

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX69/24 – Part 121 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2024

Purpose

The purpose of *CASA EX69/24 – Part 121 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2024* (the **instrument**) is to reissue *CASA EX83/21 – Part 121 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021* (the **previous instrument**). The instrument continues to exempt the operators, and pilots in command, of aeroplanes conducting operations under Parts 91 and 121 of the *Civil Aviation Safety Regulations 1998 (CASR)* from certain provisions of the Parts. The exemptions are subject to stated conditions. Also, the instrument continues to issue directions to the operators and pilots in command.

The few changes that have been made to the previous instrument are to include separate commencement and repeal sections instead of a duration section, save the operation of certain approvals under certain repealed instruments, delete obsolete provisions and make a small number of minor amendments and corrections.

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 11.175(4) of CASR, in deciding whether to renew an exemption, on application by a person, CASA must regard as paramount the preservation of at least an acceptable level of aviation 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.

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 (within a maximum penalty of 50 penalty units) 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.

Under subregulation 11.230(1), an exemption may remain in force for 3 years or for a shorter period specified in the instrument.

Legislation — approvals

Under paragraph 12(3)(b) of the instrument, it is a condition to the exemption in subsection 12(2) that the operator must hold an approval from CASA that the operator's training and checking program adequately covers all of the matters mentioned in paragraphs 121.475(2)(h) to (m) of CASR. Subsection 12(3A) provides that the approval is to be equivalent to an approval under regulation 121.010 of CASR and as if regulation 121.010 applied.

Under subsection 14H(3) of the instrument, it is a condition to the exemption in subsection (2) that an operator must hold an approval from CASA for cabin crew members of the operator to be assigned to duty on no more than 4 aeroplane types operated by the operator. Subsection 14H(4) provides that the approval is to be equivalent to an approval under regulation 121.010 of CASR and as if regulation 121.010 applied.

Under paragraph 28(3)(d) of the instrument, an operator must not change any of the *operator pairing procedures and requirements* mentioned in section 28 without CASA's written approval. Those procedures and requirements are defined in section 3 and are otherwise incorporated into the document as they existed (in an operations manual or training and checking manual) immediately before 2 December 2021.

Under regulation 11.015 of CASR, approvals of these types are authorisations under Part 11 of CASR, with Subpart 11.BA of CASR applying to the authorisation.

Regulation 11.055 sets out criteria that apply to CASA when granting an authorisation. Regulation 11.056 provides that an authorisation may be granted subject to any condition that CASA is satisfied is necessary in the interests of the safety of air navigation. Under regulation 11.077, a person commits an offence of strict liability (with a maximum penalty of 50 penalty units) if the person breaches a condition of an authorisation.

Legislation — directions

Under paragraph 11.245(1)(a) of CASR, for subsection 98(5A) of the Act, CASA may, by instrument, issue a direction about 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 in the interests of safety, only if the direction is not inconsistent with the Act, and only for the purposes of CASA's functions.

Under regulation 11.250, 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 of strict liability (with a maximum penalty of 50 penalty units) to contravene a direction under regulation 11.245 that is applicable to the person.

Legislation — Documents incorporated 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. A legislative instrument may also make provision in relation to matters by applying, adopting or incorporating any matter contained in any other instrument or writing as in force at, or before, the time the legislative instrument commences. Under subsection 14(2) of the *LA*, unless the contrary intention appears, the legislative instrument

may not make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time. However, subsection 98(5D) of the Act states that, despite section 14 of the LA, a legislative instrument made under the Act or the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time, even if the other instrument or writing does not yet exist when the legislative instrument is made.

Background

Part 121 of CASR applies to larger aeroplanes used in Australian air transport operations. Part 121 works with Part 91 of CASR to provide a comprehensive code of safety rules for air transport operations using larger aeroplanes.

Part 121 is a part of the suite of CASA's flight operations regulations (the *FOR*). The FOR includes Parts 91, 119, 121, 133, 135 and 138 of CASR, each of which commenced on 2 December 2021.

Post-implementation of the FOR, it was discovered that there were several technical errors and omissions in Part 121 which gave rise to unintended obligations. These will be rectified in the next set of amendments to the Part but, in the meantime, until those amendments are made, it is necessary to use exemptions to provide relief from having to comply with certain requirements, and directions to ensure safety compliance.

The exemptions and directions in the instrument variously require operator oversight of the actions of operator personnel and otherwise are intended to maintain current regulatory requirements where the regulations inappropriately failed to reflect requirements of the previous regulations which the FOR replaced. In other cases, exemptions are provided where relief from a requirement is considered appropriate, to facilitate implementation of certain FOR requirements, and to permit, for private operations, compliance with Part 121 requirements instead of Part 91 requirements.

The instrument will facilitate the operation of Part 121 in accordance with CASA's transition policies for the FOR.

