

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

**CASA EX12/23 – Amendment of CASA EX87/21 – Instrument 2023 (No. 1)**

**CASA EX14/23 – Amendment of CASA EX82/21 – Instrument 2023 (No. 1)**

**CASA EX15/23 – Amendment of CASA EX83/21 – Instrument 2023 (No. 1)**

**CASA EX16/23 – Amendment of CASA EX86/21 – Instrument 2023 (No. 1)**

### Purpose

The purpose of these exemption amendment instruments is to extend the dates within which certain aircraft operators must take certain preparatory steps for compliance with Parts 119 and 138 of the *Civil Aviation Safety Regulations 1998* if the operators are to continue to enjoy the benefits of exemption from the obligation to be compliant with aspects of those Parts. Those Parts were elements of CASA's new Flight Operations Regulations (**FOR**) which otherwise commenced on 2 December 2021.

In particular, *CASA EX87/21 – Flight Operations Regulations – SMS, HFP&NTS and T&C Systems – Supplementary Exemptions and Directions Instrument 2021 (CASA EX87/21)* made a number of exemptions against provisions of various Parts in the FOR that relate to the requirements for Australian air transport operators and certificated aerial work operators to have a safety management system (**SMS**), human factors principles and non-technical skills training program (**HF&NTS**), and training and checking (**T&C**) system. A range of safety conditions were to be complied with in order to obtain the benefit of the exemptions.

The exemptions were designed to provide a transitional period for relevant operators before full implementation of the FOR.

CASA has decided that it is necessary to extend this period of exemption, subject to conditions, to enable all relevant operators to make a safe and appropriate transition to the requirements of the new FORs.

To facilitate this, CASA has also decided to convert some former conditions into directions to ensure that operators take and complete essential preparatory steps for full transition in a timely way. Directions, rather than exemption conditions, will better facilitate any necessary enforcement action that may be required to address non-compliance with the requirements.

These new arrangements have the effect of requiring complementary consequential amendments to *CASA EX82/21 – Part 119 of CASR – Supplementary Exemptions and Directions Instrument 2023 (No. 1) (CASA EX82/21)*, *CASA EX83/21 – Part 121 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2023 (No. 1) (CASA EX83/21)* and *CASA EX86/21 – Part 138 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2023 (No. 1) (CASA EX86/21)*, as referred to below.

Parts 3 and 5 of CASA EX87/21 are also repealed as their effect is now spent by the passage of time.

### **Aviation safety**

In determining whether to issue the exemption amendment instruments, CASA had regard to the safety of air navigation as the most important consideration.

CASA is satisfied that, given the nature of the amendments involved, and the necessary conditions imposed by the principal instruments, an acceptable level of aviation safety will be preserved, and the safety of air navigation thereby maintained for the additional periods during which the relevant exemptions will be in force.

### **Legislation — exemptions**

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

Subpart 11.F of CASR deals with exemptions. Under subregulation 11.160 (1), and for subsection 98 (5A) of the Act, CASA may, by instrument, grant an exemption from a provision of CASR in relation to a matter mentioned in subsection 98 (5A).

Subsection 98 (5A) matters are, in effect, those affecting the safety, airworthiness or design of aircraft.

Under subregulation 11.160 (2), an exemption may be granted to a person or a class of persons. Under subregulation 11.160 (3), CASA may grant an exemption on application, or on its own initiative. Under subregulation 11.170 (3), for an application for an exemption, CASA must regard as paramount the preservation of an acceptable level of safety. For making a decision on its own initiative, CASA is guided by the requirement in subsection 9A (1) of the Act that in exercising its powers and functions CASA must regard the safety of air navigation as the most important consideration.

Under regulation 11.205, CASA may impose conditions on an exemption if this is necessary in the interests of the safety of air navigation. Under regulation 11.210, it is a strict liability offence not to comply with the obligations imposed by a condition. Under regulation 11.225, CASA must, as soon as practicable, publish on the internet details of all exemptions under Subpart 11.F.

