

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX75/22 – Amendment of CASA EX83/21 (Training or Checking for Safety Equipment or Emergency Equipment) – Instrument 2022 (No.1)

Purpose

The purpose of *CASA EX75/22 – Amendment of CASA EX83/21 (Training or Checking for Safety Equipment or Emergency Equipment) – Instrument 2022 (No.1)* (the **exemption instrument**) is to insert additional exemptions into *CASA EX83/21 – Part 121 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021 (CASA EX83/21* or the **principal exemptions instrument**) to, in effect, remove an unnecessary and inadvertent requirement for duplication of certain training.

CASA EX83/21 made a number of exemptions and directions relating to Part 121 and Part 91 of the *Civil Aviation Safety Regulations 1998 (CASR)*. These CASR Parts are elements of CASA’s new Flight Operations Regulations that commenced on 2 December 2021. Part 121 generally deals with Australian air transport operations in larger aeroplanes; Part 91 deals with the general aircraft operating rules and the rules of the air.

Background

The exemption instrument is for the operator of an aeroplane for a flight that is a Part 121 operation. It relates to the process for approving a person to conduct flight crew and cabin crew training and checking that involves safety equipment or emergency equipment.

Generally, such a person (an **applicant**) applies to be approved and obtains the approval by successfully demonstrating to CASA the conduct of the relevant training. This demonstration normally involves the applicant “training” actual flight crew or cabin crew who require such training (the **trainees**).

However, legally, the trainees thus “trained” during the demonstration have been trained by an *applicant for approval*, and not by an approved person, even though, at the end of the successful demonstration, the applicant is approved.

The trainees must, therefore, undergo a repetition of the training they had already received, but this time by a legally approved person.

This duplication was an unintended consequence of the relevant provisions. The purpose of the exemption instrument is to, in effect, allow the training conducted by the successful applicant for approval to be valid for the trainees and not require repetition.

Thus, the exemption instrument removes an inadvertent duplication of an approval process under the Part 121 regulations. This unintended consequence will be remedied on a more permanent basis when the regulations are amended in 2023.

Legislation — exemptions

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

Legislation — CASR

The exemption instrument grants exemptions from the following provisions of Part 121 of CASR (explained below) in relation to the training and checking of flight crew and cabin crew for use of safety equipment and emergency equipment:

- (a) subregulation 121.475 (4);
- (b) subregulation 121.475 (5), in its application to subregulation 121.475 (4);

- (c) subregulation 121.640 (3);
- (d) subregulation 121.640 (5), in its application to subregulation 121.640 (3).

Flight crew

Under subregulation 121.005 (1), Part 121 of CASR applies to the operation of a multi-engine aeroplane for an Australian air transport operation if either or both of the following apply in relation to the aeroplane: (a) it has a maximum operational passenger seat configuration of more than 9; (b) it has a maximum take-off weight of more than 8 618 kg.

Subpart 121.N of CASR applies to such operations. Subpart 121.N also applies to the operation of a multi-engine aeroplane if either or both of paragraphs (a) and (b) above apply in relation to the aeroplane, and the operator holds an Australian air transport AOC that authorises Part 121 operations, and the operation is of a kind specified in the operator's exposition.

Under subregulation 121.475 (1) in Subpart 121.N, the operator of an aeroplane for a flight contravenes the subregulation if, when the flight begins, a requirement mentioned in subregulation (2) is not met.

These requirements are various but include requirements for qualified flight crew to meet training and checking requirements.

Under subregulations 121.475 (4) and (5), the operator of an aeroplane commits an offence of strict liability if the aforementioned training or checking involves safety equipment or emergency equipment and is conducted by a person who does not hold a CASA approval for the purpose under regulation 121.010.

Cabin crew

Subpart 121.P applies to subregulation 121.005 (1) operations if a cabin crew member must be carried on the flight. Regulation 121.630 provides that a cabin crew member must be carried on a flight of an aeroplane if the flight is a passenger transport operation with a maximum operational passenger seat configuration (**MOPSC**) of more than 19; or if the aeroplane has a MOPSC of more than 9 and a maximum certificated passenger seating capacity (MCPSC) of more than 19.

Under subregulation 121.640 (1) in Subpart 121.P, the operator of an aeroplane for a flight contravenes the subregulation if, when the flight begins, a requirement mentioned in subregulation (2) is not met. These requirements are various but include requirements for each qualified cabin crew member to meet training and checking requirements.

(Under subregulation 121.640 (4), the requirements do not apply to a requirement mentioned in subregulation (2) if the cabin crew member is successfully participating in the operator's CASA approved training and checking system. The exemption instrument is not relevant for such circumstances.)

Under subregulations 121.640 (3) and (5), the operator of an aeroplane commits an offence of strict liability if the training or checking involves safety equipment or emergency equipment and is conducted by a person who does not hold an CASA approval for the purpose under regulation 121.010.

