

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

### CASA EX76/24 – CAR Part 5 – Exemption Instrument 2024

#### Purpose

The purpose of *CASA EX76/24 – CAR Part 5 – Exemption Instrument 2024* (the **exemption instrument**) is to exempt applicants to CASA for commercial pilot (balloon) licences (**CP(B)L**) from requirements under regulation 5.138 of the *Civil Aviation Regulations 1988 (CAR)* that they must already hold a private pilot certificate (balloons) (**PPC(B)**) issued by the Australian Ballooning Federation (**ABF**).

The ABF previously administered recreational or private balloon activities and issued PPC(B), but ceased doing so on 2 December 2023 when CASA assumed the administration role.

In general terms, under the exemption instrument, the requirement to hold a PPC(B) has been replaced by a condition that requires CP(B)L applicants to hold a CASA relevant permit or, should the circumstance arise in the future, an authorisation issued by a body that would have, in effect, replaced the ABF (a Part 131 ASAO or approved self-administering aviation organisation). Consequential exemptions and conditions apply to applicants who hold overseas balloon pilot qualifications, and are seeking a CP(B)L.

#### Legislation

Under regulation 5.09 of CAR, CASA must, relevantly, issue a CP(B)L licence to an applicant if the applicant is (among other things) qualified to hold the licence.

Under subregulation 5.138(6) of CAR, a **private pilot certificate (balloons)** means a certificate that is issued by the ABF.

Under subregulation 5.138(1) of CAR, a person is qualified to hold a CP(B)L if the person:

- (a) is at least 18; and
- (b) holds a current **private pilot certificate (balloons)**; and
- (c) has held one of the following for at least one year:
  - (i) a **private pilot certificate (balloons)**;
  - (ii) a certificate or licence issued by the competent authority of a foreign country that is **at least equivalent to a private pilot certificate (balloons)**; and
- (d) has passed a commercial pilot (balloon) licence theory examination; and
- (e) has passed a commercial pilot (balloon) licence flight test; and
- (f) has completed a course of balloon flying training in accordance with regulation 5.146; and
- (g) has the aeronautical experience set out in regulation 5.145.

Under subregulation 5.138(2) of CAR, a person is qualified to hold a CP(B)L if:

- (a) the person:
  - (i) *holds, or has held [that is not current]*, an overseas balloon authorisation that is at least equivalent to the commercial pilot (balloon) licence; and
  - (ii) satisfies the requirements of subregulation (1), other than paragraph (f) (completing the training course); **OR**
- (b) the person:
  - (i) *holds a current* overseas balloon authorisation that is at least equivalent to the commercial pilot (balloon) licence; and
  - (ii) satisfies the requirements of subregulation (1), other than paragraphs (e) and (f) (doing the CP(B)L flight test and completing the training course).

Under subregulation 5.138(4) of CAR, a certificate or licence issued by the competent authority of a country other than Australia is equivalent to a private pilot certificate (balloons) if it authorises the holder of the certificate or licence to fly balloons as pilot in command in private operations.

### **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 CAR or 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.).

### **Background**

On 2 December 2023, the ABF ceased issuing the PPC(B), and other certificates and endorsements related to piloting activities during the private operation of balloons. On and from that date, CASA assumed the administration of recreational or private balloon activities.

Under *Civil Aviation Order 95.54 (Part 131 Recreational Activity and Specialised Balloon Operations) Instrument 2021*, which commenced on 2 December 2021, and under its amending successor instrument, *Civil Aviation Order 95.54 (Part 131 Recreational Activity and Specialised Balloon Operations) Instrument 2024 (CAO 95.54)*, which commenced on 12 November 2024, CASA preserved the validity of those ABF PPC(B) and related aviation certificates and endorsements that were still in force, and assumed the role of issuing new balloon permits and endorsements equivalent to those that the ABF had had responsibility for.

Under regulation 5.138 of CAR, to be eligible to hold a CP(B)L, an applicant must meet requirements about holding the ABF's PPC(B). Since that is no longer possible, it is necessary to exempt applicants from that requirement and impose safety conditions that have a similar effect, essentially substituting requirements in relation to holding a CASA ballooning permit under CAO 95.54 for the previous requirements in relation to holding an ABF PPC(B).