Under subregulation 11.230 (1), an exemption may remain in force for 3 years or for a shorter period specified in the instrument.

Under subregulation 11.230 (3), an exemption, in force in relation to a particular aircraft owned by a particular person, ceases to be in force when the aircraft ceases to be owned by that person. Under regulation 11.235, an exemption is not transferable (as between operators, aircraft, etc.).

### **Legislation — directions**

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

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

### **Description of revised and consequential exemptions and directions**

The amendments in CASA EX87/21 are described in detail in Appendix 1.

The complementary consequential amendments in CASA EX82/21, CASA EX83/21 and CASA EX86/21 are described in Appendices 2, 3 and 4.

### ***Legislation Act 2003 (the LA)***

The exemptions and directions in the instruments that are being amended are for the safe navigation and operation of aircraft and apply to classes of persons. As such, they were legislative instruments 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. The exemption amendment instruments must be similarly regarded.

### **Sunsetting**

As the exemption amendment instruments relate to aviation safety and are made under CASR, that means that Part 4 of Chapter 3 of the LA (the sunset provisions) does not apply to the instruments (as per item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). The exemption amendment instruments deal 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 exemption amendment instruments amend the principal exemptions instrument and are 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 instruments are themselves repealed at the end of 28 February 2025 by virtue of their duration provisions. 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 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.

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.

Incorporated documents are described below, together with the manner of incorporation and how they may be obtained.

### **CASA EX12/23:**

- SMS implementation plans
- SMS exposition content
- SMS manual content

- HFP&NTS program exposition content
- T&C exposition content
- T&C manual content.

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

An exposition or manual, for an operator, generally means the exposition as changed from time to time.

An exposition or manual is not publicly or freely available. It is proprietary to the operator who creates it and owns its intellectual property, and it will generally include commercial in confidence information about the operator's business. The incorporated requirements of expositions and manuals are at the operator-specific level and apply only to the operator and its personnel. Further, the operator is under obligations to make the exposition or manual available to its personnel who have obligations under the document.

However, CASA will, as far as practicable, make arrangements with any relevant operator to make a suitably redacted copy of the exposition available for requested inspection by appointment at a relevant CASA office.

### **CASA EX14/23, CASA EX15/23 and CASA EX16/23**

The amendments in these instruments as such do not incorporate documents.

### **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 amendment instruments will operate to extend the period during which relevant operators are relieved of the obligation to comply with certain applicable requirements of the FOR. Under the FORs, relevant operators must prepare, submit and (where applicable) obtain CASA's approval of:

- SMS implementation plans (submission only)
- SMS exposition content
- SMS manual content
- HFP&NTS program exposition content
- T&C exposition content
- T&C manual content.

Compliance with these pre-existing obligations under the FOR will have cost impacts for operators. However, the exemption amendment instruments have the effect of delaying the time at which those costs will arise. Compliance with the FOR will be achieved by complying with the extended timeframes for the directions and conditions in the instruments.

#### *Sector risks*

There will be a particular impact on air transport operators and aerial work operators. However, this is a positive impact because it is the training and checking exemption end dates currently applying to the majority of air transport operators and a limited number of aerial work operators, that are being extended by the exemption amendment instruments.

#### **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 really material way from the general economic and cost impacts, or sector risks described above. However, smaller operators, more likely to be located in rural and regional areas, will also obtain cost deferral benefits.

#### **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 amendment instruments, as compared to the baseline that existed on 1 December 2021, since the instruments do not create any new environmental impacts arising from flight operations.

#### **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.

There has been no formal consultation on the exemption amendment instruments because of the following considerations:

- they are wholly beneficial in effect for relevant operators
- they are required to be in force before the end of 1 March 2023 if they are to have their intended relieving effect
- it is logistically impossible for many operators who have not yet submitted relevant plans and expositions to do so before the end of 1 March 2023.

