

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX86/24 – Medical Certification (Private Pilot Licence Holders with Basic Class 2 Medical Certificate) (CASA EX49/24 – Repeal Date) Amendment Instrument 2024

Purpose

The purpose of *CASA EX86/24 – Medical Certification (Private Pilot Licence Holders with Basic Class 2 Medical Certificate) (CASA EX49/24 – Repeal Date) Amendment Instrument 2024* (the **instrument**) is to extend by a period of 3 months the duration of *CASA EX49/24 – Medical Certification (Private Pilot Licence Holders with Basic Class 2 Medical Certificate) Exemption 2024* (**CASA EX49/24**).

CASA EX49/24 would otherwise be repealed at the end of 30 November 2024.

CASA EX49/24 continues to be necessary to permit a person in a particular class of private pilot licence holders (a **relevant private pilot licence holder**) to exercise the privileges of their licence in single-pilot operations if related circumstances mentioned in the instrument exist and related conditions mentioned in the instrument are met. Those circumstances include that the Civil Aviation Safety Authority (**CASA**):

- (a) is satisfied that a relevant private pilot licence holder, instead of meeting the medical standard for a class 2 medical certificate in Part 67 of the *Civil Aviation Safety Regulations 1998* (**CASR**), meets the **medical standard basic class 2**; and
- (b) therefore, has issued to the relevant private pilot licence holder an Aviation Medical Certificate (Basic Class 2).

The Explanatory Statement for CASA EX49/24 describes the class of persons, standards, circumstances and conditions in more detail under the headings “Overview of instrument” and “Content of instrument”.

CASA is currently preparing an instrument that would modify and reissue CASA EX49/24. However, unexpected delays in preparing that instrument have prevented it from commencing before the repeal date of CASA EX49/24. CASA anticipates that extending CASA EX49/24 for 3 months will provide sufficient time to finalise that instrument, that it will commence before the extended repeal date of CASA EX49/24 (the end of 28 February 2025) and will repeal CASA EX49/24.

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 CASR.

CASR — Exemptions (Subpart 11.F)

Each provision mentioned in this section is a provision of CASR.

Subpart 11.F provides for the granting of exemptions from particular provisions of the regulations. Subregulation 11.160(1) provides that, for subsection 98(5A) of the Act, 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), in deciding whether to reissue 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 grant an exemption on its own initiative.

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

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

Under subsection 33(3) of the *Acts Interpretation Act 1901*, a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) includes a power exercisable in the like manner and subject to the like conditions to repeal, rescind, revoke, amend, or vary any such instrument. Under subsection 13(1) of the *Legislation Act 2003* (the *LA*), subsection 33(3) applies to legislative instruments as if each provision of the instrument was a section of an Act.

Part 61 of CASR

Each provision mentioned in this section is a provision of CASR.

Under subregulation 61.065(1), the holder of a flight crew licence commits an offence if:

- (a) the holder conducts an activity mentioned in Part 61 while:
 - (i) piloting a registered aircraft; or
 - (ii) acting as a flight engineer of a registered aircraft; or
 - (iii) acting as an examiner or instructor; and
- (b) the holder is not authorised under Part 61 to conduct the activity.

Under subregulation 61.410(1), the holder of a private pilot licence is authorised to exercise the privileges of the licence only if the holder also holds:

- (a) a current class 1 or 2 medical certificate; or
- (b) a medical exemption for the exercise of the privileges of the licence.

Background

On 31 May 2024, CASA made *CASA EX33/24 – Medical Certification (Private Pilot Licence Holders with Basic Class 2 Medical Certificate) (CASA EX69/21 – Repeal Date) Amendment Instrument 2024 (CASA EX33/24)*. CASA 33/24 was made to amend the duration of

CASA EX69/21 — Medical Certification (Private Pilot Licence Holders with Basic Class 2 Medical Certificate) Exemption 2021 (CASA EX69/21), pending the making of an instrument to modify the scope of application of the exemption.

CASA EX33/24 commenced at the time on 31 May 2024 at which it was registered and was automatically repealed in accordance with section 48A of the LA.

On 5 August 2024, CASA made CASA EX49/24 to overcome any doubt about the legal effectiveness of CASA EX33/24 as a renewal of CASA EX69/21.

CASA EX49/24 repealed and replaced CASA EX69/21 in substantially similar terms. CASA EX49/24 commenced on 7 August 2024 (the day after registration) and is expressed to be repealed at the end of 30 November 2024.

In the same way, CASA EX69/21 renewed *CASA EX65/18 — Private Pilot Licence Medical Certification (Basic Class 2 Medical Certificate) Exemption 2018 (CASA EX65/18)* in substantially similar terms.

In particular, CASA EX49/24 retains the exemption and the related conditions in CASA EX69/21. Like CASA EX69/21, CASA EX49/24 permits a private pilot licence holder of the same kind to exercise the privileges of their licence in single-pilot operations if related circumstances mentioned in the instrument exist and related conditions mentioned in the instrument are met.

The Explanatory Statement for CASA EX49/24 includes the following background information:

Feedback from private pilots in the aviation industry has identified that the aviation-specific medical standards are unnecessarily onerous and access to specialised aviation doctors that assess compliance against those standards is unnecessarily difficult and expensive.

CASA has determined that private pilots engaged in low risk flying activities, and carrying small numbers of passengers, should be permitted to exercise the privileges of their private pilot licence if they meet the AUSTROADS medical standard that applies to drivers of heavy vehicles, public passenger vehicles or vehicles carrying dangerous goods. CASA will issue pilots who meet that standard, on application and based on certification from a medical practitioner, an *Aviation Medical Certificate (Basic Class 2)*.

