

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### CASA EX39/23 – Part 141 operators using a sole instructor – Exemption Instrument 2023

##### Purpose

The purpose of this legislative exemption instrument is to exempt a CASR Part 141 flight training operator, who is, or for whom, a single individual carries out the relevant training, from annual standardisation and proficiency checks, and from particular training base reporting and approval requirements. The instrument also applies to an applicant to become such an operator.

##### Background

The Civil Aviation Safety Authority (*CASA*) has developed a General Aviation Workplan (*GAW*) to reassess the regulatory burden on general aviation with a view to ameliorating or reducing it where this can be done without adversely affecting aviation safety. This exemption instrument is for that purpose in that it is designed to simplify the process of authorising a single individual instructor to conduct certain flight training under Part 141 of the *Civil Aviation Safety Regulations 1998 (CASR)*.

Part 141 flight training is recreational, private and commercial flight training, in contrast to Part 142 flight training which is more complex integrated and multi-crew flight training, and contracted training and checking. In effect, Part 141 flight training includes less complex training for the grant of some flight crew licences, ratings and endorsements that are conducted as a single pilot operation.

This instrument applies to the holder of a Part 141 certificate (a *Part 141 operator*) who is a single individual (in colloquial terms “a one person business”) whether incorporated or otherwise who, in their person, combines the operator, the chief executive officer and the head of operations.

This operator is exempted from the requirement to undergo an annual standardisation and proficiency check, and from the requirement to notify CASA of, and obtain its approval for, any change to the training bases where the individual conducts flight training other than excluded flight training. (Excluded flight training is authorised Part 141 flight training for a flight crew licence category rating, or an instrument rating, or an instructor rating. These are more complex Part 141 flight training activities, and the relevant training bases for them are not covered by the notification and approval exemption.)

The instrument also exempts applicants who wish to become Part 141 operators operating only in accordance with the exemption, from some elements of the application process that could not otherwise be complied with where the essential purpose of the application is to gain the benefit of the exemptions.

##### 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 (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.

### **Aviation safety**

In determining whether to issue the exemption instrument, CASA has regard to the safety of air navigation as the most important consideration.

In this case, CASA is satisfied that an acceptable level of aviation safety will be preserved, and the safety of air navigation thereby maintained.

### *Standardisation and proficiency checks*

First, although an individual may apply for a CASR Part 141 flight training certificate, the provisions of Part 141 have a significant focus on organisational safety requirements that provide no, or limited, safety benefit if the Part 141 operator is a single flight instructor.

Thus, for a Part 141 operator who is a single individual, the safety benefits of an annual standardisation and proficiency check are adequately subsumed in the requirement under Part 61 of CASR that a flight instructor must have a prescribed and valid flight instructor proficiency check before conducting flight training.

CASA considers that compliance with this requirement provides an acceptable level of aviation safety in relation to the competency for Part 141 flight training of an instructor who is both the operator and the sole instructor.

#### *Training bases*

Secondly, a change to the operation or location of a training base is usually a significant change which must be notified to CASA for safety assessment and approval. This can deliver material safety outcomes where the Part 141 operator is conducting complex excluded flight training, that is authorised Part 141 flight training for a flight crew licence category rating, or an instrument rating, or an instructor rating.

However, the administrative burden associated with the notification, assessment and approval process yields little material safety benefit where the training base is for relatively less complex training activities, conducted at the smaller scale of a sole instructor/operator who is not conducting excluded flight training at the base. CASA considers that an acceptable level of aviation safety is still delivered by exempting such operators from these requirements.

#### *Conditions*

Conditions on the exemptions further ensure an acceptable level of safety. Thus, for each applicable exemption, such operators must notify CASA of their primary base for Part 141 flight training, and of any change to the primary base. The operator must also comply with the requirements of the CASA sample operations manual. This is an operations manual specifically prepared by CASA for Part 141 operators with a sole instructor. It applies as in force from time to time and is available free on the CASA website.

#### **Description of the exemption instrument**

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

#### ***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 is generic in nature and applies to classes of persons. It 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 exemption 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 is self-repealed at the end of 31 March 2026 by virtue of the terms of paragraph 2(b). It is expected that, before that date, Part 141 of CASR will have been amended to include provisions that parallel the effect of the exemption instrument and remove any continuing need for it.

Thus, in practice, no sunseting avoidance issues arise. The fact that the instrument is formally not subject to sunseting does not, therefore, 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.

The instrument contains several references to an incorporated document in the form of an operations manual.

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

CASA would normally, as far as practicable, make arrangements with any relevant operator to make a suitably redacted copy of the training and checking manual available for requested inspection by appointment at a relevant CASA office.

However, in this case the incorporated operations manual is a public document in the form of the sample operations manual prepared by CASA for Part 141 operators with a sole instructor, as in force from time to time, and available on the CASA website.

This non-legislative document may be so incorporated by virtue of subregulation 98(5B) of the Act which provides that, despite section 14 of the LA, a legislative instrument made under the Act or under the regulations may apply, adopt or incorporate any matter contained in *any instrument or other writing*, as in force or existing at a particular time; or 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.

