

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### **CASA EX59/23 — Amendment of CASA EX84/21 (Extension of Time) Instrument 2023 (No. 1)**

#### **CASA EX60/23 — Amendment of CASA EX87/21 (Extension of Time) Instrument 2023 (No. 1)**

#### **CASA EX61/23 — Amendment of CASA EX97/22 (Extension of Time) Instrument 2023 (No. 1)**

### Purpose

The purpose of the CASA EX84/21 and CASA EX87/21 exemption amendment instruments is to extend the dates within which certain aircraft operators must take certain preparatory steps for compliance with Part 119 (air transport operations), Part 121 (Australian air transport operations), Part 133 (medical transport rotorcraft operations), Part 135 (smaller Australian air transport operations) and Part 138 (aerial work operations) 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 until compliance with the Parts is required at a later date.

Those Parts were elements of CASA's new Flight Operations Regulations (*FOR*) which commenced on 2 December 2021. The Parts dealt with a wide range of aviation matters, but relevantly with safety management systems (*SMS*), human factors principles and non-technical skills training programs (*HFP&NTS*), training and checking (*T&C*) systems, and rotorcraft performance classes.

It is important to note that, prior to 2 December 2021, air transport operations in larger aircraft, and regular public transport operations, were already required to comply with safety rules in relation to virtually all of these matters. One of the purposes of the FOR was to require all air transport operations, including in smaller aircraft, to use similar system-based safety controls.

CASA issued exemption instruments to facilitate the 3-year transition (from 2 December 2021) of relevant operators to full compliance with the FORs.

In addition, *CASA EX97/22 – Part 121 – Single Pilot Aeroplane (MOPSC 10-13) Operations – Exemptions Repeal, Remake, and Direction Instrument 2022 (CASA EX97/22)* (successor to *CASA EX137/21 – Part 121 – Single Pilot Aeroplane (MOPSC 10-13) Operations – Exemptions Instrument 2021 (CASA EX137/21)*) was issued to permit AOC holders to operate certain 10-13 passenger seat aeroplanes in Part 135 of CASR instead of Part 121. The purpose of the CASA EX97/22 exemption amendment instrument is to remove a date that originally required affected aircraft operators to take certain preparatory steps for compliance with the conditions of the exemption (the *relevant date*).

Conditions were included in *CASA EX84/21 – Part 133 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021 (CASA EX84/21)*, *CASA EX87/21 – Flight Operations Regulations – SMS, HFP&NTS and T&C Systems –*

*Supplementary Exemptions and Directions Instrument 2021 (CASA EX87/21)* and CASA EX97/22 requiring operators to fulfil certain milestones during the exemption period. Typical milestones were the submission of proposed exposition or operations manual content in support of the new requirements and receiving CASA approval of this content. Such submissions would reflect operators' states of preparedness for transition to compliance with relevant FOR requirements within the FOR or the exemption itself.

Other milestones included expiry dates for the exemptions themselves, in expectation of CASA's ability to issue appropriate approvals and industry transition to full compliance with the FORs without the need for exemptions. The revised timeframe in CASA EX84/21 and CASA EX87/21 will allow CASA to update and improve guidance information and tools, and resources such as training, to support operators and CASA officers with the implementation task.

The removal of the relevant date in CASA EX97/22 is because CASA has determined that this milestone is not necessary to preserve an acceptable level of aviation safety.

However, as a result of logistical and resourcing issues faced by both CASA and relevant operators, including the effects, and the after-effects, of the COVID-19 pandemic, CASA has decided to revise its timeframe for operators to submit expositions or manuals to CASA for approval under the terms of some elements of CASA EX84/21 and CASA EX87/21. CASA has similarly revised some timeframe for the obtaining of approvals and the expiry of the exemptions.

The first step in the development of an acceptable timeframe is to create, for both CASA and industry, a buffer period of continuation or preservation of the status quo, a period which, by definition, will be short but in the circumstances, indeterminate.

Consequently, CASA also concluded that extending interim operator exposition and manual submission dates, and approval and expiry dates, to "a date to be specified" with a commitment to at least 3 months' notice of any specified date, would permit a completion-date program to be developed and promulgated to operators in the fourth quarter of 2023.

