance with particular provisions of CASR, to the extent that each provision requires the Part 141 operator to have obtained CASA's approval of a significant change mentioned in subparagraph (a) (ix) of the definition of ***significant change*** in regulation 141.025 of CASR. Section 65 is to be read as subject to the exclusions in section 67.

Section 66 exempts a relevant Part 142 operator from compliance with particular provisions of CASR, to the extent that each provision requires the relevant Part 142 operator to have or obtain CASA's approval of a significant change mentioned in subparagraph (a) (xi) of the definition of ***significant change*** in regulation 142.030 of CASR. Section 66 is to be read as subject to the exclusions in section 67.

Section 67 disapplies significant changes relating to particular listed aircraft operated by a Part 141 operator or relevant Part 142 operator. These are:

- (a) multi-crew aircraft with the type ratings that may be granted for multi-crew operation prescribed, for paragraph 61.055 (1) (a) of CASR, in a legislative instrument made by CASA;
- (b) a variant model of an aircraft of the kind mentioned in paragraph (a) that requires differences training;
- (c) a type of aircraft that is certificated for single-pilot operation and for which single-pilot type ratings are required, with the type ratings that may be granted for single-pilot operation prescribed, for subparagraph 61.060 (1) (b) (i) of CASR, in a legislative instrument made by CASA;
- (d) a variant model of an aircraft of the type mentioned in paragraph (c) that requires differences training;
- (e) an aircraft covered by a class rating, being the first aircraft of that class to be used by the operator in authorised Part 141 flight training or a Part 142 activity;
- (f) a type of aircraft prescribed in an instrument made by CASA under regulation 61.062 of CASR;
- (g) a pressurised aircraft, being the first pressurised aircraft to be used by the operator in authorised Part 141 flight training or a Part 142 activity;
- (h) a turbine-engined aircraft, being the first turbine-engined aircraft to be used by the operator in authorised Part 141 flight training or a Part 142 activity.

Legislation Act 2003

Paragraph 10 (1) (d) of the LA provides that an instrument will be a legislative instrument if it includes a provision that amends or repeals another legislative instrument. The amending instrument amends the principal instrument which is a legislative instrument and is, therefore, also a legislative instrument. It is subject to registration on the Federal Register of Legislation and tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

As the amending instrument relates to aviation safety and is made under CASR, Part 4 of Chapter 3 of the LA (the ***sunsetting provisions***) does not apply to the instrument (as per item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters)*)

Regulation 2015). In this case, the instrument amends the principal instrument and is almost immediately spent. It is repealed in accordance with the automatic repeal provisions in section 48A of the LA. Part 14 is itself repealed at the end of 31 May 2024 by virtue of section 2 of the principal instrument. Therefore, the exemption from sunseting does not affect parliamentary oversight of the amending instrument.

Consultation

Consultation under section 17 of the LA has not been undertaken in this case. Part 14 continues the effect of the previous instrument in exempting certain Part 141 and 142 operators from having to get CASA's approval for certain significant changes in relation to their fleet of aircraft. The policy underpinning Part 14 was subject to consultation with an industry forum in 2015, in which the proposed exemptions were supported. The need for the exemption provisions is ongoing. In these circumstances, CASA is satisfied that no consultation is appropriate or reasonably practicable for the amending instrument for section 17 of the LA.

Sector risk, economic and cost impact

Subsection 9A (1) of the Act states that, in exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration. Subsection 9A (3) of the Act states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9 (1) (c), CASA must:

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

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

As Part 14 replaces the previous instrument with provisions that will have the same effect, there will be no change of economic or cost impact on individuals, businesses or the community.

Impact on regional and remote communities

The amending instrument is not likely to have a specific impact on operators in regional or remote communities in Australia.

Impact on categories of operations

Part 14 will have a beneficial effect in continuing to enable Part 141 and relevant Part 142 operators to add certain aircraft to their fleet of training aircraft without needing to seek CASA approval.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (*RIS*) is not required in this case, as the exemption is covered by a standing agreement between CASA and OBPR under which a RIS is not required for exemptions (OBPR id: 14507).

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights at Attachment 1 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Making and commencement

The amending instrument has been made by a delegate of CASA relying on the power of delegation under subregulation 11.260 (1) of CASR.

The amending instrument commences on 1 September 2022 and is automatically repealed in accordance with section 48A of the LA.

Statement of Compatibility with Human Rights

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

CASA EX68/22 – Amendment of CASA EX66/21 (Significant Change Approval Requirements – Part 141 Operators and Relevant Part 142 Operators) Instrument 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

This legislative instrument amends instrument *CASA EX66/21 – Flight Crew Licensing (Miscellaneous Exemptions) Exemption 2021* by inserting a new Part (**Part 14**). Part 14 replaces the measures in instrument *CASA EX100/20 – Particular Significant Changes Approval Requirements (Part 141 Operators and Relevant Part 142 Operators) Exemption 2020* (the *previous instrument*) which expired at the end of 31 August 2022.

Part 14 applies to the following kinds of persons:

- (a) a **Part 141 operator** — the holder of **Part 141 certificate** (a certificate issued under regulation 141.060 of the *Civil Aviation Safety Regulations 1998 (CASR)*);
- (b) a **relevant Part 142 operator** — the holder of an Air Operator’s Certificate that authorises a particular activity (a **Part 142 activity**) to be conducted in an aircraft.

Part 14 exempts Part 141 and relevant Part 142 operators from complying with particular provisions of Parts 141 and 142 of CASR that would otherwise require the Part 141 or relevant Part 142 operator to obtain CASA’s approval of a significant change of a particular kind. Part 14 preserves the exclusions of the previous instrument in disapplying significant changes relating to the kinds of aircraft listed in section 67 of the new Part.

Subregulation 142.015 (1) of CASR defines a **Part 142 activity** as any of the following conducted in an aircraft or a flight simulation training device:

- (a) Part 142 flight training;
- (b) contracted recurrent training;
- (c) contracted checking.

Any safety risks potentially arising from the measure are addressed by limitations on the application of the exemptions in the interests of the safety of air navigation.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

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

Civil Aviation Safety Authority