

## **Explanatory Statement**

### **Civil Aviation Safety Regulations 1998**

#### **CASA EX46/24 – Amendment of CASA EX82/21 – Instrument 2024 (No. 1)**

#### **CASA EX47/24 – Amendment of CASA EX86/21 – Instrument 2024 (No. 1)**

##### **Purpose**

The purpose of *CASA EX46/24 – Amendment of CASA EX82/21 – Instrument 2024 (No. 1)* is to amend *CASA EX82/21 – Part 119 of CASR – Supplementary Exemptions and Directions Instrument 2021 (CASA EX82/21)*.

CASA EX82/21 makes a number of exemptions and directions relating to Part 119 of the *Civil Aviation Safety Regulations 1998 (CASR)*. Part 119 of CASR is one of CASA's new Flight Operations Regulations (**FORs**) that commenced on 2 December 2021. It places obligations on operators conducting Australian air transport operations.

The purpose of *CASA EX47/24 – Amendment of CASA EX86/21 – Instrument 2024 (No. 1)* is to amend *CASA EX86/21 – Part 138 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021 (CASA EX86/21)*.

CASA EX86/21 makes a number of exemptions and directions relating to Part 138 of CASR. Part 138 of CASR is also one of CASA's new FORs. It makes provision for aerial work operators and aerial work operations.

Both Parts 119 and 138 require relevant operators to keep physical copies of all flight crew member (**FCM**) licences and medical certificates. This includes, in effect, an obligation to keep copies of licence documentation elements (such as ratings, endorsements, checks or reviews) that are not used by, or necessary for, the FCM in their operations for the operator. This inadvertent consequence of the regulations is unnecessarily onerous and costly for many operators.

Each of the exemption instruments exempts the relevant operators from this obligation, but conditional on them maintaining up-to-date records showing the currency of their FCM's relevant licences, ratings, endorsements, and medical certificates.

Because the 2 exemption amendment instruments deal with the same issue for different classes of operators, this single Explanatory Statement is for both instruments, consistent with the facility under subsection 15J(4) of the *Legislation Act 2003* (the **LA**).

##### **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 also 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.).

### **Background**

Under regulation 119.235 of CASR, an Australian air transport operator commits a strict liability offence if an FCM exercises a privilege of the person's flight crew licence for the operator, and the operator does not have a copy of the person's flight crew licence, and a copy of the person's medical certificate.

Additionally, under item 6 of the table in regulation 119.240, it is an offence for an Australian air transport operator to fail to keep a copy of an FCM's licence and medical certificate, as required by regulation 119.235, for the period during which the member is exercising the privileges of the licence for the operator.

Under regulation 138.180 of CASR, an aerial work operator commits a strict liability offence if an FCM exercises a privilege of the person's flight crew licence for the operator, and the operator does not have a copy of the person's flight crew licence, and a copy of the person's medical certificate.

The requirement to have physical copies of an FCM's flight crew licence and medical certificate is onerous and unnecessary. The same level of safety assurance is obtained by requiring relevant operators to maintain an up-to-date record showing the currency of each of the qualifications and medical certificates actually required under the civil aviation legislation for the FCM to operate the operator's particular aircraft, including any foreign registered aircraft.

There is no current requirement that the relevant operators keep copies of the licences, medical certificates, and related documentation of the flight crew of foreign registered aircraft. It is, however, common practice that copies of these documents are held by the

operators. A condition in each of the exemption amendment instruments requires the keeping of an up-to-date record showing the currency of each of the qualifications and medical certificates related to a flight crew of a foreign registered aircraft.

Details of each of the 2 exemption amendment instruments are set out in Appendix 1 and Appendix 2.

### **Aviation safety**

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

CASA is satisfied that, given the nature of the new exemptions and their conditions, an acceptable level of aviation safety will be preserved, and the safety of air navigation thereby maintained.

### **Legislation Act 2003**

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 amendment instruments are clearly 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 amendment instruments are generic in nature and apply to classes of persons. Each 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 each 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*).

Each 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.

Each 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 instruments are repealed at the end of 1 December 2024 by virtue of the terms of section 2 of the principal instruments (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.

There are otherwise no incorporations in the 2 exemption amendment instruments.

### **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.

Although a formal, public consultation has not been undertaken in relation to this instrument, there has nevertheless been informal consultation with the aviation industry in the form of industry feedback to CASA about the need for appropriate exemptions to address the issue.

