

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX06/24 – Amendment of CASA EX66/21 (Flight Instructors and Part 141 Operators – Flight Training for Certain Solo Cross-country Flights) Instrument 2024

Purpose

The purpose of *CASA EX06/24 – Amendment of CASA EX66/21 (Flight Instructors and Part 141 Operators – Flight Training for Certain Solo Cross-country Flights) Instrument 2024* (the **instrument**) is to continue certain existing exemptions from obligations under the *Civil Aviation Safety Regulations 1998 (CASR)* that would otherwise apply to flight instructors and Part 141 operators when authorising a student helicopter pilot to conduct a solo cross-country flight for the first time.

The exemptions are required because the relevant provisions of CASR contain obsolete references to “dual instrument time” and “dual instrument flight time” requirements. Those concepts are no longer an aspect of the scheme in Part 61 of CASR, making it impossible for flight instructors and Part 141 operators to comply with the obligations created by the provisions.

An existing instrument that contains the exemptions will be repealed at the end of 31 January 2024.

As the exemptions are still required, the instrument continues their operation, on a temporary basis, until the CASR can be amended to address the anomaly. This is achieved by transferring the exemptions, in substantially the same terms, to another instrument that already contains a series of other exemptions, namely *CASA EX66/21 – Flight Crew Licensing (Miscellaneous Exemptions) Exemption 2021* (the **principal instrument**). The principal instrument will be repealed at the end of 31 May 2024.

Legislation

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

Subpart 11.F of CASR deals with exemptions

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

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

Under subregulation 11.160(3), an exemption may be granted on application by a person or on CASA’s own initiative. Under subregulation 11.175(4) of CASR, in deciding whether to renew an exemption, CASA must regard as paramount the preservation of at least an

acceptable level of aviation safety. CASA has regard to the same test when deciding whether to renew an exemption on its own initiative.

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

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

Part 61 of CASR deals with the licensing of aircraft flight crew.

Part 61 of CASR sets out flight crew licensing requirements. Regulation 61.1225 of CASR sets out the obligations of flight instructors in relation to approving a person to pilot an aircraft as a student pilot. Subregulation 61.1225(4) makes it an offence for a flight instructor to approve a person to conduct certain solo flights (including a cross-country flight) as a student pilot for the first time if the student has not completed the training specified by the authorising Part 141 or 142 operator for the conduct of a solo flight of that kind by a student pilot and been assessed by the operator as competent to conduct the flight.

Paragraph 61.1225(4)(c) imposes an additional obligation in relation to a cross-country flight, namely the flight instructor must also be satisfied that the student has completed at least 2 hours of dual instrument time, 1 hour of which is conducted during dual instrument flight time.

Part 141 of CASR deals with certain flight training

Part 141 of CASR deals with the conduct of recreational, private and commercial pilot flight training, other than certain integrated training courses. Part 141 operators are operators who are authorised under that Part to conduct particular kinds of flight training and checking.

Subregulation 141.305(1) of CASR provides that a Part 141 operator commits an offence if a student pilot who is undertaking authorised Part 141 flight training with the operator conducts a specified solo flight (including a cross-country flight) for the first time and the student pilot does not meet the requirements mentioned in subregulation 141.305(3). As far as is relevant, under paragraph 141.305(3)(c), one of the requirements, in relation to a solo cross-country flight, is that the student pilot must have completed at least 2 hours of dual instrument time, 1 hour of which is conducted during dual instrument flight time.

As far as is relevant, subregulation 141.305(6) makes it an offence for a Part 141 operator to allow the holder of a pilot licence who is receiving flight training from the operator for a recreational navigation endorsement to conduct a solo cross-country flight if the holder has not completed at least 2 hours of dual instrument time, 1 hour of which is conducted during dual instrument flight time.

Incorporation of a document by reference

Under subsection 14(1) of the *Legislation Act 2003* (the *LA*), a legislative instrument may make provision in relation to matters by applying, adopting, or incorporating provisions of an Act or disallowable legislative instrument as in force at a particular time or as in force from time to time.

Power to amend, modify or repeal another instrument

Under subsection 33(3) of the *Acts Interpretation Act 1901* (the *AIA*), where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations, or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument. Under subsection 13(1) of the LA, subsection 33(3) applies to legislative instruments as if each provision of the instrument were a section of an Act.

Background

Before 2018, applicants for private or commercial pilot licences with the helicopter category rating were required, under regulations 61.550 and 61.615 of CASR, to have completed a specified number of hours of dual instrument time, part of which was required to be dual instrument flight time in a helicopter. Similarly, applicants for recreational navigation endorsements were required, under regulations 61.495 and 61.500 of CASR, to have completed at least 2 hours of dual instrument time, at least 1 hour of which was to be conducted during dual instrument flight time.