An important part of this two-step implementation approach will be CASA's commitment to consult with industry, including sector associations, before resetting the new milestones and proscribing how they would be achieved. The context for this is CASA's intent to achieve the objectives of the FOR initiatives within the revised timeframe of 5 years (since 2 December 2021) rather than 3 years, a goal which is both reasonable and achievable.

### **CASA EX87/21**

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 an SMS, a HFP&NTS program, and a T&C system. A range of safety conditions were to be complied with in order to obtain the benefit of the exemptions.

### **CASA EX84/21**

CASA EX84/21 made a number of exemptions against provisions of Parts 133 and 91, and issued related directions, to facilitate implementation of these Parts in accordance with CASA's transition policies for the FORs. Part 91 deals with the general aviation operating

rules, and the rules of the air, for private operations. Part 133 deals with Australian air transport operations in rotorcraft.

### **CASA EX97/22**

CASA EX97/22 contained exemptions from Part 121 of the CASR. They allowed an Australian air transport operator to conduct VFR and IFR single-pilot operations, using single and multi-engine aeroplanes with a maximum operational passenger seat configuration (*MOPSC*) of 10 to 13, under Part 135 of the CASR instead of under Part 121, provided that safety mitigation conditions were satisfied in accordance with a timeframe. This timeframe was a revised version of an original timeframe contained in the repealed CASA EX137/21.

### **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.

### **The Amendments**

Under subsection 33(3) of the *Acts Interpretation Act 1901* where regulations empower the making of an instrument, the power includes a parallel power to amend the instrument. The exemption amendment instruments are made under the same head of power, and on the same basis, as the principal exemption instruments.

The amendments in the instruments are forensic and to a degree repetitive. They may be best understood in the following narrative rather than through restatement in a Schedule.

### **CASA EX87/21**

The individual amendments to CASA EX87/21 are explained below in context.

### **HFP&NTS**

Part 6 of CASA EX87/21 deals with HFP&NTS for an Australian air transport operator (the *relevant operator*) who, immediately before 2 December 2021 held an AOC, or was an early applicant for an AOC or an AOC variation, that authorised charter operations, or aerial work (air ambulance) operations, but did not authorise regular public transport operations.

Section 28 directed relevant operators to give CASA their proposed HFP&NTS program exposition content for compliance with Part 119, not later than the end of 2 June 2023.

Under section 28A, a relevant operator who has taken the benefit of a relevant exemption in relation to HFP&NTS requirements, 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.

Under paragraph 29(a), the exemptions expire at the end of 3 December 2023 (or earlier if the exposition was submitted and approved earlier).

### **Postponement and reasons for it**

Under amendments 1 to 6, CASA is postponing each of these dates to "a date specified in writing by CASA" which will be publicised by CASA on its website and communicated to relevant operators at least 3 months in advance of the specified date.

Section 28 is a direction which, if no day is specified, under regulation 11.250 of CASR, expires 1 year after the exemption amendment instrument commences, namely, 2 June 2024. "A date specified in writing" is not a specific day for the expiry of a section or for the completion of an obligation expressed in the section. Therefore, the section, as amended, will expire on 2 June 2024, 12 months after commencement of the exemption amendment instrument. However, as part of the two-step process described above, CASA will again have amended section 28 with an actual date many months before 2 June 2024.

CASA considers that its publication and communication plan will bring the specified date to the attention of all relevant operators.

CASA also considers that a minimum of 3 months' notice of the specified date will provide all relevant operators with sufficient time to finalise their proposed HFP&NTS program exposition content for submission — bearing in mind that this date when specified with 3 months' notice will be a further extension on what was an existing transitional postponement.

This approach is necessary for logistical and resourcing reasons within CASA. It is a temporary expedient, designed to enable CASA to plan and resource in a way that will enable the proper assessment of HFP&NTS program exposition content of numerous operators with a view to CASA approval, and ultimately, expected universal compliance with the FOR by 2026, 5 years after commencement of the FORs. The relevant exemptions and associated directions were originally developed to accommodate an industry transition period to full compliance of 3 years from 2021, which experience, and contingency, have demonstrated was insufficient time.

