

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX51/23 — Amendment of CASA EX66/21 (Low-level Rating) Instrument 2023

Purpose

CASA EX51/23 — Amendment of CASA EX66/21 (Low-level Rating) Instrument 2023 (the **amending instrument**) amends instrument *CASA EX66/21 — Flight Crew Licensing (Miscellaneous Exemptions) Exemption 2021* (the **principal instrument**) by inserting a new Part 15 (**new Part 15**).

New Part 15 exempts the holder of a low-level rating from certain recent experience (**recency**) and flight review requirements provided alternative requirements are met.

New Part 15 is a reissue of instrument *CASA EX73/20 — Low-level Rating Exemption 2020 (CASA EX73/20)* that is repealed at the end of 30 April 2023.

Legislation

Section 98 of the *Civil Aviation Act 1988* (the **Act**) empowers the Governor-General to make regulations for the Act and in the interests of the safety of air navigation. Relevantly, the Governor-General has made the *Civil Aviation Safety Regulations 1998 (CASR)*.

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

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

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

Under subregulation 11.170(3) of CASR, in deciding whether to grant an exemption on application, CASA must regard as paramount the preservation of at least an acceptable level of aviation safety. CASA has regard to the same test when deciding whether to grant an exemption on its own initiative.

Regulation 11.205 of CASR provides that CASA may impose conditions on an exemption if necessary in the interests of the safety of air navigation. Under regulation 11.210 of CASR, it is a strict liability offence not to comply with the obligations imposed by a condition.

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

Regulation 61.1040 of CASR provides that the holder of a pilot licence with a low-level rating is authorised to conduct low-level operations, subject to Subpart 61.E and regulations 61.1045 to 61.1060.

Regulation 61.1055 of CASR makes the exercise of the privileges of a low-level rating subject to a recency requirement. Under subregulation 61.1055(1), the holder of a low-level rating is authorised to exercise the privileges of the rating only if the holder has, within the previous 6 months, completed at least 2 hours of low-level operations, or been assessed as competent to conduct low-level operations by a flight instructor who holds a low-level training endorsement.

Under subregulation 61.1055(2), the holder is taken to meet the requirements of subregulation (1) if the holder has successfully completed an operator proficiency check in low-level operations within the previous 6 months, or has successfully completed a flight review for the rating within the previous 6 months.

Regulation 61.1060 of CASR makes the exercise of the privileges of a low-level rating subject to a flight review requirement. The holder of a low-level rating is authorised to exercise the privileges of the rating only if the holder has, within the previous 12 months, successfully completed a flight review for the rating.

Under subregulation 61.1060(2), the holder is taken to meet the requirements of subregulation (1) if the holder:

- (a) has passed a low-level rating flight test within the previous 12 months; or
- (b) has passed a low-level endorsement flight test within the previous 12 months (but more than 6 months after passing the rating flight test); or
- (c) has successfully completed an aerial application proficiency check within the previous 12 months; or
- (d) within the previous 12 months, has successfully completed an operator proficiency check covering operations under the low-level rating or aerial application rating; or
- (e) is successfully participating in a relevant operator's approved training and checking system.

The requirements in regulations 61.1055 and 61.1060 do not distinguish between aerial mustering operations and other low-level operations.

Background

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

Overview of new Part 15

Part 61 of CASR commenced on 1 September 2014. Before that, under Civil Aviation Order 29.10, a person authorised for aerial mustering operations had a recency requirement of at least 20 hours in the 12 months before a relevant operation. A flight test could also satisfy the requirement. Not to have such recent experience of an aerial mustering operation was considered unsafe. Because of its inherent dangers, aerial mustering was a special case and other low-level rating operations did not have this requirement, apart from a general

requirement to have a current aeroplane or helicopter flight review as applicable to the category of aircraft being operated.

In developing the Part 61 flight review requirements for low-level operations, the differing nature and requirements of rotorcraft and aeroplane operations presented difficulty in determining optimal flight review frequency (or the frequency of flight review equivalents). In the event, 12-monthly flight reviews were considered optimal, although this constituted a change for rotorcraft.

Since 1 September 2014, CASA has had the opportunity to re-examine the safety implications of the recency and flight review requirements for low-level operations in the light of experience and operator feedback and concluded that, in some conditional circumstances, there may be equally effective alternative requirements.

Further consideration has been given to the different levels of safety risk associated with aerial mustering operations as compared to other low-level operations, and the consequential need to have more stringent requirements in place such as checks and recent experience.

CASA decided on its own initiative to issue a conditional exemption for certain low-level operations, to be effective until Part 61 is amended. The first such exemption was issued on 25 May 2015 with a duration of approximately 2 years; see instrument number CASA EX92/15. CASA EX92/15 was remade as instrument number CASA EX48/17 in 2017, and remade again as instrument number CASA EX73/20 in 2020.

CASA has provided drafting instructions to the Office of Parliamentary Counsel for amendments to Part 61 of CASR to reflect the requirements in CASA EX73/20.

Content of amending instrument

Section 1 sets out the name of the amending instrument.

Section 2 provides that the amending instrument commences on 1 May 2023.

Section 3 provides that Schedule 1 of the amending instrument amends the principal instrument.

Item [1] of Schedule 1 inserts definitions of *aerial mustering endorsement* and *low-level rating* into the principal instrument.