The technical details of how the exemption works are set out in Appendix 1.

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

The exemption 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.

The exemption instrument is repealed at the end of 11 November 2027 by virtue of the terms of section 2. Thus, in practice, no sunset 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 legislative instruments such as CAR, CASR, a Civil Aviation Order (*CAO*) or a Manual of Standards (*MOS*) are taken to be as they are in force from time to time, by virtue of paragraph 13(1)(c) of the LA. CAR, CASR, CAOs and MOSs are freely available online on the Federal Register of Legislation.

No relevant documents are incorporated into the exemption instrument.

### **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.

The need for the exemption, which is corrective in nature, was identified by CASA in a legislation review. No formal, public consultation has been undertaken and, in the circumstances, none has been considered necessary in relation to this exemption instrument.

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

An Impact Analysis (*IA*) is not required because the exemption instrument is covered by a standing agreement between CASA and the OIA under which an IA is not required for exemption or direction instruments (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 instrument make it possible for CASA to continue to issue CP(B)L to eligible applicants who would otherwise be prevented from obtaining the qualification and from operating on a commercial basis.

#### *Sector risks*

For aviation safety reasons, the exemption instrument is specific to balloons only and those operators and pilots 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.

### **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 indirectly promotes the right to life and the rights to work, and to safe and healthy working conditions for commercial ballooning, in a way that is reasonable, necessary and proportionate in the context of aviation safety.

### **Making and commencement**

The exemption instrument commences on 12 November 2024. The exemption instrument has been made by a delegate of CASA relying on the power of delegation under subregulation 11.260(1) of CASR.

**Details of:****CASA EX76/24 – CAR Part 5 – Exemption Instrument 2024**

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**1 Name**

This section names the instrument.

**2 Duration**

Under this section, the instrument:

- (a) commences on 12 November 2024; and
- (b) is repealed at the end of 11 November 2027.

**3 Definitions**

- (1) Under this subsection, key words and phrases are defined.
- (2) Under this subsection, a certificate or licence issued by the competent authority of a foreign country is at least equivalent to a relevant permit or a relevant authorisation if it authorises the holder of the certificate or licence to fly balloons as pilot in command in private operations.
- (3) Under this subsection, unless the contrary intention appears, words and phrases in this instrument have the same meaning as in or under Part 5 of CAR.

**4 Table of Contents**

Under this section, a Table of Contents may be added to the front of the compilation of this instrument but it is for reader guidance only and is not a formal part of this instrument.

**5 Application**

Under this section, each section of the instrument applies, according to its terms, to each person who is mentioned in the section.

**6 Exemptions — CP(B)L qualifications**

- (1) Under this subsection, this section applies to an applicant to hold a CP(B)L (the *applicant*).
- (2) Under this subsection, the applicant is exempted from compliance with the following provisions of CAR in relation to the requirements to be qualified to hold a CP(B)L:
  - (a) paragraph 5.138(1)(b) (this is about holding a current PPC(B));
  - (b) paragraph 5.138(1)(c) (this is about having held, for at least 1 year, a PPC(B) or an overseas equivalent);
  - (c) subparagraph 5.138(2)(a)(ii) (for overseas applicants who hold, or have held, an overseas balloon authorisation that is at least equivalent to the commercial pilot (balloon) licence — this is about holding a current PPC(B));
  - (d) subparagraph 5.138(2)(b)(ii) (for overseas applicants who hold an overseas balloon authorisation that is at least equivalent to the commercial pilot (balloon) licence — this is about holding a current PPC(B));

## **7 Exemptions – CP(B)L qualifications – conditions**

Under this section, the exemptions under section 6 are subject to the following conditions:

- (a) for paragraph 5.138(1)(b) — the applicant must hold a relevant permit (that is the CASA replacement for the ABF PPC(B), or a relevant authorisation (this would be an authorisation from a Part 131 of CASR approved self-administering aviation organisation (an ASAO) should one emerge in the future to replace the ABF);
- (b) for paragraph 5.138(1)(c) — the applicant must have held one of the following for at least one year:
  - (i) a relevant permit (as above);
  - (ii) a relevant authorisation (as above);
  - (ii) a certificate or licence issued by the competent authority of a foreign country that is at least equivalent to such a relevant permit or relevant authorisation; A Note states that for the meaning of this equivalence, see subsection 3(2);
- (c) for subparagraph 5.138(2)(a)(ii) — the applicant must satisfy the following:
  - (i) the requirements of subregulation 5.138(1), other than paragraphs 5.138(1)(b), (c) and (f);
  - (ii) the conditions mentioned in paragraphs (a) and (b) of this section as if they applied for this paragraph (c);
- (d) for subparagraph 5.138(2)(b)(ii) — the applicant must satisfy the following:
  - (i) the requirements of subregulation 5.138(1), other than paragraphs 5.138(1)(b), (c), (e) and (f);
  - (ii) the conditions mentioned in paragraphs (a) and (b) of this section as if they applied for this paragraph (d).

## Statement of Compatibility with Human Rights

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

### CASA EX76/24 – CAR Part 5 – Exemption Instrument 2024

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 EX76/24 – CAR Part 5 – Exemption Instrument 2024* (the **exemption instrument**) is to exempt applicants to CASA for commercial pilot (balloon) licences (**CP(B)L**) from requirements under regulation 5.138 of the *Civil Aviation Regulations 1988 (CAR)* that they must already hold a private pilot certificate (balloons) (**PPC(B)**) issued by the Australian Ballooning Federation (**ABF**).

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In general terms, under the exemption instrument, the requirement to hold a PPC(B) has been replaced by a condition that requires CP(B)L applicants to hold a CASA relevant permit or, should the circumstance arise in the future, an authorisation issued by a body that would have, in effect, replaced the ABF (a Part 131 ASAO or approved self-administering aviation organisation). Consequential exemptions and conditions apply to applicants who hold overseas balloon pilot qualifications, and are seeking a CP(B)L.

#### Background

On 2 December 2023, the ABF ceased issuing the PPC(B), and other certificates and endorsements related to piloting activities during the private operation of balloons. On and from that date, CASA assumed the administration of recreational or private balloon activities.

Under *Civil Aviation Order 95.54 (Part 131 Recreational Activity and Specialised Balloon Operations) Instrument 2021*, which commenced on 2 December 2021, and under its amending successor instrument, *Civil Aviation Order 95.54 (Part 131 Recreational Activity and Specialised Balloon Operations) Instrument 2024 (CAO 95.54)*, which commenced on 12 November 2024, CASA preserved the validity of the in force ABF PPC(B) and related aviation certificates and endorsements, and assumed the role of issuing new balloon permits and endorsements equivalent to those that the ABF had had responsibility for.

Under regulation 5.138 of CAR, to be eligible to hold a CP(B)L, an applicant must meet requirements about holding the ABF's PPC(B). Since that is no longer possible, it is necessary to exempt applicants from that requirement and impose safety conditions that have a similar effect, essentially substituting requirements in relation to holding a



CASA ballooning permit under CAO 95.54 for the previous requirements in relation to holding an ABF PPC(B).

### **Human rights**

The legislative instrument indirectly 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 work under Article 6 (1) of the of the International Covenant on Economic, Social and Cultural Rights (the *ICESCR*)
- the right to safe and healthy working conditions under Article 7, of the *ICESCR*).

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

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

#### ***Right to safe and healthy working conditions 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 the commercial and other operations of Part 131 aircraft.

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.

With its aviation safety focus in relation to training and the holding of appropriate pilot authorisations, the exemption instrument indirectly promotes the right to life and the right to safe and healthy working conditions for crew and ground staff in the context of aviation safety. The instrument also indirectly promotes the right to work because the exemption instrument makes it possible for CASA to continue to issue CP(B)L to eligible applicants who would otherwise be prevented from obtaining the qualification and from operating on a commercial basis.

### **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 the right to safe and healthy working conditions in commercial ballooning activities. 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**