CASA has established a related Technical Working Group (**TWG**) and, in December 2020, tabled a discussion paper at a TWG meeting. Following the post-implementation review (**PIR**) of Part 67 of CASR, the TWG will be able to consider and assess the implementation and outcomes of the Aviation Medical Certificate (Basic Class 2).

CASA expected that the PIR of Part 67 of CASR would have incorporated the principles underlying the medical standard basic class 2 before the repeal of CASA EX65/18 on 30 June 2021. The PIR of Part 67 of CASR was deferred for

several reasons, including the impacts of the COVID-19 pandemic on the aviation sector. CASA made CASA EX69/21 to renew the provisions in CASA EX65/18.

CASA intends Part 67 of CASR to include provisions related to the medical standard basic class 2 and the Aviation Medical Certificate (Basic Class 2) and intends to make related consequential amendments of Part 61 of CASR. TWG meetings will review, develop and update the policy for Part 67 of CASR.

Overview of instrument

The instrument extends the duration of CASA EX49/24 until the end of 28 February 2025.

No other changes have been made to CASA EX49/24.

The exemption in CASA EX49/24 will continue to be in force, subject to its existing conditions.

CASA EX49/24 permits a relevant private pilot licence holder to exercise the privileges of their licence in single-pilot operations if related circumstances mentioned in the instrument exist and related conditions mentioned in the instrument are met.

During the period that CASA EX65/18, CASA EX69/21 and CASA EX49/24 have been in force, CASA has not identified any negative effects on aviation safety related to the operations covered by those instruments. On that basis, CASA has assessed that extending the duration of CASA EX49/24 and continuing to permit those operations would not have a negative effect on aviation safety.

Content of instrument

Section 1 names the instrument.

Section 2 states that the instrument commences at the time it is registered.

Section 3 states that Schedule 1 amends instrument CASA EX49/24.

Item [1] of Schedule 1 substitutes section 2 so that CASA EX49/24 is repealed at the end of 28 February 2025.

Legislation Act 2003

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. This instrument amends CASA EX49/24 that was registered as a legislative instrument. This instrument is, therefore, also a legislative instrument, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Sunsetting

As the instrument relates to aviation safety and is made under CASR, Part 4 of Chapter 3 of the LA (the sunset 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 CASA EX49/24 and is almost immediately spent and repealed in accordance with the automatic repeal provisions in section 48A of the LA. CASA EX49/24 will itself be repealed at the end of 28 February 2025 by the operation of section 2 of CASA EX49/24, as amended by the instrument. Therefore, in practice, no sunseting avoidance issues arise and there is no impact on parliamentary oversight.

Consultation

Consultation under section 17 of the LA has not been undertaken in this case. The instrument extends the operation of CASA EX49/24 for a period of 3 months. By extending the duration of CASA EX49/24, the instrument continues an existing arrangement that is beneficial to relevant private pilot licence holders.

Under those circumstances, CASA is satisfied that no further consultation is appropriate or reasonably practicable for this 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) 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.

The instrument extends the duration of, and makes no other changes to, CASA EX49/24. Therefore, there will be no apparent change in the economic or cost impact on individuals, businesses or the community.

Impact on categories of operations

By extending the duration of CASA EX49/24, the instrument continues an existing arrangement that is beneficial to relevant private pilot licence holders. Therefore, there will be no apparent impact on categories of operations.

Impact on regional and remote communities

The instrument extends the duration of, and makes no other changes to, CASA EX49/24. Therefore, there will be no apparent impact on regional and remote communities.

Office of Impact Analysis (OIA)

An Impact Analysis (*IA*) is not required in this case, as the exemption in CASA EX49/24 is covered by a standing agreement between CASA and OIA under which an IA is not required for exemptions (OIA reference number: OIA23-06252).

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*. The instrument does not engage any of the applicable rights or freedoms, and is compatible with human rights, as it does not raise any human rights issues.

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 at the time it is registered and will be automatically repealed in accordance with section 48A of the LA.

Attachment 1

Statement of Compatibility with Human Rights

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

CASA EX86/24 – Medical Certification (Private Pilot Licence Holders with Basic Class 2 Medical Certificate) (CASA EX49/24 – Repeal Date) Amendment 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 instrument extends the duration of *CASA EX49/24 – Medical Certification (Private Pilot Licence Holders with Basic Class 2 Medical Certificate) Exemption 2024 (CASA EX49/24)* by a period of 3 months.

Therefore, the instrument continues to permit a person in a particular class of private pilot licence holders (a **relevant private pilot licence holder**) to exercise the privileges of their licence in single-pilot operations if:

- (a) instead of meeting the medical standard for a class 2 medical certificate set out in Part 67 of the *Civil Aviation Safety Regulations 1998 (CASR)*, they meet the Austroads commercial vehicle driver medical standards that apply to drivers of heavy vehicles, public passenger vehicles or vehicles carrying dangerous goods (other than the requirement to meet those standards without glasses or a hearing aid) — defined in the instrument as the **medical standard basic class 2**; and
- (b) related circumstances mentioned in the instrument exist and related conditions mentioned in the instrument are met.

CASA EX49/24 is not intended to permit a relevant private pilot licence holder to exercise the privileges of their licence in a **multi-crew operation**, defined in regulation 61.010 of CASR as an operation that requires at least 2 pilots in:

- (a) a multi-crew aircraft; or
- (b) an aircraft that is equipped, and required by the *Civil Aviation Regulations 1988* or CASR, to be operated by a crew of at least 2 pilots.

Human rights implications

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

Conclusion

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

Civil Aviation Safety Authority