### **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 specific formal consultation on the exemption instrument. However, there has been informal consultation with relevant, impacted, operators. In addition, it is widely known within the relevant sectors of the aviation industry that the GAW will progressively generate relieving exemption instruments of this kind.

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

An Impact Analysis (*IA*) is not required because the instrument is covered by a standing agreement between CASA and OIA under which an IA is not required for Exemption or Direction instruments (OIA 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.

The exemption instrument will relieve those operators who are eligible to take the benefit of it, of the costs and administrative overheads associated with annual standardisation and proficiency checks, and relevant training base notifications and approvals. It is not considered that compliance with the conditions of the exemptions will generate additional costs as compared to the costs of compliance with the exempted from provisions.

#### *Sector risks*

For aviation safety reasons, the exemption instrument is specific to the particular Part 141 operators who fall within its scope and who choose to take the benefit of the exemptions and comply with 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 does not create any new environmental impacts arising from a Part 141 operator's use of the exemptions.

#### **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 the right to life, and the right to safe and healthy working conditions.

The exemption instrument achieves these likely outcomes in a way that is reasonable, necessary and proportionate in the context of aviation safety.

#### **Commencement, duration and making**

The instrument commences on the day after it is registered, and is repealed at the end of 31 March 2026 though, the repeal date may be earlier if substitutional regulatory amendments can be made sooner.

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 EX39/23 – Part 141 operators using a sole instructor – Exemption Instrument 2023

### 1 Name

This section names the instrument.

### 2 Duration

Under this section, the instrument commences on the day after it is registered, and is repealed at the end of 31 March 2026.

### 3 Application

Under this section, the instrument applies, for relevant Part 141 flight training to:

- (a) an operator;
- (b) the operator's chief executive officer;
- (c) the operator's head of operations;
- (d) the operator's sole instructor;
- (e) the relevant applicant.

### 4 Definitions

This section provides key definitions. In particular:

***excluded flight training*** means authorised Part 141 flight training for any of the following:

- (a) a flight crew licence category rating;
- (b) an instrument rating;
- (c) an instructor rating.

***operator*** means a person, whether incorporated or otherwise:

- (a) who holds a Part 141 certificate; and
- (b) who:
  - (i) is the sole individual who carries out the authorised Part 141 flight training; or
  - (ii) uses a single individual for the purposes of carrying out the authorised Part 141 flight training.

### 5 Exemptions — chief executive officer

This section exempts the operator's chief executive officer from compliance with the following provisions:

- (a) subparagraph 141.070(b)(i) — which would otherwise impose on a relevant Part 141 certificate compliance obligations that are the subject of the exemption instrument;
- (b) subregulation 141.075(1) — which would otherwise make it an offence to contravene matters where compliance is already the subject of the exemption.

## **6 Exemptions — head of operations**

- (1) Under this provision, the operator's head of operations is exempted from compliance with the following provisions:
  - (a) subparagraph 141.070(b)(i) — which would otherwise impose on a Part 141 certificate prescribed conditions relating to compliance with Part 141 that the head of operations is exempted from;
  - (b) subregulation 141.075(1) — which would otherwise make it an offence to contravene matters where compliance is already the subject of the exemption.
- (2) Under this provision, the operator's head of operations is exempted from compliance with paragraph 141.130(2)(h) and subparagraph 141.130(4)(b)(iv) but only in relation to ensuring that the sole instructor must otherwise hold a valid standardisation and proficiency check.
- (3) Under this provision, for operations that are not excluded flight training, the operator's head of operations is exempted from compliance with paragraph 141.130(2)(o) and paragraph 141.130(5)(d) which would otherwise make the head of operations responsible for regularly assessing the suitability of the operator's travel bases which are already the subject of the exemption instrument.

## **7 Exemptions — Part 141 operator**

- (1) Under this provision, the operator is exempted from with subregulation 141.085(1) which would otherwise make it an offence to make a significant, unapproved, change to its training bases where it conducts Part 141 flight training other than excluded flight training.
- (2) Under this provision, the operator is exempted from compliance with subregulation 141.185(1), which would otherwise make it an offence if an instructor conducts authorised Part 141 flight training and does not hold a valid standardisation and proficiency check for the operator.
- (3) Under this provision, the operator is exempted from compliance with regulation 141.195, to the extent that the sole instructor fails to hold a valid standardisation and proficiency check for the operator.
- (4) Under this provision, an operator is exempted from compliance with the following provisions:
  - (a) subparagraph 141.260(1)(b)(ii) — which would otherwise require the operator's operations manual to include the address of each of the operator's training bases where it conducts flight training other than excluded flight training;
  - (b) paragraph 141.260(1)(s) — which would otherwise require the operator's operations manual to include the operator's process for making a significant change, and telling CASA of the change, to its training bases where it conducts Part 141 flight training other than excluded flight training.



- (5) Under this provision, the operator is exempted from compliance with the following provisions:
- (a) subparagraph 141.070(b)(ii) — which would otherwise impose on a Part 141 certificate prescribed conditions relating to compliance with Part 141 that the head of operations is exempted from;
  - (b) subregulation 141.075(1) — which would otherwise make it an offence to contravene matters where compliance is already the subject of the exemption.