Item [2] of Schedule 1 inserts new Part 15.

Section 68 of new Part 15 provides that new Part 15 applies to a holder of a pilot licence with a low-level rating.

Section 69 of new Part 15 provides that the holder is exempt from compliance with the requirements of the following provisions of CASR:

- (a) regulation 61.1040, to the extent that it requires compliance with regulations 61.1055 and 61.1060;
- (b) regulation 61.1055;
- (c) regulation 61.1060.

Sections 70 and 71 of new Part 15 set out conditions on the exemption in section 69.

Section 70 provides that the holder must not exercise the privileges of the low-level rating unless, within 24 months before exercising the privileges, the holder:

- (a) has successfully completed a flight review for the rating; or
- (b) has passed a flight test for the rating; or
- (c) has passed a flight test for the grant of a low-level endorsement (as long as it is more than 6 months after passing the flight test for the rating); or
- (d) has successfully completed an aerial application proficiency check under regulation 61.1110 of CASR; or
- (e) has successfully completed an operator proficiency check that covers:
 - (i) operations under the rating; or
 - (ii) operations under the aerial application rating; or
- (f) is successfully participating in an operator's training and checking system for an operation under the rating, being a system for which the operator holds an appropriate approval under regulation 61.040 of CASR.

Section 71 provides that, if the low-level rating has an aerial mustering endorsement, the holder must not engage in an aerial mustering operation unless, within 12 months before the operation, the holder has:

- (a) completed 20 hours of aerial mustering operations; or
- (b) been assessed as competent to conduct aerial mustering operations by a flight instructor who holds a low-level training endorsement; or
- (c) successfully completed an operator proficiency check in low-level operations covering aerial mustering operations; or
- (d) successfully completed a low-level flight review covering aerial mustering operations.

Legislation Act 2003 (the LA)

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

As the amending instrument relates to aviation safety and is made under CASR, Part 4 of Chapter 3 of the LA does not apply to the instrument (as per item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). In this case, the instrument amends the principal instrument and is almost immediately spent. It is repealed in accordance with the automatic repeal provisions in section 48A of the LA. New Part 15 is itself repealed at the end of 31 May 2024 by virtue of section 2 of the principal instrument. Therefore, the exemption from sunseting does not affect parliamentary oversight of the amending instrument.

Consultation

New Part 15 continues the effect of CASA EX73/20, which continued the effect of instrument number CASA EX48/17. Aviation industry participants supported the renewal of

instrument number CASA EX48/17 in Technical Working Group meetings held in November 2019 and March 2020. The exemption is required to be renewed to ensure that continued relief is provided in relation to the particular low-level rating requirements, in the absence of the making of the proposed amendments to Part 61 to give effect to the policy within the CASR. In these circumstances, CASA is satisfied that no further consultation is appropriate or reasonably practicable for the amending instrument for section 17 of the LA.

Sector risk, economic and cost impact

Subsection 9A(1) of the Act states that, in exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration.

Subsection 9A(3) of the Act states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9(1)(c), CASA must:

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

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

As new Part 15 reissues an expiring instrument with provisions that will have the same effect, there will be no change of economic or cost impact on individuals, businesses or the community.

Impact on regional and remote communities

The instrument is likely to have a significant impact on operators in regional or remote communities in Australia. Low-level operations such as aerial mustering is an activity that predominantly takes place in regional and remote areas for agricultural purposes, and the instrument allows pilots who meet the alternative recency requirements to continue to carry out these activities.

Impact on categories of operations

New Part 15 will have a beneficial effect in continuing to enable pilots to conduct low-level operations, including aerial mustering, provided that they meet the alternative recency requirements set out in the conditions to the exemption.

Office of Impact Analysis (OIA)

An Impact Analysis (*IA*) is not required in this case, as the exemption is covered by a standing agreement between CASA and OIA under which an IA is not required for exemptions (OIA id: 14507).

Statement of Compatibility with Human Rights

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

Making and commencement

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

The amending instrument commences on 1 May 2023 and is automatically repealed in accordance with section 48A of the LA.

Statement of Compatibility with Human Rights

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

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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 legislative instrument amends instrument *CASA EX66/21 — Flight Crew Licensing (Miscellaneous Exemptions) Exemption 2021* by inserting a new Part 15 (**new Part 15**).

New Part 15 provides that the holder of a pilot licence with a low-level rating is exempt from compliance with the requirements of the following provisions of the *Civil Aviation Safety Regulations 1998 (CASR)*:

- (a) regulation 61.1040, to the extent that it requires compliance with regulations 61.1055 and 61.1060;
- (b) regulation 61.1055;
- (c) regulation 61.1060.

Regulations 61.1055 and 61.1060 require a pilot to have recent experience and a flight review to be able to conduct low-level operations, such as aerial mustering.

A condition of the exemption is that alternative recent experience and flight review requirements are met. Further alternative recent experience and flight review requirements are set out in relation to a low-level rating with an aerial mustering endorsement.

New Part 15 is a renewal of the exemptions and conditions in instrument *CASA EX73/20 — Low-level Rating Exemption 2020* that is repealed at the end of 30 April 2023.

Human rights implications

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

Conclusion

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

Civil Aviation Safety Authority