### **T&C — 1**

Part 7 of CASA EX87/21 deals with T&C for an Australian air transport operator for a Part 121 operation (the *relevant operator*) who, immediately before 2 December 2021 held an AOC, or was an early applicant for an AOC or an AOC variation, that authorised charter operations, or aerial work (air ambulance) operations, but was **not** required to provide a training and checking organisation for the operations or for *an aeroplane* used in the operations.

Under section 33A, a relevant operator who has taken the benefit of a relevant exemption in relation to Part 119 and Part 121 training and checking requirements, must, not later than the end of 1 September 2023, have obtained CASA's written approval of the proposed T&C exposition content. Under section 33, this content was to have been submitted to CASA not later than the end of 3 April 2023.

Under paragraph 34(a), the exemptions expire at the end of 1 September 2023 (or, earlier for an individual operator whose exposition is submitted to CASA earlier and approved).

Under amendments 7, 8, 9, and 10, CASA is postponing the 1 September 2023 dates to “a date specified in writing by CASA” which will be publicised by CASA on its website and communicated to relevant operators at least 3 months in advance of the specified date.

The reasons for this change are as explained above.

### **T&C — 2**

Part 7A of CASA EX87/21, deals with T&C for an Australian air transport operator for a Part 121 operation (the *relevant operator*) who, immediately before 2 December 2021 held an AOC, or was an early applicant for an AOC or an AOC variation, that authorised charter operations, or aerial work (air ambulance) operations, and who **was** required to provide a training and checking organisation for the operations or for *an aeroplane* used in the operations.

Under section 34DA, a relevant operator who has taken the benefit of a relevant exemption in relation to Part 121 training and checking requirements, must, not later than the end of 1 September 2023, have obtained CASA's written approval of the proposed T&C exposition

content. Under section 34D, this content was to have been submitted to CASA not later than the end of 3 April 2023.

Under paragraph 34E(a), the exemptions expire at the end of 1 September 2023 (or earlier if the exposition was submitted and approved earlier).

Under amendments 11, 12, 13 and 14, CASA is postponing the 1 September 2023 dates to “a date specified in writing by CASA” which will be publicised by CASA on its website and communicated to relevant operators at least 3 months in advance of the specified date.

The reasons for this change are as explained above.

### **T&C — 3**

Part 8 of CASA EX87/21, deals with T&C for an Australian air transport rotorcraft operator for the conduct of a Part 133 operation (the *relevant operator*) who, immediately before 2 December 2021 held an AOC, or was an early applicant for an AOC or an AOC variation, that authorised charter operations, or aerial work (air ambulance) operations, but who was **not** required to provide a training and checking organisation for the operations or for *a rotorcraft* used in the operations.

Under section 38A, a relevant operator who has taken the benefit of a relevant exemption in relation to Part 119 or Part 133 training and checking requirements, must, not later than the end of 1 September 2023, have obtained CASA’s written approval of the proposed T&C exposition content. Under section 38, this content was to have been submitted to CASA not later than the end of 3 April 2023.

Under paragraph 39(a), the exemptions expire at the end of 1 September 2023 (or earlier if the exposition was submitted and approved earlier).

Under amendments 15, 16, 17 and 18, CASA is postponing the 1 September 2023 dates to “a date specified in writing by CASA” which will be publicised by CASA on its website and communicated to relevant operators at least 3 months in advance of the specified date.

The reasons for this change are as explained above.

### **T&C — 4**

Part 9 of CASA EX87/21, deals with T&C for an Australian air transport rotorcraft operator for the conduct of a Part 135 operation (the *relevant operator*) who, immediately before 2 December 2021 held an AOC, or was an early applicant for an AOC or an AOC variation, that authorised charter operations, or aerial work (air ambulance) operations, but who was **not** required to provide a training and checking organisation for the operations or for *an aeroplane* used in the operations.

Under section 43A, a relevant operator who has taken the benefit of a relevant exemption in relation to Part 119 or Part 135 training and checking requirements, must, not later than the end of 1 September 2023, have obtained CASA’s written approval of the proposed T&C exposition content. Under section 43, this content was to have been submitted to CASA not later than the end of 3 April 2023.