However, there have been informal consultations by CASA with a range of operators, and also with the Aviation Safety Advisory Panel (a CASA/industry consultation forum) hearing their views and explaining the implications of the circumstances. In addition, there have been broader communications with the relevant aviation industry about what was proposed.

In the circumstances, CASA is satisfied that it has undertaken such consultation as it considers appropriate and reasonably practicable.

### **Office of Impact Analysis (OIA)**

An Impact Analysis (*IA*) is not required because the exemption amendment instruments are covered by a standing agreement between CASA and OIA under which an IA is not required for exemption or direction instruments (OIA id: 14507).

### **Statement of Compatibility with Human Rights**

The Statement in Appendix 5 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The exemption amendment instruments are amending instruments to extend the duration of substantive exemptions in relevant principal instruments. As such, they do not directly give rise to any human rights issues. They allow existing exemptions to continue for a longer period. Those existing exemptions themselves have indirect effects on the right to life under the International Covenant on Civil and Political Rights (ICCPR), and the right to safe and healthy working conditions under the International Covenant on Economic, Social and Cultural Rights (ICESCR), but only insofar as the conditions and directions promote and protect those rights through ensuring the continuing safety of relevant operations.

### **Commencement and making**

The exemption amendment instruments commence on the day after they are registered.

The exemption amendment instruments have been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

**CASA EX12/23 – Amendment of CASA EX87/21 – Instrument 2023 (No. 1)****1 Name of instrument**

This section names the instrument.

**2 Commencement**

This section provides for the instrument’s commencement.

**3 Amendment of CASA EX87/21**

Under this section, Schedule 1 amends *CASA EX87/21 – Flight Operations Regulations – SMS, HFP&NTS and T&C Systems – Supplementary Exemptions and Directions Instrument 2021*.

**Schedule 1 Amendments****[1] Paragraph 2 (b)**

This section extends the repeal date of CASA EX87/21 to the end of 28 February 2025 to avoid the confusion that might arise from certain “cease to have effect” provisions in the instrument coinciding with the repeal date of the instrument.

**[2] Sections 8 and 8A**

Section 8 of CASA EX87/21 previously contained conditions on exemptions for Australian air transport operators from SMS requirements under Part 119. The conditions related to the submission of SMS implementation plans and SMS exposition content, and CASA approval of that content. These requirements are now more effectively divided into directions and conditions.

Thus, section 8 now directs that a relevant operator who has taken the benefit of the SMS exemptions must, not later than the end of 3 April 2023 (previously 2 December 2022) give CASA an SMS implementation plan; and must, not later than the end of 3 June 2024, give CASA the proposed SMS exposition content, with an application for its approval.

New section 8A now provides that a relevant operator who has taken the benefit of the SMS exemptions must, not later than the end of 1 December 2024, have obtained CASA’s written approval of their proposed SMS exposition content.

A Note explains that a relevant operator may voluntarily seek earlier approval of their SMS exposition content if planning an earlier commencement of scheduled air transport operations. However, they should apply to CASA for the approval at least 90 days before their planned date for scheduled air transport operations to commence. CASA cannot guarantee that an approval can be given in every case within 90 days.

**[3] Part 3 (being sections 10 to 14)**

This Part is spent due to the passage of time and is now repealed.



**[4] Sections 18 and 18A**

Previously, section 18 was similar to section 8 but with respect to aerial work operators under Part 138 of CASR, and the operators' SMS manual content. Section 18 and new section 18A now have, with respect to such operators and manuals, effectively the same directions and conditions (and dates) as set out above for Australian air transport operators.

**[5] Part 5 (being sections 20 to 24)**

This Part is spent due to the passage of time and is now repealed.