Overview of instrument

The instrument ameliorates unintended consequences arising from grammatical errors or omissions in the drafting of Parts 91 and 121 by either:

- granting regulated entities exemptions from compliance with certain requirements that were not intended to apply to them, either at all, or in the manner expressed in the legislation; or
- requiring regulated entities to perform certain activities, which are necessary to ensure aviation safety, but not prescribed in the legislation.

Where an exemption is granted in the instrument, CASA is satisfied that the granting of the exemption will preserve a level of aviation safety which is at least acceptable. In imposing any conditions on the exemptions, CASA is satisfied this is necessary in the interests of the safety of air navigation.

Where a direction is issued in the instrument, CASA is satisfied that the issuing of the direction is necessary in the interests of the safety of air navigation.

Documents incorporated by reference

The instrument is made under the exemption power in regulation 11.160 of CASR and the directions power in regulation 11.245 of CASR, and provisions in the instrument make reference to provisions in other parts of the same legislative framework which are freely available on the Federal Register of Legislation, for example:

- regulation 215 of the *Civil Aviation Regulations 1988 (CAR)*, as it was in force immediately before 2 December 2021 (at which time it was repealed by the *Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021*)
- regulations in Parts 121 and 91 of CASR, as in force from time to time.

In accordance with paragraph 15J(2)(c) of the LA and subsection 98(5D) of the Act, the instrument also applies, adopts or incorporates matters contained in the following documents:

- *Part 121 (Australian Air Transport Operations—Larger Aeroplanes) Manual of Standards 2020* (the ***Part 121 Manual of Standards***)
- Annex 14 to the Chicago Convention – Aerodromes
- aircraft flight manual instructions
- expositions
- operations manuals
- training and checking manuals
- *Civil Aviation Order 82.1 (CAO 82.1)*
- *Civil Aviation Order 82.3 (CAO 82.3)*
- *Civil Aviation Order 82.5 (CAO 82.5)*.

Part 121 Manual of Standards

The Part 121 Manual of Standards sets out the standards for the operational, procedural and safety risk management standards for the conduct of Australian air transport operations in larger aeroplanes. A number of provisions in the instrument incorporate Divisions 3 and 5 of Chapter 12 of the Manual of Standards. Chapter 12 prescribes the requirements for flight crew training and checking. Division 3 provides for conversion training requirements for flight crew. Division 5 provides for proficiency checks for flight crew in relation to kinds of aeroplanes.

The Part 121 Manual of Standards is incorporated as in force from time to time. It is a legislative instrument and freely available on the Federal Register of Legislation.

Annex 14 to the Chicago Convention — Aerodromes

Annex 14 contains globally-recognised aerodrome standards. Section 9 of the instrument incorporates standards contained in Annex 14 in relation to approach slope indicator systems. Annex 14 is incorporated as in force from time to time. It is publicly available but subject to copyright that belongs to the International Civil Aviation Organization (***ICAO***). It is made available by ICAO for a fee <<https://store.icao.int/>>.

This cost is not considered to be unreasonably onerous for operators to whom the document is most relevant, but does involve a modest impost for some others, although academic and other researchers may obtain free access through university library subscriptions.

CASA has no effective control over these costs and it is considered extremely unlikely that the relevant owner of the intellectual property in the documents would sell CASA the

copyright at a price that would be an effective and efficient use of CASA's appropriated funds, or would otherwise permit CASA to make the document freely available.

CASA has incorporated the document in the instrument because no other similar documents that serve the same aviation safety purpose are freely available.

CASA has noted the views of the Senate Standing Committee on Regulations and Ordinances (in its report *Parliamentary scrutiny of delegated legislation*, tabled out of session on 3 June 2019) that:

The incorporation of material by reference (particularly where that material is not publicly available) has been a longstanding concern for the committee. [para 3.65]

and:

The committee appreciates that it may in some cases be costly to provide free, public access to all incorporated Australian and international standards. Nevertheless, the committee reiterates that one of its core functions is to ensure that all persons subject to or interested in the law may readily and freely access its terms. It intends to continue to monitor this issue. Any justification for a failure to provide for public access to incorporated documents, and any action the committee takes in relation to this matter, will be determined on a case-by-case basis. [para 3.75]

CASA appreciates the Committee's concern, and to mitigate the situation as far as currently practicable proposes that where an incorporated document is copyright and not otherwise freely available to the general public, but is available to CASA as a licenced subscriber, CASA will, by prior arrangement, make CASA's copy available, for in-situ viewing, free of charge, at any office of CASA.

Aircraft flight manual instructions

Aircraft flight manual instructions is defined in the CASR Dictionary to comprise the flight manual, checklists of normal, abnormal and emergency procedures for the aircraft and any operating limitation, instructions, markings and placards relating to the aircraft. The instructions comprise information required to safely operate the specific aircraft.

The aircraft flight manual instructions are incorporated by section 25 of the instrument, as they exist from time to time. These documents are publicly available but not for free. The aircraft flight manual instructions for an aircraft are proprietary of the owner of the aircraft design (usually the manufacturer). The incorporated requirements are at the aircraft-specific level, and instructions are required to be provided to owners of aircraft. Where available, and by prior arrangement, CASA will make aircraft flight manual instructions available for inspection at any CASA office.

