

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX97/23 – Amendment of CASA EX85/21 – Instrument 2023 (No. 1)

Purpose

The purpose of *CASA EX97/23 – Amendment of CASA EX85/21 – Instrument 2023 (No. 1)* (the **exemption instrument**) is to amend and insert a number of exemptions and directions within *CASA EX85/21 – Part 135, Subpart 121.Z and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021 (CASA EX85/21* or the **principal instrument**). CASA EX85/21 makes a number of exemptions and directions relating to Part 135 and Subpart 121.Z of the *Civil Aviation Safety Regulations 1998 (CASR)*. Part 135 and Subpart 121.Z of CASR are part of CASA’s new Flight Operations Regulations (**FOR**) that commenced on 2 December 2021.

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. The preservation of an acceptable level of safety remains paramount.

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 of CASR.

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

Section 98 of the Act empowers the Governor-General to make regulations for the Act and the safety of air navigation.

Under subregulation 11.245 (1) of CASR, for subsection 98 (5A) of the Act, CASA may, by instrument, issue a direction about, among other things, 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 to do so in the interests of the safety of air navigation; and only if the direction is not inconsistent with the Act; and only for the purposes of CASA's functions.

Under regulation 11.250 of CASR, 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.

Background

Analysis by CASA of feedback from Australian air transport operators and other stakeholders regarding the implementation of civil aviation legislation relating to Australian air transport operations requires amendments to be made to the principal instrument.

Along with some minor corrections, the exemption instrument amends the principal instrument to allow more time for relevant operators to transition to full compliance with the FOR, while ensuring that an acceptable level of safety is preserved.

In addition, some provisions relate to terrain awareness and warning systems (*TAWS*). The purpose of these amendments is to reduce TAWS implementation costs for certain air transport operations conducted under Subpart 121.Z of CASR in lower weight turbine-engine aeroplanes. The provisions are designed to maintain an acceptable level of aviation safety by permitting these aeroplanes to install a version of TAWS-Class B called TAWS-Class B+ as an alternative to installing a TAWS-Class A. The TAWS-Class B+ is a TAWS Class B with enhanced terrain display features.

Details of the exemption instrument are set out in Appendix 1.

Aviation safety

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

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

Legislation Act 2003 (the LA)

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

The exemption instrument is clearly one in relation to matters affecting the safe navigation and operation of aircraft. Under subsection 98 (5AA) of the Act, an exemption issued under paragraph 98 (5A) (a), for such matters, is a legislative instrument if expressed to apply in relation to a class of persons, a class of aircraft or a class of aeronautical products (as distinct from a particular person, aircraft or product).

The exemption instrument 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 instrument relates to aviation safety and is made under CASR, that means that Part 4 of Chapter 3 of the LA (the sunseting provisions) does not apply to the instrument (as per item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

The instrument deals with aviation safety matters that, once identified, require a risk response or treatment plan. Generally speaking, item 15, when invoked, is necessary in order to ensure that, in the interests of aviation safety, a relevant instrument has enduring effect, certainty and clarity for aviation operators, both domestic and international.

In this case, the instrument amends the principal instrument and is almost immediately spent and repealed in accordance with the automatic repeal provisions in Subdivision A in Division 1 of Part 3 of Chapter 3 of the LA. The principal instrument is itself repealed at the end of 1 December 2024 by virtue of the terms of section 2 of the principal instrument (as amended). Thus, in practice, no sunseting avoidance issues arise and there is no impact on parliamentary oversight.

Incorporations by reference

Under subsection 98 (5D) of the Act, the exemption 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 following document is applied, adopted or incorporated for the purposes of the exemption instrument.

Document	Description	Manner of incorporation	Source
Civil Aviation Order 20.18	Prescribes basic operational equipment requirements.	As in force immediately before 2 December 2021.	This document is available for free on the Federal Register of Legislation.

Consultation

Under section 16 of the Act, in performing its functions and exercising its powers, CASA must consult government, industrial, commercial consumer and other relevant bodies and organisations as far 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.