Under paragraph 44(a), the exemptions expire at the end of 1 September 2023 (or earlier if the exposition was submitted and approved earlier).

Under amendments 19, 20, 21 and 22, CASA is postponing the 1 September 2023 dates to “a date specified in writing by CASA” which will be publicised by CASA on its website and communicated to relevant operators at least 3 months in advance of the specified date.

The reasons for this change are as explained above.

### **T&C — 5**

Part 10 of CASA EX87/21, deals with T&C for an aerial work operator for the conduct of a Part 138 operation (the *relevant operator*) who, immediately before 2 December 2021 held an AOC, or was an early applicant for an AOC or an AOC variation, that authorised charter operations, or aerial work (air ambulance) operations, but who was **not** required to provide a training and checking organisation for the operations or for *an aircraft* used in the operations.

Under section 48A, a relevant operator who has taken the benefit of a relevant exemption in relation to Part 138 training and checking requirements, must, not later than the end of 1 September 2023, have obtained CASA’s written approval of the proposed *T&C manual content*. Under section 48, this content was to have been submitted to CASA not later than the end of 3 April 2023.

Under paragraph 49(a), the exemptions expire at the end of 1 September 2023 (or earlier if the exposition was submitted and approved earlier).

Under amendments 23, 24, 25, and 26, CASA is postponing the 1 September 2023 dates to “a date specified in writing by CASA” which will be publicised by CASA on its website and communicated to relevant operators at least 3 months in advance of the specified date.

The reasons for this change are as explained above.

### **CASA EX84/21**

The individual amendments to CASA EX84/21 are explained below in context.

Part 6 of CASA EX84/21 deals with the operator, and the pilot in command, for the flight of a rotorcraft in an Australian air transport operation under Part 133 of CASR (passenger transport operations and medical transport operations) and exempts them from certain rotorcraft performance class prescriptions to which they would otherwise be subject under Part 133.

Under section 28(1)(a), an operator or pilot in command who takes the benefit of such an exemption must, not later than the end of 2 June 2023, give CASA their proposed Part 133 performance class exposition content; and not later than the end of 3 December 2023, must have obtained CASA’s written approval of that exposition content.

Under section 29, the operator, and the pilot in command, for the flight of a rotorcraft in a medical transport operation conducted by day in VMC are each exempted (subject to conditions) from liability for non-compliance with certain performance class requirements during the flight.

Under subsection 29(4), an operator who takes the benefit of such an exemption must, not later than the end of 4 September 2023, give CASA their proposed exposition content for compliance with the performance requirements for such a flight.

Under subsection 29(5), these particular exemptions cease to have effect at the end of 3 December 2023.

Under section 30, the operator, and the pilot in command, for the flight of a rotorcraft in certain medical transport operations are exempted from prescribed climb performance requirements.

Under subsection 30(5), an operator who takes the benefit of such an exemption must, not later than the end of 4 September 2023, give CASA their proposed exposition content for compliance with the performance requirements for such a flight.

Under subsection 30(6), these particular exemptions cease to have effect at the end of 3 December 2023.

Under amendments 1 to 6, CASA is postponing each of the dates mentioned above (2 June 2023 and 4 September 2023) to “a date specified in writing by CASA” which will be publicised by CASA on its website and communicated to relevant operators at least 3 months in advance of the specified date.

The reasons for this change are as explained above.

Section 28 is a direction which, if no day is specified, under regulation 11.250 of CASR, expires 1 year after the exemption amendment instrument commences, namely, 2 June 2024. “A date specified in writing” is not a specific day for the expiry of a section or for the completion of an obligation expressed in the section. Therefore, the section, as amended, will expire on 2 June 2024, 12 months after commencement of the exemption amendment instrument. However, as part of the two-step process described above, CASA will again have amended section 28 with an actual date many months before 2 June 2024.

The same logic applies to subsections 29(4) and (5), and 30(5) and (6).

### **CASA EX97/22**

The individual amendments to CASA EX97/22 are explained below in context.

Under CASA EX97/22, a relevant aeroplane is one that, among other things, has a MOPSC of at least 10 but not more than 13, a maximum take-off weight of no more than 8 618 kg, and that is type certificated to be flown by a single pilot.