### **Office of Impact Analysis (OIA)**

An Impact Analysis (*IA*) is not required because the instrument is covered by a standing agreement between CASA and the OIA under which an IA is not required for exemption or direction instruments (OIA id: OIA23-06252).

### **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 amendment instruments will relieve operators from requirements that might otherwise have involved compliance costs.

#### *Sector risks*

For aviation safety reasons, the exemption amendment instruments are specific to those operators who fall within their 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 instruments, 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 3 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The exemption amendment instruments are compatible with human rights and to the extent that they may engage or impinge on any of those rights, they either promote the rights, or impinge of the right in a restricted way that is reasonable, necessary and proportionate in the context of aviation safety.

#### **Making and commencement**

The exemption amendment instruments commence on the day after they are registered. The exemption amendment instruments have been made by a delegate of CASA relying on the power of delegation under subregulation 11.260(1) of CASR.

**Details of:****CASA EX46/24 – Amendment of CASA EX82/21 – Instrument 2024 (No. 1)**

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**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 instrument CASA EX82/21**

Under this section, Schedule 1 amends *CASA EX82/21 – Part 119 of CASR – Supplementary Exemptions and Directions Instrument 2021*.

**Schedule 1 Amendment****[1] After section 19**

This amendment inserts a new section 20 as follows:

**20 Flight crew licences, medical certificates, etc. — exemptions and conditions**

- (1) This subsection defines *operator* as meaning an Australian air transport operator, whether operating a registered aircraft or a foreign registered aircraft.
- (2) Under this subsection, the operator is exempted from the requirements of regulation 119.235, and an item in regulation 119.240 of CASR.
- (3) Under this subsection, each exemption is subject to the conditions mentioned in subsections (4), (5) and (6).
- (4) Under this subsection, for each FCM operating a registered aircraft, the operator must maintain an up-to-date record showing the currency of the following required under the civil aviation legislation for the FCM to operate the aircraft:
  - (a) the FCM's medical certificate;
  - (b) the FCM's flight crew licence;
  - (c) the FCM's flight crew ratings;
  - (d) the FCM's flight crew endorsements.

A Note explains that a reference to a flight crew licence includes a certificate of validation of an overseas flight crew licence. A reference to a medical certificate includes an overseas medical certificate of the holder of such a certificate of validation.

- (5) Under this subsection, for each FCM operating a foreign registered aircraft, the operator must maintain an up-to-date record showing the currency of the following, as applicable, that is required under the civil aviation legislation for the FCM to operate the aircraft:
  - (a) the FCM's overseas medical certificate;
  - (b) the FCM's overseas flight crew licence;
  - (c) the FCM's overseas flight crew ratings;
  - (d) the FCM's overseas endorsements;
  - (e) the FCM's certificate of validation and related overseas medical certificate.

- (6) Under this subsection, the operator must keep each FCM record mentioned in subsections (4) and (5), as applicable, for the period during which the FCM exercises the privileges of their flight crew licence for the operator.

A Note explains that the expressions *foreign registered aircraft* and *civil aviation legislation* are each defined in section 3 of the *Civil Aviation Act 1988*. Various other expressions used in the section are defined in Part 1, and in item 36 in Part 2, of the CASR Dictionary.

**Details of:****CASA EX47/24 – Amendment of CASA EX86/21 – Instrument 2024 (No. 1)**

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**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 instrument CASA EX86/21**

Under this section, Schedule 1 amends *CASA EX86/21 – Part 138 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021*.

**Schedule 1 Amendment****[1] After section 9B**

This amendment inserts a new section 9C as follows:

**9C Flight crew licences, medical certificates, etc. — exemptions and conditions**

- (1) Under this subsection, *operator* means an aerial work operator, whether operating a registered aircraft or a foreign registered aircraft.
- (2) Under this subsection, the operator is exempted from the requirements of regulation 138.180 of CASR.
- (3) Under this subsection, the exemption under this section is subject to the conditions mentioned in subsections (4), (5) and (6).
- (4) Under this subsection, for each FCM operating a registered aircraft, the operator must maintain an up-to-date record showing the currency of the following required under the civil aviation legislation for the FCM to operate the aircraft:
  - (a) the FCM's medical certificate;
  - (b) the FCM's flight crew licence;
  - (c) the FCM's flight crew ratings;
  - (d) the FCM's flight crew endorsements.

A Note explains that a reference to a flight crew licence includes a certificate of validation of an overseas flight crew licence. A reference to a medical certificate includes an overseas medical certificate of the holder of such a certificate of validation.