CASA engaged in public consultation on the policy proposals underpinning amendments 4, 5, 6 and 7 from 26 September 2023 to 24 October 2023. These concerned proposed changes to the Part 135 Manual of Standards and subregulation 121.775 (1) of CASR TAWS aeroplane equipment requirements for certain lower maximum take-off weight turbine-engine aeroplanes of particular passenger carriage or capacity. CASA published a Summary of Proposed Changes describing the proposed policy changes that would require amendments to this instrument. CASA received 18 responses to the proposals, the majority broadly supportive of the amendments.

A minority of the responses suggested that the policy proposals were inappropriate as the reduction in the required TAWS standard did not go far enough and certain TAWS requirements should be removed entirely. CASA considered these but concluded that for the operation of smaller aeroplanes in the Australian air transport sector, aviation safety would be appropriately maintained by progressing the amendments.

Many of the other amendments in the exemption instrument have arisen from informal consultation with the aviation industry relating to the continuing implementation of the FOR to Australian air transport operators. The amendments to the principal instrument are consequential on, or aligned with, changes in the FOR implementation methodology contained within *CASA EX99/23 – Amendment of CASA EX87/21 – Instrument 2023 (No. 2)*, which amends *CASA EX87/21 – Flight Operations Regulations – SMS, HFP&NTS and T&C Systems – Supplementary Exemptions and Directions Instrument 2021*.

Office of Impact Analysis (OIA)

An Impact Analysis (*IA*) is not required for the non-TAWS amendments because these aspects of this instrument are covered by a standing agreement between CASA and the OIA under which an IA is not required for exemption or direction instruments (OIA id: 14507).

In relation to amendments 4, 5, 6 and 7 of this instrument, the OIA made the assessment that the amendments are likely to be low risk with small impacts on individuals and businesses and, therefore, did not require the preparation of an IA (OIA23-06033).

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.

In terms of economic and cost impacts for subsection 9A (3) of the Act, the exemption instrument will relieve operators from requirements that might otherwise have involved compliance costs.

The requirements in this instrument at amendments 4, 5, 6 and 7, associated with the CASA public consultation activity on TAWS, have been determined by CASA to lower the cost of implementing the relevant standards for operators otherwise required to conduct operations from 2 December 2023 in accordance with subregulation 121.775 (1) of CASR.

Sector risks

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

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 flight operations.

Statement of Compatibility with Human Rights

The Statement in Appendix 2 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The exemption instrument is compatible with human rights: with its aviation safety focus, it promotes the right to life, the right to work, and the right to safe and healthy working conditions, and it does so in a way that is reasonable, necessary and proportionate in the context of aviation safety.

Making and commencement

The instrument commences on 2 December 2023. The instrument has been made by a delegate of CASA relying on the power of delegation under subregulation 11.260 (1) of CASR.

Appendix 1

Details – CASA EX97/23 – Amendment of CASA EX85/21 – Instrument 2023 (No. 1)

- 1 Name**
This section names the instrument.
- 2 Commencement**
Under this section, the instrument commences on the day after it is registered.
- 3 Amendment of CASA EX85/21**
Under this section, Schedule 1 amends *CASA EX85/21 – Part 135, Subpart 121.Z and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021* (the *principal instrument*).

Schedule 1 Amendments

[1 and 2] Subsection 3 (1), definitions

Among other definitions, these amendments redefine the meaning of CAR (the *Civil Aviation Regulations 1988*) to be the version as in force from time to time. Particular provisions will refer to CAR as in force immediately before 2 December 2021 where that version is intended to be the operative version for the provision.

The technical term *maximum operational passenger seat configuration* or *MOPSC* is also defined.

[3] Part 4, after section 20

A new direction in section 20A applies to an Australian air transport operator who, immediately before 2 December 2021 conducted charter operations, or aerial work (air ambulance) operations, in an aeroplane and did not hold an approval under subregulation 217 (3) of CAR, as in force immediately before 2 December 2021, for an applicable training and checking organisation.

The amendment prescribes the qualifications and approvals individuals must have to conduct certain higher risk training and checking in an aeroplane. Alternatively, the operator must hold CASA's approval that their training and checking system produces an equivalent safety outcome. Analogous requirements apply for the use of a foreign registered aeroplane.

This amendment is consequential on changes in the FOR implementation methodology contained within *CASA EX99/23 – Amendment of CASA EX87/21 – Instrument 2023 (No. 2)*, which amends *CASA EX87/21 – Flight Operations Regulations – SMS, HFP&NTS and T&C Systems – Supplementary Exemptions and Directions Instrument 2021*. Those changes remove the previous requirement for certain Part 135 and Subpart 121.Z operators to obtain CASA's approval of their training and checking system before implementing it while ensuring the maintenance of an acceptable level of aviation safety.