## **8 Conditions**

- (1) Under this provision, each exemption in this instrument that is applicable to an operator is subject to the following conditions:
- (a) the operator must ensure that CASA is notified of the operator's primary base for its Part 141 flight training, and of any change to the primary base;
  - (b) the operator must have and comply with an operations manual that is fully consistent with the sample operations manual prepared by CASA for Part 141 operators with a sole instructor, as it is in force from time to time, and provided free on the CASA website.
- (2) Under this provision, each exemption in this instrument that is applicable to an operator, the operator's chief executive officer or the head of operations is subject to the condition that the operator, the officer and the head must each ensure compliance with the conditions under subsection (1).

## **9 Relevant applicants — exemption**

Under this provision, a relevant applicant is exempted from paragraph 141.055(2)(f) — but only to the extent that the appointed or proposed chief executive officer would otherwise be required to give a written undertaking in relation to a matter that is the subject of an exemption under this instrument.

## **10 Relevant applicants — direction to delegates**

Under this provision, for subregulation 11.260(4) of CASR, a CASA delegate for the issue of a Part 141 certificate to a relevant applicant must consider, for paragraph 141.060(1)(a), that the applicant's operations manual complies with paragraph 141.260(1)(p), but only in relation to the location of the training bases where it will conduct flight training other than excluded flight training.

## **11 Relevant applicants — cessation of this instrument**

Under this provision, the instrument ceases to have effect for an operator if the operator:

- (a) becomes an operator having the benefit of sections 9 and 10; and
- (b) fails to operate within the scope of:
  - (i) their Part 141 certificate; or
  - (ii) this instrument.

## Statement of Compatibility with Human Rights

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

### CASA EX39/23 – Part 141 operators using a sole instructor – Exemption Instrument 2023

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

##### Purpose

The purpose of this legislative exemption instrument is to exempt a CASR Part 141 flight training operator who is, or for whom, a single individual carries out the relevant training, from annual standardisation and proficiency checks, and from particular training base reporting and approval requirements. The instrument also applies to an applicant to become such an operator.

##### Background

The Civil Aviation Safety Authority (*CASA*) has developed a General Aviation Workplan to reassess the regulatory burden on general aviation with a view to ameliorating or reducing it where this can be done without adversely affecting aviation safety. This exemption instrument is for that purpose in that it is designed to simplify the process of authorising a single individual instructor to conduct certain flight training under Part 141 of the *Civil Aviation Safety Regulations 1998 (CASR)*.

Part 141 flight training is recreational, private and commercial flight training, in contrast to Part 142 flight training which is more complex integrated and multi-crew flight training, and contracted training and checking. In effect, Part 141 flight training includes less complex training for the grant of some flight crew licences, ratings and endorsements that are conducted as a single pilot operation.

This instrument applies to the holder of a Part 141 certificate (a *Part 141 operator*) who is a single individual (in colloquial terms “a one person business”) whether incorporated or otherwise who, in their person, combines the operator, the chief executive officer and the head of operations.

This operator is exempted from the requirement to undergo an annual standardisation and proficiency check, and from the requirement to notify CASA of, and obtain its approval for, any change to the training bases where the individual conducts flight training other than excluded flight training. (Excluded flight training is authorised Part 141 flight training for a flight crew licence category rating, or an instrument rating, or an instructor rating. These are more complex Part 141 flight training activities, and the relevant training bases for them are not covered by the notification and approval exemption.)

The instrument also exempts applicants who wish to become Part 141 operators operating only in accordance with the exemption, from some elements of the application process that could not otherwise be complied with where the essential purpose of the application is to gain the benefit of the exemptions.

### **Human rights implications**

The legislative instrument engages with the following human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*:

- the right to life under Article 6 of the International Covenant on Civil and Political Rights (the *ICCPR*)
- the right to safe and healthy working conditions under Article 7 of the International Covenant on Economic, Social and Cultural Rights (the *ICESCR*)
- the right to work under Article 6 of the *ICESCR*.

#### ***Right to life under the ICCPR***

#### ***Right to safe and healthy working conditions under the ICESCR***

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

While the instrument relieves certain Part 141 operators engaged in less complex Part 141 flight training of otherwise applicable requirements, the safety impact of those requirements is considered to be minimal, in practice immaterial, and more than offset by the requirement in the conditions that operators must use and comply with the sample operations manual specifically prepared by CASA for Part 141 operators with a sole instructor. These arrangements will contribute to an acceptable level of aviation safety and hence promote the 2 applicable rights.

#### ***Right to work under the ICESCR***

Adhering to the terms and conditions of the exemption instrument may impose initial but minor overhead cost on relevant operators and may, theoretically, consequently affect the right to work through cost-induced reduction in opportunities for work. However, such overhead costs are so small compared to those that would otherwise arise without the exemption, that any impact is, in the context, hypothetical, and would, in any event, almost certainly be immaterial.

### **Conclusion**

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 is reasonable, necessary and proportionate in the interests of aviation safety.

## **Civil Aviation Safety Authority**