Exposition

An exposition is a document, or suite of documents, that specifies the scope of the operations and activities conducted by the operator and sets out the plans, processes, procedures,

programs and systems implemented by the operator to comply with the civil aviation legislation.

Several provisions in the instrument incorporate matters contained in an exposition. The matters are incorporated as existing from time to time by virtue of subsection 98(5D) of the Act, and in accordance with the definition of *exposition* in the CASR Dictionary.

The matters incorporated include:

- a survey program and a methodology concerning the distribution of weight on an aircraft under subparagraphs 11(3)(b)(ii) and (c)(ii)
- a training and checking system, under paragraphs 12(3)(a) and (5)(b) of the instrument. A training and checking system must meet the requirements in regulation 119.170 of CASR and is detailed in the exposition by virtue of paragraph 119.205(1)(h) of CASR
- requirements about training for ground support duties, under section 14C of the instrument
- requirements in section 14D about complying with exposition requirements specified for additional persons entering a cockpit solely for a purpose relating to aviation safety
- any other requirements stated in an exposition that are applicable under the provisions in Part 3 of the instrument.

An exposition is the proprietary intellectual and commercial property of the operator and applies only to the operator and its personnel. However, the operator is under obligations to make the exposition available to its personnel who have obligations under the document.

Operations manuals and training and checking manuals (or T&C manuals)

Operations manual

An operations manual is a document principally setting out the practices, processes and procedures to be followed by the operator and all relevant personnel to comply with applicable aviation safety requirements. The operations manual is required to have complied with regulation 215 of CAR as it was in force immediately before 2 December 2021. Operations manuals are now replaced with an operator's "exposition" under the FOR.

The definition of *operations manual* in section 3 of the instrument, and section 28, incorporate the matters described as *operator pairing procedures or requirements*, also defined in section 3, as those matters were documented in the operations manual immediately before 2 December 2021.

An *operations manual* is defined to be an operations manual that complies with regulation 215 of CAR as in force immediately before 2 December 2021. The provision is, therefore, incorporated as such for the purposes of the definition.

Training and checking manual (or T&C manual)

This is defined in section 3 of the instrument as an operator's training and checking manual that meets the requirements of certain provisions in Civil Aviation Order 82.1, 82.3 or 82.5, as those provisions were in force immediately before 2 December 2021.

As above for operations manuals, section 28 incorporates the matters described as operator pairing procedures or requirements, as those matters were documented in the T&C manual immediately before 2 December 2021.

Also, for the purposes of the definition of *T&C manual* in section 3, subsection 4 of Appendix 2 of each of CAO 82.1, CAO 82.3 and CAO 82.5, as in force immediately before 2 December 2021, are incorporated.

These documents are legislative instruments and freely available on the Federal Register of Legislation.

The relevant provisions in the Civil Aviation Orders set out requirements to be met for training and checking manuals. These manuals have now been replaced by the training and checking system under the FOR.

Availability

An operations manual, or a T&C manual, is the proprietary intellectual and commercial property of a specific operator and applies only to the operator and its personnel. Paragraph 28(3)(a) of the instrument requires the operator to include the matters from the operations manual or T&C manual in the operator's exposition. Under regulation 119.215 of CASR, the operator is under obligations to make the incorporated matters available to its personnel who have obligations under the document.

Content of instrument

Part 1 — Preliminary, Definitions and Application

Section 1 — Name provides the name of the instrument.

Section 1A — Commencement provides that the instrument commences on 2 December 2024.

Section 2 — Repeal provides that the instrument repeals at the end of 1 December 2027.

Section 3 — Definitions provides definitions for the instrument.

Section 3A — Table of Contents provides that the table of contents is not part of the instrument and is published for guidance only.

Section 4 — Application provides that the instrument applies according to its terms.

Part 2 — Exemptions from Part 121

Section 5 — Application of Part 121 – Australian air transport operations in foreign countries – exemption

This section applies to a “Part 121 operation” which is defined in the instrument to exclude a “Subpart 121.Z operation”.

A “Part 121 operation” is the operation of a *multi-engine* aeroplane for an Australian air transport operation if either or both of the following apply in relation to the aeroplane: (a) it has a maximum operational passenger seat configuration of more than 9; (b) it has a maximum take-off weight of more than 8 618 kg.

A “Subpart 121.Z operation” is the operation of a *single-engine* aeroplane for an Australian air transport operation if both of the following apply in relation to the aeroplane: (a) it has a maximum operational passenger seat configuration of more than 9; (b) it has a maximum take-off weight of *not* more than 8 618 kg.

For operations in a foreign country, this section exempts the operator and the pilot in command from complying with a provision of Part 121 to the extent that the provision is inconsistent with a law of the foreign country. The law of the foreign country prevails to the extent it is inconsistent with a provision of Part 121. There is no inconsistency, however, if the provision of Part 121 and the law of the foreign country can operate concurrently.