Major changes were made to CASR in 2018, including to remove basic instrument flight training from the minimum requirements for the grant of certain pilot licences with a helicopter category rating or recreational navigation training endorsement, but only for non-integrated training courses: see *Civil Aviation Safety Amendment (Flight Crew Licensing Measures No. 1) Regulations 2018* (the **2018 amending regulations**).

After the commencement of the 2018 amending regulations, those dual instrument time requirements were no longer required of students. However, the relevant offence provisions in Parts 61 and 141 for flight instructors and Part 141 operators were not updated at the time.

The concepts of “dual instrument time” and “dual instrument flight time” are no longer an aspect of the scheme in Part 61, making it impossible for flight instructors and Part 141 operators to comply with the obligations created by the relevant provisions. This anomaly was previously dealt with by CASA granting exemptions from the obligations that contain the obsolete references: see *CASA EX20/21 – Flight Instructors and Part 141 Operators (Flight Training – Certain Solo Cross-country Flights) Exemption 2021* (the **current instrument**). Those exemptions will be repealed at the end of 31 January 2024.

Overview of instrument

The instrument renews the exemptions granted in the current instrument by transferring them to a new Part 17 of the principal instrument.

CASA is satisfied that the instrument has no negative impact on aviation safety. CASA assessed the impact on aviation safety of removing the dual instrument flight time requirements ahead of making the 2018 amending regulations. The exemptions contained in the instrument are mechanical in nature and arose because the consequential amendment of the relevant provisions was overlooked when the 2018 amending regulations were made.

In accordance with subsection 33(3) of the AIA, the instrument amends the principal instrument.

Document incorporated by reference

Under paragraph 15J(2)(c) of the LA, the Explanatory Statement must contain a description of any incorporated documents and indicate how they may be obtained.

The instrument incorporates the *Part 61 Manual of Standards* (the **Part 61 MOS**) by reference. The Part 61 MOS is a legislative instrument made under regulations 11.068 and 61.035 of CASR, which prescribes standards for the purpose of the Part 61 scheme. The term **Part 61 Manual of Standards** has the meaning given in the CASR Dictionary and has effect as amended from time to time in accordance with paragraph 10A(a) of the AIA and paragraph 13(1)(a) of the LA.

The Part 61 MOS is subordinate legislation and is freely available on the Federal Register of Legislation.

Content of instrument

Section 1 states the name of the instrument.

Section 2 provides that the instrument commences on 1 February 2024.

Section 3 is a technical provision that gives effect to the amendments to the principal instrument set out in Schedule 1.

Schedule 1 amends the principal instrument by inserting a new Part 17, which renews the exemptions granted in the current instrument and includes the following provisions.

Section 76 is about definitions. The section includes a definition of **endorsement** and a note that other terms and expressions in Part 17 have the same meaning as they have in the Act and CASR.

Section 77 grants exemptions relating to a student pilot receiving training, other than integrated training, for a private or commercial pilot licence with the helicopter category rating who has completed the training in relation to the competency standards mentioned in element *H6.4 – Land, take off and manoeuvre in a confined area* in section 4 of Schedule 2 of the Part 61 MOS.

The exemptions granted are as follows:

- paragraph 77(1)(a) exempts a flight instructor from compliance with paragraph 61.1225(4)(c), which requires a student to have completed the dual instrument time requirements stated in the paragraph before the instructor approves the student to conduct a solo cross-country flight in a helicopter as a student pilot for the first time;
- paragraph 77(1)(b) exempts a Part 141 operator from compliance with paragraph 141.305(3)(c), which requires a student pilot to have completed the dual instrument time requirements stated in the paragraph before conducting a solo cross-country flight in a helicopter for the first time as part of authorised Part 141 flight training with the operator.

Section 78 grants exemptions relating to a student who is receiving flight training for the grant of a recreational navigation endorsement for a recreational pilot licence with the helicopter category rating, conducted in a helicopter, and has completed the training in

relation to the competency standards mentioned in element *H6.4 – Land, take off and manoeuvre in a confined area* in section 4 of Schedule 2 of the Part 61 MOS.

The exemptions granted are as follows:

- paragraph 78(1)(a) exempts a flight instructor from compliance with paragraph 61.1225(4)(c), which requires a student to have completed the dual instrument time requirements stated in the paragraph before the instructor approves the student to conduct a solo cross-country flight as a student pilot for the first time;
- paragraph 78(1)(b) exempts a Part 141 operator from compliance with paragraph 141.305(3)(c), which requires a student pilot to have completed the dual instrument time requirements stated in the paragraph before conducting a solo cross-country flight for the first time as part of authorised Part 141 flight training with the operator;
- paragraph 78(1)(c) exempts a Part 141 operator from compliance with paragraph 141.305(6)(b), which requires the operator to ensure that the holder of a pilot licence has completed the dual instrument time requirements stated in the paragraph before conducting a solo cross-country flight for the first time as part of flight training received from the operator.