**[6] Sections 28 and 28A**

Section 28 of CASA EX87/21 previously contained conditions on exemptions for Australian air transport operators from obligations in relation to training and checking of operational safety-critical personnel (other than flight crew) in an HFP&NTS program under Part 119 of CASR. The conditions related to the submission of the proposed HFP&NTS program exposition content to CASA, and CASA approval of that content. These requirements are now more effectively divided into directions and conditions.

Thus, section 28 now directs that a relevant operator who has taken the benefit of any exemption under section 26 must, not later than the end of 2 June 2023, give CASA the proposed HFP&NTS program exposition content, with an application for its approval.

New section 28A now provides that a relevant operator who has taken the benefit of any exemption under section 26 must, not later than the end of 3 December 2023, have obtained CASA's written approval of the content of their proposed HFP&NTS program exposition content.

A Note explains that a relevant operator may voluntarily seek earlier approval of their HFP&NTS program exposition content if planning an earlier commencement of scheduled air transport operations. However, they should apply to CASA for the approval at least 90 days before their planned date for scheduled air transport operations to commence. CASA cannot guarantee that an approval can be given in every case within 90 days.

**[7] Sections 33 and 33A**

Section 33 of CASA EX87/21 previously contained conditions on exemptions, for Australian air transport operators for a Part 121 operation (that is, in larger aircraft), from obligations in relation T&C exposition content under Part 121 of CASR. The conditions related to the submission of the exposition proposed content to CASA, and CASA approval of that content. These requirements are now more effectively divided into directions and conditions.

Thus, section 33 now directs that a relevant operator who has taken the benefit of any exemption under section 31 must, not later than the end of 3 April 2023 (previously 2 September 2022), give CASA the proposed T&C exposition content, with an application for its approval.

New section 33A provides that a relevant operator who has taken the benefit of any exemption under section 31 must, not later than the end of 1 September 2023 (previously 1 March 2023), have obtained CASA's written approval of the proposed T&C exposition content.

A Note explains that a relevant operator may voluntarily seek earlier approval of the T&C exposition content if planning an earlier commencement of scheduled air transport operations, or air transport operations in an aircraft with an MTOW greater than 5 700 kg. However, the operator should apply to CASA for the approval at least 90 days before their planned date for the relevant operations to commence. CASA cannot guarantee that an approval can be given in every case within 90 days.

**[8] Paragraph 34 (a)**

This amendment is consequential on amendment 7 to align the relevant dates for expiry of the exemptions.

**[9] Section 34D and 34DA**

Section 34D of CASA EX87/21 previously contained conditions on exemptions for Australian air transport operators from obligations in relation T&C exposition content under Part 121 of CASR. The conditions related to the submission of the proposed exposition content to CASA, and CASA approval of that content. These requirements are now more effectively divided into directions and conditions.

Thus, section 34D now directs that a relevant operator who has taken the benefit of any exemption under section 34B must, not later than the end of 3 April 2023 (previously 2 September 2022), give CASA the proposed T&C exposition content, with an application for its approval.

New section 34DA provides that a relevant operator who has taken the benefit of any exemption under section 34B must, not later than the end of 1 September 2023 (previously 1 March 2023), have obtained CASA's written approval of the proposed T&C exposition content.

A Note explains that a relevant operator may voluntarily seek earlier approval of the T&C exposition content if planning to comply with the normal Part 121 T&C requirements earlier than 1 September 2023. However, the operator should apply to CASA for the approval at least 90 days before their planned date for the relevant operations to commence. CASA cannot guarantee that an approval can be given in every case within 90 days.

**[10] Paragraph 34E (a)**

This amendment is consequential on amendment 9 to align the relevant dates for expiry of the exemptions.

**[11] Sections 38 and 38A**

Section 38 of CASA EX87/21 previously contained conditions on exemptions for an Australian air transport operator for the conduct of a Part 133 operation (that is, in rotorcraft) from obligations in relation T&C exposition content under Parts 119 and 133 of CASR. The conditions related to the submission of the proposed exposition content to CASA, and CASA approval of that content. These requirements are now more effectively divided into directions and conditions.