Section 7 — Journey log – recording time flight begins – exemption

This section applies to a “Part 121 operation” which is defined in the instrument to exclude a “Subpart 121.Z operation”.

This section exempts the operator and pilot in command from complying with the requirement of subregulation 121.105(2), to record in the journey log, at the time the flight begins, the actual time the flight begins as specifically required under subparagraph 121.105(3)(d)(ii). The exemption is subject to the condition that the actual time the flight begins must be recorded in the journey log, or another document kept by, or readily available to, the operator, not later than as soon as reasonably practicable after the flight ends.

Section 8 — Journey log – recording flight information – exemption

This section applies to a “Part 121 operation” which is defined in the instrument to exclude a “Subpart 121.Z operation”.

This section exempts the operator and pilot in command from complying with the requirements of subregulation 121.105(4), to record in the journey log, as soon as practicable after the flight ends, the place of arrival and incidents and observations (if any) relevant to the flight as specifically required under paragraphs 121.105(5)(a) and (e). The exemption is subject to the condition that these entries must be recorded in the journey log, or another document kept by, or readily available to, the operator, not later than as soon as reasonably practicable after the flight ends.

Section 9 — Aerodrome requirements – approach slope indicator systems – exemption

This section applies to a “Part 121 operation” which is defined in the instrument to exclude a “Subpart 121.Z operation”.

This section exempts the operator and the pilot in command from complying with the approved visual approach indication system requirements mentioned in subregulation 121.205(4). This subregulation indicates that the system must meet the prescribed standards under Part 139 of CASR. This would not be the case at a foreign

aerodrome. It is a condition of the exemption that the runway at the foreign aerodrome must be equipped with analogous equipment, namely, a T-VASIS, AT-VASIS or PAPI visual approach indicator system that meets the relevant standards in Annex 14 to the Chicago Convention, as in force from time to time.

Section 10 — Procedures for information about aerodromes – water aerodromes – exemption

This section applies to a “Part 121 operation” which is defined in the instrument to exclude a “Subpart 121.Z operation”.

This section exempts the operator from compliance with paragraph 121.210(1)(a) (about exposition content), but only to the extent that the operator’s exposition must contain information for the location of the aerodrome’s windsocks, as mentioned in paragraph 121.210(2)(e). Water aerodromes may not have a windsock. It is a condition of the exemption that the operator’s exposition must contain procedures by which flight crew can determine wind conditions at a water aerodrome.

Section 11 — Procedures for loading aeroplanes – weight of crew, passengers and their baggage – exemption

This section applies to a “Part 121 operation” which is defined in the instrument to exclude a “Subpart 121.Z operation”.

This section exempts the operator from compliance with the requirements of subregulation 121.440(2), about procedures to determine the weight of crew members, passengers, and carry-on baggage for a flight. The subregulation provides 3 options for the operator in this regard. The exemption provides a 4th option, specifically the use of standard weights derived from a regular survey program established by the operator and detailed in the operator’s exposition. If the weight of a crew member, passenger or carry-on baggage is demonstrably greater than the standard weight, the operator must use an applicable weight that is more representative of the actual weight, derived from a methodology detailed in the operator’s exposition.

Section 12 — Flight crew composition, number, qualifications and training – exemption

This section applies to a “Part 121 operation” which is defined in the instrument to exclude a “Subpart 121.Z operation”.

Subsection 12(2) provides an exemption for operators against subregulations 121.475(1) and (5) in relation to the requirements mentioned in paragraphs 121.475(2)(h) to (m), inclusive. These provisions relate to flight crew member experience and training. The exemption is conditional on a flight crew member successfully participating in the operator’s training and checking system, and the operator holding a CASA approval that the training and checking system adequately addresses all of the matters mentioned in the exempted paragraphs.

Subsections 12(3) and (3A) provide that the operator must hold an approval to use the exemptions and that the approval must be equivalent to an approval under regulation 121.010 as if that regulation applied. The intent of this provision is that an equivalent safety test will be applied to this approval as to other approvals under Part 121 for the purposes of regulation 121.010. In accordance with regulation 201.004 of CASR, a decision by CASA to refuse to

approve that the training and checking system adequately covers all of the matter mentioned in paragraphs 121.475(2)(h) to (m), as required by paragraph 12(3)(b), is subject to merits review by the Administrative Review Tribunal.

Part 6 of this instrument saves the effect of approvals granted under the equivalent section within the previous instrument. Part 6 also enables applications for approval under the previous instrument to be treated as applications for approvals under this instrument.

Subsection 12(4) provides an exemption for operators against subregulations 121.475(1) and (5) in relation to paragraph 121.475(2)(f) to the effect that a reference in the paragraph to regulation 121.490 should instead be considered a reference to regulation 121.505. A condition of the exemption is that, in relation to regulations 121.500 and 121.505, each copilot and cruise co-pilot, when performing supervised line flying, must do so in accordance with the operator's training and checking system.