Legislation Act 2003

Paragraph 98(5A)(a) of the Act provides that CASA may issue instruments in relation to matters affecting the safe navigation and operation, or the maintenance, of aircraft.

Additionally, paragraph 98(5AA)(a) of the Act provides that an instrument issued under paragraph 98(5A)(a) is a legislative instrument if the instrument is expressed to apply in relation to a class of persons. The instrument exempts the specified class of persons from specified requirements of CASR. The instrument is, therefore, a legislative instrument.

Additionally, paragraph 10(1)(d) of the LA provides that an instrument will be a legislative instrument if it includes a provision that amends or repeals another legislative instrument. The instrument amends the principal instrument, which is a legislative instrument, and is therefore a legislative instrument.

The instrument is subject to registration on the Federal Register of Legislation and tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Sunsetting

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

In this case, the instrument amends the principal instrument and is almost immediately spent and repealed in accordance with the automatic repeal provisions in section 48A of the LA. The principal instrument will be repealed at the end of 31 May 2024: see paragraph 2(b) of the principal instrument.

This means that, in practice, no sunseting avoidance issues arise and there is no impact on parliamentary oversight.

Consultation

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.

The instrument deals with a minor unintended consequence of amendments to Part 61 of CASR made in 2018 that were the subject of extensive consultation, so as to ensure the legality of longstanding aviation practices that CASA did not intend to prohibit. The instrument is beneficial in nature.

Consultation under section 17 of the LA has not been undertaken in this case. The instrument is necessary to renew existing exemptions that address an anomaly, which would otherwise make flight instructors and Part 141 operators liable for offences under CASR that they are unable to avoid.

In these circumstances, CASA is satisfied that no consultation is appropriate or reasonably practicable for the instrument for section 17 of the LA.

Sector risk, economic and cost impact

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

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

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

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

As the instrument renews exemptions in an expiring instrument, there will be no change to the economic or cost impact on individuals, businesses or the community.

The economic and cost impact of the instrument has been determined by:

- (a) the identification of individuals and businesses affected by the instrument;
- (b) consideration of how the requirements to be imposed on individuals and businesses under the instrument will be different compared to existing requirements;
- (c) a valuation of the impact, in terms of direct costs on individuals and businesses affected by the instrument to comply with the different requirements. This valuation is consistent with the principles of best practice regulation of the Australian Government;
- (d) a valuation of the impact the different requirements 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; and

- (e) consideration of community impacts, beyond those direct impacts on individuals and businesses affected by the instrument, that are relevant if the instrument were to result in flow-on effects to other aviation businesses, or local non-aviation businesses that experience a change in their activity due to the instrument.

Impact on categories of operations

The instrument will have a beneficial effect in continuing to enable flight instructors and Part 141 operators to authorise student helicopter pilots to conduct solo cross-country flights for the first time without the legal uncertainty created by the obsolete terms used in the relevant offence provisions.

Impact on regional and remote communities

The amending instrument is not likely to have a specific impact on operators in regional or remote communities in Australia.

Office of Impact Analysis (OIA)

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

Statement of Compatibility with Human Rights

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

Making and commencement

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

The instrument commences on 1 February 2024 and is automatically repealed in accordance with section 48A of the LA.

Statement of Compatibility with Human Rights

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

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The 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 the legislative instrument is to continue certain existing exemptions from obligations under the *Civil Aviation Safety Regulations 1998 (CASR)* that would otherwise apply to flight instructors and Part 141 operators when authorising a student helicopter pilot to conduct a solo cross-country flight for the first time.

The exemptions are required because the relevant provisions, which create strict liability offences, contain obsolete references to “dual instrument time” and “dual instrument flight time”. Those concepts are no longer an aspect of the scheme in Part 61 of CASR, making it impossible for flight instructors and Part 141 operators to comply with the obligations created by the provisions.

The current instrument that contains the exemptions will be repealed at the end of 31 January 2024: see *CASA EX20/21 – Flight Instructors and Part 141 Operators (Flight Training – Certain Solo Cross-country Flights) Exemption 2021*.

As the exemptions are still required, the instrument renews the existing exemptions by transferring them, in substantially the same terms, to another instrument that contains a series of other exemptions, namely *CASA EX66/21 – Flight Crew Licensing (Miscellaneous Exemptions) Exemption 2021*. The other instrument will be repealed at the end of 31 May 2024.

Human rights implications

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

Conclusion

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

Civil Aviation Safety Authority