Thus, section 38 now directs that a relevant operator who has taken the benefit of any exemption under section 36 must, not later than the end of 3 April 2023

(previously 2 September 2022), give CASA the proposed T&C exposition content, with an application for its approval.

New section 38A provides that a relevant operator who has taken the benefit of any exemption under section 36 must, not later than the end of 1 September 2023 (previously 1 March 2023), have obtained CASA's written approval of the proposed T&C exposition content.

A Note explains that a relevant operator may voluntarily seek earlier approval of their T&C exposition content if planning an earlier commencement of scheduled air transport operations, or air transport operations in an aircraft with an MTOW greater than 5 700 kg. However, they should apply to CASA for the approval at least 90 days before their planned date for the operations to commence. CASA cannot guarantee that an approval can be given in every case within 90 days.

**[12] Paragraph 39 (a)**

This amendment is consequential on amendment 11 to align the relevant dates for expiry of the exemptions.

**[13] Sections 43 and 43A**

Section 43 of CASA EX87/21 previously contained conditions on exemptions for an Australian air transport operator for the conduct of a Part 135 operation (that is in smaller aircraft) from obligations in relation T&C exposition content under Part 119 and 135 of CASR. The conditions related to the submission of the proposed T&C exposition content to CASA, and CASA approval of that content. These requirements are now more effectively divided into directions and conditions.

Thus, section 43 now directs that a relevant operator who has taken the benefit of any exemption under section 41 must, not later than the end of 3 April 2023 (previously 2 September 2022), give CASA the proposed T&C exposition content, with an application for its approval.

New section 43A provides that a relevant operator who has taken the benefit of any exemption under section 41 must, not later than the end of 1 September 2023 (previously 1 March 2023), have obtained CASA's written approval of the proposed T&C exposition content.

A Note explains that a relevant operator may voluntarily seek earlier approval of their relevant T&C exposition content if planning an earlier commencement of scheduled air transport operations, or air transport operations in an aircraft with an MTOW greater than 5 700 kg. However, they should apply to CASA for the approval at least 90 days before their planned date for the operations to commence. CASA cannot guarantee that an approval can be given in every case within 90 days.

**[14] Paragraph 44 (a)**

This amendment is consequential on amendment 13 to align the relevant dates for expiry of the exemptions.

**[15] Sections 48 and 48A**

Section 48 of CASA EX87/21 previously contained conditions on exemptions for an aerial work operator required to have a T&C system prescribed under

subregulation 138.125 (1), from obligations in relation T&C manual content under Part 138 of CASR. The conditions related to the submission of the proposed T&C manual content to CASA, and CASA approval of that content. These requirements are now more effectively divided into directions and conditions.

Thus, section 48 now directs that a relevant operator who has taken the benefit of any exemption under section 46 must, not later than the end of 3 April 2023 (previously 2 September 2022), give CASA the proposed T&C manual content, with an application for its approval.

New section 48A provides that a relevant operator who has taken the benefit of any exemption under section 46 must, not later than the end of 1 September 2023 (previously 1 March 2023), have obtained CASA's written approval of the proposed T&C manual content.

A Note explains that a relevant operator may voluntarily seek earlier approval of their T&C manual content if planning an earlier commencement of relevant aerial work operations. However, they should apply to CASA for the approval at least 90 days before their planned date for the operations to commence. CASA cannot guarantee that an approval can be given in every case within 90 days.

**[16] Paragraph 49 (a)**

This amendment is consequential on amendment 15 to align the relevant dates for expiry of the exemptions.

**[17] Sections 53 and 53A**

Section 53 of CASA EX87/21 previously contained conditions on exemptions for certain Australian air transport operators, from obligations in relation to exposition content that meets the requirements of regulation 119.195 (which relates to the use of a flight data analysis program). The conditions related to the submission of the proposed exposition content to CASA, and CASA approval of that content. These requirements are now more effectively divided into directions and conditions.