Section 13 — Requirements for valid proficiency check – exemption

This section applies to a “Part 121 operation” which is defined in the instrument to exclude a “Subpart 121.Z operation”.

This section provides operators with a technical exemption against the requirements of subregulations 121.475(1) and (5) in relation to the validity period of a proficiency check mentioned in subparagraph 121.575(1)(b)(iii) that is designed to ensure that the subparagraph works as intended. The exemption clarifies that if a Part 121 proficiency check mentioned in subparagraph 121.575(1)(b)(iii) is completed within 30 days before or after the end of the 12-month period beginning on the day the most recent of the previous checks was successfully completed, the day that is the end of the 12-month period remains the applicable day for subparagraph 121.575(1)(b)(iii).

Section 13A — Approval to conduct training or checking for safety equipment or emergency equipment – exemption from requirement

Subregulations 121.475(4) and 121.640(3) of CASR require certain safety equipment and emergency equipment training and checking events to be conducted by a person who holds an approval granted by CASA under regulation 121.010 of CASR (a **121.010 approval**).

However, under these subregulations, when a person is being assessed by CASA whether they are competent to hold the 121.010 approval, this competency determination would be best conducted during an actual training and checking event. However, at the time of conducting the event the person does not yet hold the 121.010 approval and, therefore, the event could not be valid for the crew members, subject to the event.

Without legislative adjustment, the operator would need to run a training and checking event for the person to be determined as competent and be granted the 121.010 approval, and then another training and checking event once the person held the approval to ensure the event's validity for the persons under check. This is unnecessarily costly and repetitive for operators.

This section exempts operators from the requirement for a person, under check by CASA to determine their competency to conduct these training and checking events, to hold a 121.010

approval for the event to be valid for the crew members under check, provided that the person is granted the approval by CASA after the event and other conditions are met.

Section 14 — Cabin crew – recent experience requirements – exemption

This section applies to a “Part 121 operation” which is defined in the instrument to exclude a “Subpart 121.Z operation”.

This section provides operators with an exemption against the requirements of paragraph 121.640(2)(a) and subregulation 121.640(5) in relation to the cabin crew requirements mentioned in regulation 121.705. The purpose of the exemption is to recognise that a cabin crew member can perform duties under supervision during a first flight on a new type of aeroplane, without having the prescribed prior experience on that type of aeroplane.

Section 14A — Ground support personnel – not direct employees – exemption

This section applies to the operator of an aeroplane for a flight that is a Part 121 operation. It exempts the operator from compliance with training and competency assessment requirements for ground support personnel who are not its direct employees because they may be someone else’s employees. The exemption is subject to the condition that the operator must be satisfied (on a reasonable basis) that the relevant person is capable of carrying out, and willing to carry out, the ground support duty in a manner that maintains aviation safety. Alternatively, the exemption applies subject to the condition that the person is supervised by the operator’s qualified direct employee.

Section 14B — Ground support personnel duty statement – not direct employees – exemption

This section is consequential on section 14A by relieving the operator from the obligation to have non-employed ground personnel duty statements.

Section 14C — Ground support personnel – direct employees – exemption

This section is designed to permit a direct employee to be ground support personnel while undergoing training, provided they are supervised by qualified personnel.

Section 14D — Additional persons permitted to enter the cockpit – exemption

This section permits certain specified persons to be additional admittees to the cockpit of a Part 121 aeroplane, but only if the operator’s exposition specifies how the person’s entry is solely related to aviation safety.

Section 14DA — Part 121 proficiency checks – approval to conduct – exemption

This section accomplishes a similar purpose to section 13, but for a different kind of crew member check.

Subregulations 121.580(2) and (5) of CASR require Part 121 proficiency checks to be conducted by a flight examiner or a person who holds an approval granted by CASA under regulation 121.010 of CASR.

However, under these subregulations, when a person is being assessed by CASA whether they are competent to hold the 121.010 approval, this competency determination would be best conducted during an actual training and checking event. However, at the time of conducting the event the person does not yet hold the 121.010 approval and, therefore, the event could not be valid for the crew members, subject to the event.

Without legislative adjustment, the operator would need to run a training and checking event for the person to be determined as competent and be granted the 121.010 approval, and then another training and checking event once the person held the approval to ensure the event's validity for the persons under check. This is unnecessarily costly and repetitive for operators.

This section exempts operators from the requirement for a person under check by CASA to determine their competency to conduct these training and checking events to hold a 121.010 approval for the event to be valid for the crew members under check, provided that the person is granted the approval by CASA after the event and other conditions.