CASA EX97/22 applies to an operator (a ***transitional operator***) of a relevant aeroplane if, immediately before 2 December 2021, the operator held an AOC, or was an early applicant for an AOC or an AOC variation, that authorised charter operations or regular public transport operations, or both kinds of operations, in a particular kind of relevant aeroplane. The instrument also applies to the operator of a relevant aeroplane if the operator is a prescribed ***expanded transitional operator***.



Under section 5, such an operator is exempted from prescribed provisions of Part 121 and the Part 121 Manual of Standards that would otherwise cause a transitional operator to cease operating.

Under section 9, these exemptions cease to have effect on 2 December 2023 unless the operator has, before that date, received from CASA a written notice that the operator's exposition changes are approved. Section 2 had a Note referencing section 9, and subsection 8(3) applied subject to section 9.

Under section 10, a transitional operator who intends to operate a relevant aeroplane on or after 2 June 2023 must before 2 June 2023 give CASA the operator's proposed exposition changes showing how, on and from 2 December 2023, the operator will comply with the special conditions prescribed in Schedule 1 of the instrument.

Amendment 4 changes 2 June 2023 in section 10, to 2 December 2023. The reasons for this extension of time are to allow greater time for operator compliance.

Amendment 5 contains guidance Notes for operators for when exposition changes constitute significant changes requiring CASA approval, or otherwise.

Amendment 3 repeals section 9 as it is intended that operator exposition changes associated with implementing the conditions of CASA EX97/22 do not need to be approved by CASA unless another element of the civil aviation legislation requires the exposition changes to be approved.

Amendments 1 and 2 are consequential on the repeal of section 9.

### **Aviation safety**

In determining whether to issue the exemption amendment instruments extending timeframes for compliance with the relevant aspects of the FORs, CASA had regard to the safety of air navigation as the most important consideration. CASA is satisfied that, given the context and the nature of the extensions, 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.

CASA risk assessment working groups determined that the proposal to extend the transitional timeline for overall compliance from 3 to 5 years was unlikely to materially exacerbate current flight safety risks or introduce new and additional flight safety risks as compared to such risks prior to 2 December 2021. Many pre-2 December 2021 safety requirements have been embodied in the FORs without material change in safety product, and in those respects an acceptable level of aviation safety is likely to be unaffected as between the pre- and post-2 December 2021 periods.

Consequently, CASA also concluded that extending interim operator exposition and manual submission dates to "a date to be specified" with a completion-date program to be developed and promulgated to operators in the third quarter of this year, would not materially alter the expectation that an acceptable level of aviation safety would be preserved.

Other relevant standards have, of course, been reviewed, revised, enhanced and embodied in the FORs, and postponement of their full implementation means that the introduction and accumulation of their beneficial effects is delayed.

Nevertheless, CASA is satisfied that the safety effects of such enhancements materially accrue over time and an acceptable level of safety is not prejudiced through their absence in the short term.

Given the logistic and resource issues mentioned above, if the exemption instruments were not amended, CASA would be unable to assess the content and approve changes to expositions and operations manuals before the expiry of existing deadlines. Such an outcome would create uncertainty and instability in relevant aviation sectors which could have a seriously distracting effect and create flow-on enforcement obligations that would not in these circumstances result in the promotion of aviation safety.

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

The exemption amendment instruments are in relation to the safe navigation and operation of aircraft and apply to classes of persons. As such, they are 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.

### **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 sunseting 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 will themselves be repealed not later than the end of 2026 within the sunseting period. Thus, in practice, no sunseting avoidance issues arise and there is no impact on parliamentary oversight in this respect.

### **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.

The documents described below were incorporated into the principal exemption instruments, and the manner of their incorporation and their availability was described in the Explanatory Statements for those instruments:

- 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 has previously undertaken that it 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.

The exemption amendment instruments to which this Explanatory Statement relates do not themselves incorporate documents though their effects will be in relation to previously incorporated documents as noted above.

### **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*

The exemption amendment instruments will affect air transport operators, medical transport operators and aerial work operators by permitting delays in the submission of relevant expositions and manuals.