Thus, section 53 now directs that a relevant operator who has taken the benefit of any exemption under section 51 must, not later than the end of 3 June 2023, give CASA the proposed exposition content that meets the requirements of regulation 119.195, with an application for its approval.

New section 53A provides that a relevant operator who has taken the benefit of any exemption under section 51 must, not later than the end of 1 December 2024, have obtained CASA's written approval of the exposition content that meets the requirements of regulation 119.195.

**CASA EX14/23 – Amendment of CASA EX82/21 – Instrument 2023 (No. 1)****1 Name of instrument**

This section names the instrument.

**2 Commencement**

This section provides for the instrument’s commencement.

**3 Amendment of CASA EX82/21**

Under this section, Schedule 1 amends *CASA EX82/21 – Part 119 of CASR – Supplementary Exemptions and Directions Instrument 2021*.

**Schedule 1 Amendments****[1] Paragraph 2 (b)**

This section extends the repeal date of CASA EX82/21 to the end of 28 February 2025 to avoid the confusion that might arise from certain “cease to have effect” provisions in the instrument coinciding with the repeal date of the instrument.

**[2] Paragraph 8 (5) (a)**

Section 8 of CASA EX82/21 exempts an Australian air transport operator’s head of flying operations (HOFO) who was previously the Chief Pilot for the operator in single-pilot type certificated aircraft for charter operation, aerial work (air ambulance) operations, but not regular public transport operations, from certain prescribed licensing requirements provided they held the licence required of them by the operator prior to 2 December 2021. This exemption is extended until the end of 1 September 2023 (previously 1 March 2023) to align with related dates for such operators under CASA 87/21.

**[3] Paragraph 10 (5) (a)**

Section 10 of CASA EX82/21 exempts an Australian air transport operator’s head of flying operations (HOFO) who was previously the Chief Pilot for the operator in single-pilot type certificated aircraft for charter operations, aerial work (air ambulance) operations, and regular public transport operations in small aircraft from prescribed licensing requirements provided they held the licence required of them by the operator prior to 2 December 2021. This exemption is extended until the end of 1 September 2023 (previously 1 March 2023) to align with related dates for such operators under CASA 87/21.

**[4] Subsection 14 (4)**

Section 14 of CASA EX82/21 exempts an Australian air transport operator of larger aircraft or in medical transport operations, who must have a T&C system, from certain system requirement in relation to operational safety-critical personnel, other than flight crew and cabin crew personnel, if they are already competent. This exemption is extended until the end of 1 September 2023 (previously 1 March 2023) to align with related dates for such operators under CASA 87/21.

**[5] Paragraph 15 (2) (a)**

Section 15 of CASA EX87/21 was consequential on section 14, requiring the operator's exposition to show, by not later than 2 March 2023, how compliance with the system requirements will be achieved. The by not later than date is realigned to the section 14 date of 1 September 2023.

**CASA EX15/23 – Amendment of CASA EX83/21 – Instrument 2023 (No. 1)****1 Name of instrument**

This section names the instrument.

**2 Commencement**

This section provides for the instrument’s commencement.

**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] Paragraph 2 (b)**

This section extends the repeal date of CASA EX83/21 to the end of 28 February 2025 to avoid the confusion that might arise from certain “cease to have effect” provisions in the instrument coinciding with the repeal date of the instrument.

**[2] Subsection 28 (1)**

This section corrects an error to ensure that the reference to a *relevant operator* applies for the whole of Part 5 and not merely for section 28.

**[3] Paragraph 29 (2) (b)**

Under section 28 of CASA EX83/21, certain prescribed operators (the *relevant operator*) in Part 121 operations are exempted from compliance with subregulation 121.475 (1) to the extent of the requirement under paragraph 121.475 (2) (c) that at least one pilot occupying a pilot seat must have prescribed experience.