The condition

As discussed above, CASA relevantly approves a person (the **applicant**) under regulation 121.010, through the applicant's successful demonstration of the relevant training and checking for flight crew or cabin crew members.

The exemption instrument exempts operators from the requirement that only an already approved person may conduct the relevant training and checking involving safety equipment or emergency equipment, **provided that**, in that instance:

- the person is simultaneously under assessment by a CASA officer for the purpose of being granted an approval under regulation 121.010
- the assessment results in the person being granted an approval
- the operator records the outcome in the operator's training and checking record for the applicant.

Of course, if the assessment does not result in the applicant being granted an approval, the demonstration has failed, and it is inevitable, in the interests of aviation safety, that the flight crew or cabin crew members would have to undergo another round of similar training and checking, or training and checking by an existing approval holder.

However, if an applicant is approved in this way under the exemption, the trainees are regarded as having been lawfully trained and checked, and the applicant hereby holds a CASA approval under regulation 121.010.

The exemption instrument is no longer required in relation to that particular person's subsequent relevant training and checking role involving safety equipment or emergency equipment.

Description of the exemption instrument

The way in which the exemption instrument operates is described in Appendix 1. (Note: for those seeking to have the benefit of an exemption, an Explanatory Statement is never a substitute for reading the terms of the exemption, including the scope of its application, and its conditions.)

The details of the exemption instrument are set out in Appendix 1.

Aviation safety

In determining whether to issue the exemption instrument, CASA had regard to the safety of air navigation as the most important consideration. In deciding whether to impose particular conditions on the particular exemptions, CASA considered what would be necessary in the interests of the safety of air navigation.

CASA is satisfied that, given the nature of the processes involved, and the necessary conditions imposed by the instrument, an acceptable level of aviation safety will be preserved, and the safety of air navigation thereby maintained.

Legislation Act 2003 (the LA)

Exemptions under Subpart 11.F of CASR are "for subsection 98 (5A)" of the Act, that is, for regulations which empower the issue of certain instruments, like exemptions, in relation to "(a) matters affecting the safe navigation and operation, or the maintenance, of aircraft", and "(b) the airworthiness of, or design standards for, aircraft".

The exemption instrument is clearly one in relation to matters affecting the safe navigation and operation of aircraft. Under subsection 98 (5AA) of the Act, an

exemption issued under paragraph 98 (5A) (a), for such matters, is a legislative instrument if expressed to apply in relation to a class of persons, a class of aircraft or a class of aeronautical products (as distinct from a particular person, aircraft or product).

The exemption instrument applies to classes of persons and is, therefore, a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under section 15G, and sections 38 and 42, of the LA.

Sunsetting

As the exemption instrument relates to aviation safety and is made under CASR, that means that Part 4 of Chapter 3 of the LA (the sunseting 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 exemption 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 sunseting avoidance issues arise. The fact that the instrument is formally not subject to sunseting does not impact on the potential for parliamentary oversight.

Incorporations by reference

Under subsection 98 (5D) of the Act, the 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. There are no such specific documents.

References to provisions of CASR are taken to be as they are in force from time to time, by virtue of paragraph 13 (1) (c) of the LA. CASR is freely available online 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 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.

While the current issue was overlooked in preparing the final draft of Part 121 of CASR, there would have been an implicit understanding among all concerned in earlier relevant consultation that pre-existing industry practices, whereby duplicated training and checking events were not necessary, would be continued under the new Part 121. Therefore, CASA considered that further formal consultation was not necessary or appropriate before making for the current exemption instrument.

Nevertheless, there has been informal consultation with elements of the aviation industry and discussions about the ongoing need to adjust the requirements placed on industry by the new Flight Operations Regulations, of which Part 121 is an element, consistent with previously consulted statements and understandings of its intent.

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).

Economic and cost impact, and sector risks

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 subsection 9A (3) of the Act, the exemption instrument will remove an unnecessary and unintended duplication in the training and checking of flight crew and cabin crew members in relation to safety equipment and emergency equipment.

Thus, the exemption instrument will have the effect of lowering some costs for industry that might otherwise have arisen.

Sector risks

For aviation safety reasons, the exemption instrument is specific to Part 121 operators who fall within its scope and who choose to take the benefit of the exemptions subject to its conditions.

Rural and regional impacts

The Minister's Statement of Expectations for the CASA Board 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."

There are no identified rural and regional impacts that differ in any material way from the general economic and cost impacts, or sector risks described above.

Environmental impact

Under subsection 9A (2) of the Act, while regarding the safety of air navigation as the most important consideration, CASA must exercise its powers and perform its functions in a manner that ensures that, as far as practicable, the environment is protected from the effects and associated effects of the operation and use of aircraft.

It is not anticipated there will be any negative environmental impacts as a result of the exemption instrument, as compared to the baseline that existed on 1 December 2021, since the instrument is removing an unintended duplication of a training and checking process.