[4] Section 21, definition of TAWS

This amendment corrects the definition of *TAWS* to be terrain awareness and warning system.

[5] Section 21, new definitions

This amendment adds definitions of *TAWS-Class B* and *TAWS-Class B+* for use in Part 5 of the principal instrument which deals with Subpart 121.Z operations in certain turbine-engine aeroplanes. Subpart 121.Z operations are Australian air transport operations in single-engine aeroplanes with a MOPSC of more than 9, and a maximum take-off weight of not more than 8 618 kg.

[6] Subsection 23 (7)

Under section 23, certain Subpart 121.Z operations are conditionally exempted, in effect, from the requirement to carry a TAWS-Class A (turbine-engine aeroplane) or a TAWS-Class A and a TAWS-Class B (piston-engine aeroplane). The exemption would have ceased to have effect on 2 December 2023.

The amendment extends this duration to the start of 1 June 2024, for certain turbine-engine aeroplanes only, to provide relevant operators with sufficient time to re-equip their aircraft as necessary.

[7] After section 23

This amendment inserts a new section 24 to conditionally exempt the operator of certain smaller turbine aeroplanes for a Subpart 121.Z operation from the requirement to carry a TAWS-Class A (turbine-engine aeroplane) provided they carried a TAWS-Class B+, or TAWS-Class A. Subject to certain conditions, this equipment must be operative at the beginning of a flight.

An aeroplane already fitted with a TAWS-B+ system and which, before 2 December 2023, does not comply with the more advanced terrain display requirements of a TAWS-Class B+ may remain fitted with the TAWS-B+ system until 2 June 2024, provided that not later than 1 December 2023, they notify CASA of each aeroplane that is fitted with the TAWS-B+ system. This transitional concession will provide relevant operators with an appropriate period in which to ensure their TAWS meets the revised standard.

Statement of Compatibility with Human Rights

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

CASA EX97/23 – Amendment of CASA EX85/21 – Instrument 2023 (No. 1)

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The purpose of *CASA EX97/23 – Amendment of CASA EX85/21 – Instrument 2023 (No. 1)* (the **exemption instrument**) is to amend and insert a number of exemptions and directions within *CASA EX85/21 – Part 135, Subpart 121.Z and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021 (CASA EX85/21* or the **principal instrument**). *CASA EX85/21* makes a number of exemptions and directions relating to Part 135 and Subpart 121.Z of the *Civil Aviation Safety Regulations 1998 (CASR)*. Part 135 and Subpart 121.Z of CASR are part of CASA’s new Flight Operations Regulations (**FOR**) that commenced on 2 December 2021.

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

Right to work under the ICESCR

This engagement is in the context of CASA’s statutory purpose. The aim of CASA and its regulatory framework is to uphold aviation safety by prescribing the conduct of individuals and organisations involved in civil aviation operations, including flight operations. It is, therefore, a threshold requirement for all CASA legislative instruments that they preserve, promote and enhance aviation safety and, thereby, contribute to safe and healthy working conditions for crew and ground staff.

The instrument further amends the principal instrument to allow more time for relevant operators to transition to full compliance with the FOR. The instrument’s conditions and directions are designed to allow for this longer transition while ensuring that an acceptable level of safety is preserved. In particular, the amendment is in effect a direction that prescribes the qualifications and approvals individuals must have to conduct the training and checking in a registered aeroplane. Alternatively, the operator must hold CASA’s approval that their training and checking system produces an

equivalent safety outcome. Analogous requirements apply for the use of a foreign registered aeroplane.

The exemption instrument also has the effect of reducing the TAWS implementation costs for air transport operations conducted under subregulation 121.775 (1) of CASR in lower weight aeroplanes. The instrument's conditions and directions are designed to allow for a further period of transition to full TAWS compliance while ensuring that an acceptable level of aviation safety is preserved.

Human rights implications

This legislative instrument is compatible with human rights and to the extent that it may engage certain rights it does so in a way that promotes the right to life, the right to work, and 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

This legislative instrument is compatible with human rights.

Civil Aviation Safety Authority