Section 14E — Part 121 proficiency checks – foreign conductors of – exemption

This section exempts the operator of an aeroplane for a flight that is a Part 121 operation from compliance with Part 121 proficiency checks under a number of relevant provisions of Part 121, but only to the extent of who may conduct the check. The condition is that the Part 121 proficiency check for which the operator takes the benefit of the exemption must be conducted by a person who is *employed by a training provider* who is authorised by the national aviation authority *of a recognised foreign State* to conduct a check that is equivalent to the proficiency check; and authorised by that national aviation authority to conduct the equivalent check. Additional conditions also apply that are intended to ensure an equivalent level of safety to the exempted Part 121 provisions.

Section 14F — Conversion training – foreign conductors of – exemption

This section has the same effect as section 14E except in relation to conversion training rather than Part 121 proficiency checks.

Section 14G — Relief of pilot in command – exemption

This section exempts the operator and the pilot in command from compliance with provisions of CASR that, for flight above flight level 200, restrict, on the basis of required qualifications and experience, the persons to whom the pilot in command may delegate the conduct of the flight. This relief is permissible only in circumstances where exemptions under sections 28 and 29 of CASA EX69/24 are being used and complied with concerning the pairing of appropriately qualified pilots for flight.

Section 14H — Cabin crew approvals for duty on aeroplane types – exemption

This section exempts the operator of an aeroplane for a flight that is a Part 121 operation from provisions that would otherwise require individual cabin crew members to hold approvals to be assigned to duty on no more than 4 aeroplane types. The exemption is subject to the condition that *the operator* must hold a CASA approval for the cabin crew members to be so assigned.

In accordance with regulation 201.004, a decision by CASA to refuse to approve cabin crew members as required by subsection 14H(3) of the instrument is subject to merits review by the Administrative Review Tribunal.

Part 3 — Exemptions from Part 91 and related directions

Section 15 — Use of Part 121 flight-related documents instead of Part 91 flight-related documents – exemption and direction

This section provides for exemptions against the requirements of Division 91.C.3 (Flight related documents) when an Australian air transport operator conducts a private operation using an aeroplane referred to in subregulation 121.005(1) and included in the operator's operations specifications, provided the requirements of Division 121.C.3 are complied with and the operator's exposition provides for this instead.

The term *private operation* is defined in the CASR Dictionary to include operations which are not conducted under an AOC, Part 138 certificate or Part 141 certificate, and are not other specified operations.

Directions require appropriate exposition content and that the pilot in command comply with any relevant requirements.

Section 16 — Application of Part 121 flight preparation (Part 121 alternate aerodromes) requirements instead of Part 91 flight preparation (alternate aerodromes) requirements – exemption and direction

This section provides for exemptions against the requirements of regulation 91.235 (Flight preparation (alternate aerodromes) requirements) when an Australian air transport operator conducts a private operation using an aeroplane referred to in subregulation 121.005(1) and included in the operator's operations specifications. The requirements of regulation 121.170, in relation to flight preparation and alternate aerodromes, must be complied with and the operator's exposition must provide for this instead.

Directions require appropriate exposition content and that the pilot in command comply with any relevant requirements.

Section 17 — Application of Part 121 fuel requirements instead of Part 91 fuel requirements – exemption and direction

This section provides for exemptions against the requirements of regulation 91.455 (Fuel requirements) when an Australian air transport operator conducts a private operation using an aeroplane referred to in subregulation 121.005(1) and included in the operator's operations specifications.

The fuel requirements under regulation 121.235 must be complied with instead.

Directions require appropriate exposition content and that the pilot in command comply with any relevant requirements.

Section 18 — Application of Part 121 fuelling requirements instead of Part 91 fuelling requirements – exemption and direction

This section provides for exemptions against the requirements of regulation 91.510 (Fuelling requirements) when an Australian air transport operator conducts a private operation using an aeroplane referred to in subregulation 121.005(1) and included in the operator's operations specifications.

The fuelling requirements under regulation 121.240 must be complied with instead.

Directions require appropriate exposition content and that the pilot in command comply with any relevant requirements.

Section 19 — Application of Part 121 passenger safety briefings, instructions and demonstrations requirements instead of Part 91 safety briefings and instructions requirements – exemption and direction

This section provides for exemptions against the requirements of regulation 91.565 (Passengers — safety briefings and instructions) when an Australian air transport operator conducts a private operation using an aeroplane referred to in subregulation 121.005(1) and included in the operator's operations specifications.

The safety briefings, instructions and demonstrations requirements under regulation 121.285 must be complied with instead.

Directions require appropriate exposition content and that the pilot in command comply with any relevant requirements.

Section 20 — Application of Part 121 stowage of baggage and passenger service equipment requirements instead of Part 91 restraint and stowage requirements – exemption and direction

This section provides for exemptions against the requirements of regulations 91.590 (Restraint and stowage of carry-on baggage) and 91.595 (Restraint and stowage of certain aircraft equipment) when an Australian air transport operator conducts a private operation using an aeroplane referred to in subregulation 121.005(1) and included in the operator's operations specifications.

The carry-on baggage and stowage of passenger service equipment requirements under regulations 121.255 and 121.265 must be complied with instead.

