

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### CASA EX100/23 – Amendment of CASA EX97/22 – Instrument 2023 (No. 1)

##### Purpose

The purpose of *CASA EX100/23 – Amendment of CASA EX97/22 – Instrument 2023 (No. 1)* (the **exemption instrument**) is to amend, repeal and insert a number of exemptions and directions within *CASA EX97/22 – Part 121 – Single Pilot Aeroplane (MOPSC 10-13) Operations – Exemptions Repeal, Remake, and Direction Instrument 2022 (CASA EX97/22* or the **principal instrument**) particularly relating to terrain awareness and warning systems (**TAWS**). *CASA EX97/22* makes a number of exemptions and directions relating to Parts 121 and 135 of the *Civil Aviation Safety Regulations 1998 (CASR)*. Parts 121 and 135 of CASR are some 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**

The purpose of the amendments in the exemption instrument is to reduce the 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.

Analysis by CASA of feedback from Australian air transport operators and other stakeholders regarding the implementation of non-TAWS safety controls contained in the principal instrument also requires amendments to be made.

The instrument amends the non-TAWS elements of the principal instrument to remove provisions redundant after 2 December 2023, eliminate additional conditions that were identified as possessing minimal safety benefit but required excessive implementation investment, and insert directions for operators taking advantage of the exemption to notify CASA that they are doing so. The instrument's conditions and directions are designed to ensure that an acceptable level of safety is preserved.

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.

<b>Document</b>	<b>Description</b>	<b>Manner of incorporation</b>	<b>Source</b>
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<b>Document</b>	<b>Description</b>	<b>Manner of incorporation</b>	<b>Source</b>
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 TAWS policy proposals underpinning amendments 3, 7, 9 and 10 from 26 September 2023 to 24 October 2023. These concerned proposed changes to the Part 135 and Subpart 121.Z 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.

Other amendments to the principal have arisen from informal consultation with the aviation industry relating to the continuing implementation of the FOR by Australian air transport operators. The amendments to the principal instrument are 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 TAWS-related amendments in amendments 3, 7, 9 and 10 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 3, 7, 9 and 10, 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 certain lower maximum take-off weight turbine-engine aeroplanes under a combination of the principal instrument and Part 135 of the 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.

## Details – CASA EX100/23 – Amendment of CASA EX97/22 – Instrument 2023 (No. 1)

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- 1 Name**  
This section names the instrument.
- 2 Commencement**  
Under this section, the instrument commences on 2 December 2023.
- 3 Amendment of CASA EX97/22**  
Under this section, Schedule 1 amends *CASA EX97/22 – Part 121 – Single Pilot Aeroplane (MOPSC 10-13) Operations – Exemptions Repeal, Remake, and Direction Instrument 2022* (the *principal instrument*).

### Schedule 1 Amendments

- [1] Subsection 3 (1), definitions**  
This amendment modifies some definitions. In particular, it redefines 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.
- [2] Subsection 3 (1), definition of *Part 145 approved maintenance organisation***  
This amendment repeals the definition of *Part 145 approved maintenance organisation*, which is no longer required in the instrument as the Schedule 1 clause mentioning it is repealed (see amendment 12).
- [3] Subsection 3 (1), new definitions**  
This amendment inserts some new definitions, in particular *TAWS* (terrain awareness and warning system), *TAWS-B+ system* (an older version of TAWS prescribed by Civil Aviation Order 20.18 prior to 2 December 2021) and *TAWS-Class B+* (a TAWS Class B with enhanced terrain display features).
- [4] Sub-subparagraph 4 (2) (b) (i) (B)**  
This amendment corrects a typographical error.
- [5] Subsection 6 (1)**  
This amendment repeals a redundant application provision.
- [6] Section 7, including the Note**  
Section 7 had the effect of continuing, until immediately before 2 December 2023, the previous grandfathering of the carriage of Ground Proximity Warning Systems. Arising from the amendments in this instrument, this section is no longer required and the provision is repealed.
- [7] Subsections 8 (2), (2A) including the Note, (3) and (4)**  
Under these subsections, Schedule 1 conditions would apply to an operator of a relevant aeroplane from 2 December 2023 (including a TAWS requirement).

Under the amendments, if the visual display of a required TAWS-B+ system fitted to certain lower maximum take-off weight turbine-engine aeroplanes was not compliant with the TAWS-Class B+ terrain display requirements before 2 December 2023, compliance could be deferred up to 3 June 2024 provided the aeroplane remained fitted with the operative TAWS-B+ system.

**[8] Section 10, including the Notes**

Previously under section 10, a transitional operator who intended to operate a relevant aeroplane on or after 2 December 2023 had to give CASA proposed exposition changes showing how the operator would comply with the conditions mentioned in Schedule 1 of the principal instrument.

Under the amendment, the notification requirements are different. Details are to be provided to CASA of any additional same type aeroplanes, or any additional similar type aeroplanes, that are to be used under the principal instrument. As a transitional measure, so too must details of those aeroplanes being used under the principal instrument that are still fitted with the TAWS-B+ system (and by association not yet fitted with a TAWS-Class A or TAWS-Class B+).

**[9] Schedule 1, clause 4**

Under clause 4, IFR flights, and VFR flights at night, in relevant turbine-engine aeroplane, must be fitted with an operative TAWS-Class A.

The amendment modifies that requirement so that it applies only to a turbine-engine aeroplane with a maximum take-off weight of more than 5 700 kg.

**[10] Schedule 1, after clause 4**

This amendment adds a new clause so that for an IFR flight, or a VFR flight at night, in a turbine-engine aeroplane with a maximum take-off weight of 5 700 kg or less, the aeroplane must be fitted with an operative TAWS-Class A or a TAWS-Class B+.

**[11] Schedule 1, clause 6, the Note**

Since Schedule 1 has been amended, the Note is obsolete.

**[12] Schedule 1, clauses 10 to 15, inclusive**

Clauses 10 to 15 dealt with fatigue risk management reviews, and training needs analysis for single-pilot operations which must not be conducted unless fatigue and competency requirements were met and an arrangement was in place for all maintenance services to be provided by a Part 145 approved maintenance organisation.

The amendment repeals these requirements. In context, the matters referred to are already covered elsewhere in the civil aviation legislation, or are not significant contributors to safety outcomes.



## Statement of Compatibility with Human Rights

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

### CASA EX100/23 – Amendment of CASA EX97/22 – 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 EX100/23 – Amendment of CASA EX97/22 – Instrument 2023 (No. 1)* (the **exemption instrument**) is to amend, repeal and insert a number of exemptions and directions within *CASA EX97/22 – Part 121 – Single Pilot Aeroplane (MOPSC 10-13) Operations – Exemptions Repeal, Remake, and Direction Instrument 2022 (CASA EX97/22* or the **principal instrument**). CASA EX97/22 makes a number of exemptions and directions relating to Parts 121 and 135 of the *Civil Aviation Safety Regulations 1998 (CASR)*. Parts 121 and 135 of CASR are some of CASA’s new Flight Operations Regulations 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 reduce the TAWS implementation costs for air transport operations conducted under a combination of the principal instrument and Part 135 of CASR in lower weight turbine-engine aeroplanes, while maintaining an acceptable level of aviation safety. The principal instrument is also amended to remove provisions redundant after 2 December 2023, eliminate additional conditions that were identified as possessing minimal safety benefit but required excessive implementation investment, and insert directions for operators taking advantage of the exemption to notify CASA that they are doing so. The instrument’s

conditions and directions are designed to ensure that an acceptable level of safety is preserved. These changes produce not immaterial cost savings that may contribute to the preservation of employment.

**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**