Thus, the exemption instrument as such will have no specific negative effect on the environment.

Statement of Compatibility with Human Rights

The Statement in Appendix 2 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 the right to life, and it does so in a way that is reasonable, necessary and proportionate in the context of the regulatory aviation safety framework. By reducing some training and checking costs it may support the right to work.

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.

Details of:**CASA EX75/22 – Amendment of CASA EX83/21 (Training or Checking for Safety Equipment or Emergency Equipment) – Instrument 2022 (No. 1)**

1 Name

This instrument is *CASA EX75/22 – Amendment of CASA EX83/21 (Training or Checking for Safety Equipment or Emergency Equipment) – Instrument 2022 (No. 1)*.

2 Commencement

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

3 Amendment of CASA EX83/21

Under this section, Schedule 1 amends *CASA EX83/21 – Part 121 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021*.

Schedule 1 Amendments**[1] After section 3 — section 3A**

This provision is designed to facilitate the future creation of a Table of Contents for the principal exemptions instrument.

[2] After section 13 — new section 13A — Approval to conduct training or checking for safety equipment or emergency equipment — exemption from requirement

This amendment inserts a new section 13A, Approval to conduct training or checking for safety equipment or emergency equipment — exemption from requirement.

- (1) Under new subsection 13A (1), the section **applies** to the operator of an aeroplane for a flight to which regulation 121.475 or 121.640 applies (the operator), but only to the extent that 1 or more of the following would otherwise apply to the operator for the flight:
 - (a) subregulation 121.475 (4);
 - (b) subregulation 121.475 (5), in its application to subregulation 121.475 (4);
 - (c) subregulation 121.640 (3);
 - (d) subregulation 121.640 (5), in its application to subregulation 121.640 (3).
- (2) Under new subsection 13A (2), the operator is **exempted** from each of the subregulations mentioned in subsection (1), insofar as it applies to the operator.
- (3) Under new subsection 13A (3), each exemption under subsection (2) is subject to the **condition** that the operator must ensure that the person who conducts the safety equipment or emergency equipment training or checking mentioned in subregulation 121.475 (4) or 121.640 (3) is a person who:
 - (a) while conducting the task, is **simultaneously under assessment** by a CASA officer for an approval under regulation 121.010 to conduct the training or checking mentioned in either or both of subregulations 121.475 (4) and 121.640 (3); and
 - (b) is granted the approval; and

- (c) is recorded in the operator's training and checking record for the persons undertaking the safety equipment or emergency equipment training or checking, as a person who meets the relevant requirements.

Statement of Compatibility with Human Rights

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

CASA EX75/22 – Amendment of CASA EX83/21 (Training or Checking for Safety Equipment or Emergency Equipment) – Instrument 2022 (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 additional exemptions into *CASA EX83/21 – Part 121 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021 (CASA EX83/21)*. CASA EX83/21 made a number of exemptions and directions relating to Part 121 and Part 91 of the *Civil Aviation Safety Regulations 1998 (CASR)*. These CASR Parts are elements of CASA’s new Flight Operations Regulations that commenced on 2 December 2021. Part 121 deals with Australian air transport operation in larger aeroplanes; Part 91 deals with the general operating rules, and the rules of the air.

The exemption instrument is for the operators of an aeroplane for a flight that is a Part 121 operation. It relates to the process for approving a person to conduct flight crew and cabin crew training and checking that involves safety equipment or emergency equipment.

Generally, such a person (an *applicant*) applies to be approved and obtains the approval by successfully demonstrating to CASA the conduct of the relevant training. This demonstration normally involves the applicant “training” actual flight crew or cabin crew who require such training (*trainees*).

However, legally, the trainees thus “trained” during the demonstration have been trained by an *applicant for approval*, and not by an approved person, even though, at the end of the successful demonstration, the applicant is approved.

This duplication was an unintended consequence of the relevant provisions. The purpose of the exemption instrument is to, in effect, allow the training conducted by the successful applicant for approval to be valid for the trainees and not require repetition.

Thus, the exemption instrument removes an inadvertent duplication of an approval process under the Part 121 regulations. This unintended consequence will be remedied on a more permanent basis when the regulations are amended in 2023.

Human rights implications

The legislative instrument may indirectly engage 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 work under Article 6 of the International Covenant on Economic, Social and Cultural 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.

The relevant exemptions facilitate Part 121 aeroplane operators in the cost-effective training and checking of flight crew and cabin crew in safety equipment and emergency equipment by removing a requirement that imposes unintended duplicated training and checking. The training and checking itself promotes safety and hence protects the right to life. Removal of unnecessary duplication of that training is a cost-saving measure that ultimately contributes to economic viability and the right to work.

As such, the instrument has no negative effect of human rights, and may be said to support the 2 rights mentioned above.

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 the right to work in relation to the operations of 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