Directions require appropriate exposition content and that the pilot in command comply with any relevant requirements.

Section 21 — Application of Part 121 performance requirements instead of Part 91 performance requirements – exemption and direction

This section provides for exemptions against the requirements of Subpart 91.F (Performance) when an Australian air transport operator conducts a private operation using an aeroplane

referred to in subregulation 121.005(1) and included in the operator's operations specifications.

The performance requirements under Subpart 121.F of CASR must be complied with instead.

Directions require appropriate exposition content and that the pilot in command comply with any relevant requirements.

Section 22 — Application of Part 121 weight and balance requirements instead of Part 91 weight and balance requirements – exemption and direction

This section provides for exemptions against the requirements of Subpart 91.J (Weight and balance) when an Australian air transport operator conducts a private operation using an aeroplane referred to in subregulation 121.005(1) and included in the operator's operations specifications.

The performance requirements under Subpart 121.J of CASR must be complied with instead.

Directions require appropriate exposition content and that the pilot in command comply with any relevant requirements.

Section 23 — Application of Part 121 instruments, indicators, equipment and systems requirements instead of Part 91 equipment requirements – exemptions and direction

This section provides for exemptions against the requirements of Subpart 91.K (Equipment) when an Australian air transport operator conducts a private operation using an aeroplane referred to in subregulation 121.005(1) and included in the operator's operations specifications.

The equipment requirements under Subpart 121.K of CASR must be complied with instead.

Directions require appropriate exposition content and that the pilot in command and any crew member comply with any relevant requirements.

Section 24 — Application of Part 121 cabin crew requirements instead of Part 91 cabin crew requirements – exemption and direction

This section provides for exemptions against the requirements of Subpart 91.P (Cabin crew) when an Australian air transport operator conducts a private operation using an aeroplane referred to in subregulation 121.005(1) and included in the operator's operations specifications.

The cabin crew requirements under Subpart 121.P of CASR must be complied with instead.

Directions require appropriate exposition content and that the pilot in command and cabin crew members comply with any relevant requirements.

Part 4 — Directions to Part 121 operators

Section 25 — Compliance before and after flight with flight manual instructions – direction

This section applies to a “Part 121 operation” which is defined in the instrument to exclude a “Subpart 121.Z operation”.

The operator must ensure that any activity, in relation to the flight, that occurs whether before or after the flight and that is required, under the aircraft flight manual (*AFM*) instructions for the aeroplane, to be carried out before or after the flight, is carried out in compliance with any relevant requirements and limitations under the AFM instructions.

Section 26 — Fuelling safety procedures – direction

This section applies to a “Part 121 operation” which is defined in the instrument to exclude a “Subpart 121.Z operation”.

This section requires operators to include in their exposition procedures to be followed by crew members for the safety of passengers for the flight who, during fuelling, are embarking or disembarking, or are on board, the aeroplane. The procedures must include the normal, emergency and communication procedures.

“Crew member” in this context does not include cabin crew members or flight crew members on duty in the cockpit of the aeroplane.

Section 27 — Passengers in emergency exit rows – direction

This section applies to a “Part 121 operation” which is defined in the instrument to exclude a “Subpart 121.Z operation”.

This section requires an operator to ensure that the pilot in command is satisfied, at the beginning of a flight, that a person sitting in an emergency exit row or adjacent to an emergency exit is a “suitable person” who can assist with the evacuation of the aircraft, or is accompanied or assisted by a suitable person who can access the emergency exit and provide such assistance.

The term *suitable person* is defined in the CASR Dictionary.

The section applies to the operator of an aeroplane with a maximum certificated passenger seating capacity of 19 or less, for a flight that is a Part 121 operation. This is a Part 121 operation for which a cabin crew member is not required.

Part 5 — Composition and experience of Part 121 flight crew

Section 28 — Operator pairing procedures and requirements – exemption

This section applies to the operator of an aeroplane for a flight that is a Part 121 operation if, immediately before 2 December 2021, the operator: was involved in authorised regular public transport, charter, or aerial work (air ambulance) operations; and was required to provide a training and checking (*T&C*) organisation; and had an operations manual, or a T&C manual,

with operator pairing procedures or requirements designed to avoid the flight crew being composed only of similarly less experienced flight crew members.

The operator is exempted from compliance with regulation 121.475(1) (an offence provision) to the extent of the otherwise mandatory requirement under paragraph 121.475(2)(c). This paragraph would otherwise require at least one pilot to have the additional flying experience prescribed under paragraph 121.480(1)(b).

The exemption is subject to the condition that the operator must continue to comply with its existing operator pairing procedures or requirements, and must place them, unaltered, in its exposition (unless CASA approves changes).

In accordance with regulation 201.004 of CASR, a decision by CASA to refuse to approve changes to the operator pairing procedures or requirements is subject to merits review by the Administrative Review Tribunal.

Section 28 ceases to have effect at the end of 28 February 2025 arising from the effect of section 29.