- (5) Under this subsection, for each FCM operating a foreign registered aircraft, the operator must maintain an up-to-date record showing the currency of the following, as applicable, that is required under the civil aviation legislation for the FCM to operate the aircraft:
  - (a) the FCM's overseas medical certificate;
  - (b) the FCM's overseas flight crew licence;
  - (c) the FCM's overseas flight crew ratings;
  - (d) the FCM's overseas endorsements;
  - (e) the FCM's certificate of validation and related overseas medical certificate.



- (6) Under this subsection, the operator must keep each FCM record mentioned in subsections (4) and (5), as applicable, for the period during which the FCM exercises the privileges of their flight crew licence for the operator.

A Note explains that the expressions *foreign registered aircraft* and *civil aviation legislation* are each defined in section 3 of the *Civil Aviation Act 1988*. Various other expressions used in the section are defined in Part 1, and in item 36 in Part 2, of the CASR Dictionary.

## Statement of Compatibility with Human Rights

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

### **CASA EX46/24 – Amendment of CASA EX82/21 – Instrument 2024 (No. 1)**

### **CASA EX47/24 – Amendment of CASA EX86/21 – Instrument 2024 (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 EX46/24 – Amendment of CASA EX82/21 – Instrument 2024 (No. 1)* is to amend *CASA EX82/21 – Part 119 of CASR – Supplementary Exemptions and Directions Instrument 2021 (CASA EX82/21)*.

CASA EX82/21 makes a number of exemptions and directions relating to Part 119 of the *Civil Aviation Safety Regulations 1998 (CASR)*. Part 119 of CASR is one of CASA's new Flight Operations Regulations (*FORs*) that commenced on 2 December 2021. It places obligations on operators conducting Australian air transport operations.

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Both Parts 119 and 138 require relevant operators to keep physical copies of all flight crew member (*FCM*) licences and medical certificates. This includes, in effect, an obligation to keep copies of licence documentation elements (such as ratings, endorsements, checks or reviews) that are not used by, or necessary for, the FCM in their operations for the operator. This inadvertent consequence of the regulations is unnecessarily onerous and costly for many operators.

Each of the exemption instruments exempts the relevant operators from this obligation, but conditional on them maintaining up-to-date records showing the currency of their FCM's relevant licences, ratings, endorsements, and medical certificates.

Because the 2 exemption amendment instruments deal with the same issue for different classes of operators, this single Explanatory Statement is for both instruments, consistent with the facility under subsection 15J(4) of the *Legislation Act 2003*.

### **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*
- the right to privacy under Article 17 of the *ICCPR*.

#### ***Right to life under the ICCPR***

#### ***Right to safe and healthy working conditions under the ICESCR***

#### ***Right to work under the ICESCR***

#### ***Right to privacy under the ICCPR***

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.

Each instrument exempts relevant operators from the existing obligation to keep "copies" of their FCM's flight crew licences and medical certificates, and replaces it with an exemption condition to maintain up-to-date "records" showing the currency of such of their FCMs' licences and medical certificates, including their related ratings and endorsements, as are required under the civil aviation legislation to authorise and permit their FCMs to carry out the operators' operations.

That the operators should know, and be obliged to know and record, that their FCMs are lawfully authorised to conduct operations is essential for aviation safety, and thereby to protect the right to life of all concerned, the right to safe and healthy working conditions for passengers and other flight crew, and the right to work of those FCMs who have conscientiously invested in obtaining and retaining current relevant qualifications and certificates underpinning aviation safety.

The need to maintain records of the currency of personnel engaged in highly skilled and potentially dangerous work is not exclusive to aviation and is considered best practice in many areas of professional and commercial endeavour.

Collection and recording of the information to be held by the relevant operators in the relevant records is a necessary safety element in Australian air transport operations, and for aerial work operators in aerial work operations. It falls under principle 3 of the Australian Privacy Principles, being solicited personal information reasonably necessary for the organisation's functions or activities.

It is not necessary for a relevant operator to collect or record sensitive information as defined in the *Privacy Act 1998*. Relevant medical certificates certify that a particular standard of medical clearance exists, commensurate with the requirements of the FCM's operational obligations. They do not disclose actual medical details.

**Human rights implications**

Each of the 2 legislative instruments is 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, the right to work, and the right to safe and healthy working conditions.

To the extent that the right to privacy may be engaged by each of the instruments, the engagement is essential for aviation safety and is considered to be limited, reasonable, necessary and proportionate in the interests of aviation safety.

**Conclusion**

This legislative instrument is compatible with human rights.

**Civil Aviation Safety Authority**