#### **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 the postponement of relevant document submission dates.

### **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 2 June 2023 if they are to have their intended relieving effect
- CASA communications have alerted relevant aviation industry to what was proposed.

There has, however, been informal consultation with industry whose members have made representations to CASA about the logistical and resource issues complicating their ability to meet the conditions and directions in the principal exemption instruments.

### **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 1 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The exemption amendment instruments are amending instruments to extend submission and expiry timeframes for the 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, and the right to safe and healthy working conditions under the International

Covenant on Economic, Social and Cultural Rights, 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 at the start of 2 June 2023.

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

## Statement of Compatibility with Human Rights

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

### **CASA EX59/23 — Amendment of CASA EX84/21 (Extension of Time) Instrument 2023 (No. 1)**

### **CASA EX60/23 — Amendment of CASA EX87/21 (Extension of Time) Instrument 2023 (No. 1)**

### **CASA EX61/23 — Amendment of CASA EX97/22 (Extension of Time) 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 exemption amendment instruments CASA EX84/21 and CASA EX87/21 is to extend the dates within which certain aircraft operators must take certain preparatory steps for compliance with Part 119 (air transport operations), Part 121 (Australian air transport operations), Part 133 (medical transport rotorcraft operations), Part 135 (smaller Australian air transport operations) and Part 138 (aerial work operations) 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 until compliance with the Parts is required at a later date.

Those Parts were elements of CASA's new Flight Operations Regulations (*FOR*) which commenced on 2 December 2021. The Parts dealt with a wide range of aviation matters, but relevantly with safety management systems, human factors principles and non-technical skills training programs, training and checking systems, and rotorcraft performance classes.

It is important to note that, prior to 2 December 2021, air transport operations in larger aircraft, and regular public transport operations, were already required to comply with safety rules in relation to virtually all of these matters. One of the purposes of the FOR was to require all air transport operations, including in smaller aircraft, to use similar system-based safety controls.

CASA issued exemption instruments to facilitate the 3-year transition (from 2 December 2021) of relevant operators to full compliance with the FORs.

In addition, CASA EX97/22 (successor to CASA EX137/21) was issued to permit AOC holders to operate certain 10-13 passenger seat aeroplanes in Part 135 of CASR instead of Part 121. The purpose of the CASA EX97/22 exemption amendment instrument is to remove a date that originally required affected aircraft operators to take certain preparatory steps for compliance with the conditions of the exemption (the *relevant date*).

Conditions were included in CASA EX84/21, CASA EX87/21 and CASA EX97/22 requiring operators to fulfil certain milestones during the exemption period. Typical milestones were the submission of proposed exposition or operations manual content in support of the new requirements and receiving CASA approval of this content. Such submissions would reflect operators' states of preparedness for transition to compliance with relevant FOR requirements within the FOR or the exemption itself.

Other milestones included expiry dates for the exemptions themselves, in expectation of CASA's ability to issue appropriate approvals and industry transition to full compliance with the FORs without the need for exemptions. The revised timeframe in CASA EX84/21 and CASA EX87/21 will allow CASA to update and improve guidance information and tools, and resources such as training, to support operators and CASA officers with the implementation task.

The removal of the relevant date in CASA EX97/22 is because CASA has determined that this milestone is not necessary to preserve an acceptable level of aviation safety.

However, as a result of logistical and resourcing issues faced by both CASA and relevant operators, including the effects, and the after-effects, of the COVID-19 pandemic, CASA has decided to revise its timeframe for operators to submit expositions or manuals to CASA for approval under the terms of some elements of CASA EX84/21 and CASA EX87/21. CASA has similarly revised some timeframe for the obtaining of approvals and the expiry of the exemptions.

The first step in the development of an acceptable timeframe is to create, for both CASA and industry, a buffer period of continuation or preservation of the status quo, a period which, by definition, will be short but in the circumstances, indeterminate.

Consequently, CASA also concluded that extending interim operator exposition and manual submission dates, and approval and expiry dates, to "a date to be specified" with a commitment to at least 3 months' notice of any specified date, would permit a completion-date program to be developed and promulgated to operators in the fourth quarter of 2023.

### **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.

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**