Under section 29 of CASA EX83/21, the relevant operator must, by a prescribed date, include in its exposition, information, procedures and instructions on how it will comply with paragraph 121.475 (2) (c). The amendment modifies that date to be not later than 1 September 2023 (previously 1 March 2023).

**[4] Subsection 29 (4)**

This amendment is consequential on amendment 2.

**CASA EX16/23 – Amendment of CASA EX86/21 – Instrument 2023 (No. 1)****1 Name of instrument**

This section names the instrument.

**2 Commencement**

This section provides for the instrument’s commencement.

**3 Amendment of CASA EX86/21**

Under this section, Schedule 1 amends *CASA EX86/21 – Part 138 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021*.

**Schedule 1 Amendments****[1] Paragraph 2 (b)**

This section extends the repeal date of CASA EX86/21 to the end of 28 February 2025 to avoid the confusion that might arise from certain “cease to have effect” provisions in the instrument coinciding with the repeal date of the instrument.

**[2] Subsection 9 (4)**

Section 9 applies to an aerial work operator of a kind that is required to have a T&C system. It exempts the operator from compliance with aspects of that requirement in relation to certain operational safety-critical personnel, for example, those who are not flight crew members, provided the operator’s T&C system includes a description of how the operator will satisfy itself of the competence of the exempted personnel. The amendment has the effect of ceasing this exemption at the end 1 September 2023 (the previous date was the end of 1 March 2023).



## Statement of Compatibility with Human Rights

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

**CASA EX12/23 – Amendment of CASA EX87/21 – Instrument 2023 (No. 1)**

**CASA EX14/23 – Amendment of CASA EX82/21 – Instrument 2023 (No. 1)**

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**CASA EX16/23 – Amendment of CASA EX86/21 – Instrument 2023 (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 these exemption amendment instruments is to extend the dates within which certain aircraft operators must take certain preparatory steps for compliance with Parts 119 and 138 of the *Civil Aviation Safety Regulations 1998 (CASR)* if the operators are to continue to enjoy the benefits of exemption from the obligation to be compliant with aspects of those Parts. Those Parts were elements of CASA's new Flight Operations Regulations (**FOR**) which otherwise commenced on 2 December 2021.

*CASA EX87/21 – Flight Operations Regulations – SMS, HFP&NTS and T&C Systems – Supplementary Exemptions and Directions Instrument 2021 (CASA EX87/21)* made a number of exemptions against provisions of various Parts in the FOR 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 skills training programs, and training and checking systems. A range of safety conditions were to be complied with in order to obtain the benefit of the exemptions.

The exemptions were designed to provide a transitional period for relevant operators before full implementation of the FOR.

CASA has decided that it is necessary to extend this period of exemption, subject to conditions, to enable all relevant operators to make a safe and appropriate transition to the requirements of the new FORs.

To facilitate this, CASA has also decided to convert some former conditions into directions to ensure that operators take and complete essential preparatory steps for full transition in a timely way. Directions, rather than exemption conditions, will better facilitate any necessary enforcement action that may be required to address non-compliance with the requirements.

These new arrangements have the effect of requiring complementary consequential amendments to *CASA EX82/21 – Part 119 of CASR – Supplementary Exemptions and Directions Instrument 2023 (No. 1)*, *CASA EX83/21 – Part 121 and Part 91 of CASR –*

*Supplementary Exemptions and Directions Instrument 2023 (No. 1)* and *CASA EX86/21 – Part 138 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2023 (No. 1)*, as referred to below.

### **Human rights implications**

The legislative instruments engage 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 exemption amendment instruments 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 amendment instruments is obliged to comply with the terms of the relevant FOR.

Although the exemption amendment instruments extend the duration of exemptions from various provisions of the relevant FOR, they do so in the context of existing 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 instruments 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**

These legislative instruments are compatible with human rights and to the extent that they may engage certain rights they do 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**

These legislative instruments are compatible with human rights.

**Civil Aviation Safety Authority**