Section 29 — Directions and cessation

Under this section the operator, either from the day they cease to take advantage of the section 28 exemption, or from the end of 28 February 2025 (whichever is first), must include in its exposition the information, procedures and instructions required to comply with paragraph 121.475(2)(c) in relation to the previously exempted pilot experience requirements.

Part 6 — Transitional provisions – old approvals

Section 30 — Definitions for Part 6

This section provides a definition of *repealed instrument* for Part 6.

Section 32 — Transitional provisions – old approvals

This section provides for approvals granted by CASA under paragraph 12(3)(b), subsection 14H(3) and paragraph 28(3)(d) of the previous instrument to continue in force subject to the same terms and conditions, as if they had been granted under the corresponding provisions of this instrument. This ensures persons holding these approvals do not have to be granted another approval by CASA or reapply for the approval.

Section 33 — Transitional provisions – applications not finally dealt with

This section provides for applications for approvals under paragraph 12(3)(b), subsection 14H(3) and paragraph 28(3)(d) of the previous instrument that had not been finally dealt with before the commencement of this instrument to be taken to have been made under the corresponding provision of this instrument. This ensures applicants do not have to re-apply.

Legislation Act 2003

Paragraph 98(5AA)(a) of the Act states 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 exemptions and directions in the instrument apply to classes of persons, namely the operators, and pilots in command, of aeroplanes conducting operations under Parts 91 and 121 of CASR. Accordingly, the instrument is a legislative instrument and is 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 does not apply to the instrument (in accordance with 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.

The instrument is repealed at the end of 1 December 2027 under section 2 of the instrument. Therefore, no sunset avoidance issues arise and there is no impact on parliamentary oversight of the instrument.

Consultation

Under section 16 of the Act, in performing its functions and exercising its powers CASA must consult government, commercial, industrial, consumer and other relevant bodies and organisations insofar 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 exemptions and directions in the instrument were in force under the previous instrument. Before making of the previous instrument, from 16 July to 6 August 2021, CASA consulted the aviation community by providing descriptions of the exemptions and directions, and, subsequently, advice about their practical operation, to the Implementation Technical Working Group (**TWG**) of the Aviation Safety Advisory Panel (**ASAP**) for comment. ASAP is the primary advisory body through which CASA directs its engagement with industry and seeks input on current and future regulatory and associated policy approaches. CASA considered all TWG input in finalising the exemption instrument, and advised the TWG of its responses and comments regarding all input from the TWG. This included advice on the practical application of certain sections of the instrument.

Regulated entities affected by the instrument are, therefore, familiar with the exemptions and directions in the instrument.

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) states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9(1)(c) of the Act, 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 replaces an expiring instrument with substantially the same provisions, there will be no change to the economic or cost impact on individuals, businesses or the community.

Impact on categories of operations

The instrument is likely to have a beneficial impact on operators conducting operations under Parts 91 and 121 by clarifying the intended operation and effect of the regulatory provisions to which the exemptions and directions relate. This will generate operational efficiencies by ensuring that operators have a clear understanding of their regulatory obligations.

Impact on regional and remote communities

The instrument does not have an impact that is specific to regional and remote communities.

Office of Impact Analysis (OIA)

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

Statement of Compatibility with Human Rights

The Statement at Appendix 1 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The instrument is compatible with human rights. With its aviation safety focus, the instrument promotes the right to life and the right to safe and healthy working conditions, and does so in a way that is reasonable, necessary and proportionate in the interests of aviation safety.

Making and commencement

The instrument commences on 2 December 2024 and is repealed at the end of 1 December 2027.

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

Statement of Compatibility with Human Rights

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

CASA EX69/24 – Part 121 and Part 91 of CASR – Supplementary Exemptions and Directions 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

Part 121 of the *Civil Aviation Safety Regulations 1998 (CASR)* applies to larger aeroplanes used in Australian air transport operations. Parts 91 and 121 of CASR provide a comprehensive code of operational safety rules for air transport operators using larger aeroplanes.

Part 121 is a part of the suite of flight operations regulations (the **FOR**). The FOR includes Parts 91, 119, 121, 133, 135 and 138 of CASR, each of which commenced on 2 December 2021.

There are some technical errors and omissions in Part 121 which give rise to unintended obligations. These will be rectified in the next set of amendments to the Part but, in the meantime, until those amendments are made, it is necessary to use exemptions to provide relief from having to comply with certain requirements and directions to ensure safety compliance.

The exemptions and directions in the instrument require operator oversight of the actions of operator personnel and otherwise are intended to maintain previous regulatory requirements (before commencement of the FOR) where the FOR inappropriately failed to reflect those requirements. In other cases, exemptions are provided where relief from a requirement is considered appropriate, to facilitate implementation of FOR requirements, and to permit, for private operations, compliance with Part 121 requirements instead of Part 91 requirements.

The purpose of the instrument is to reissue *CASA EX83/21 – Part 121 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021* (the **previous instrument**). The instrument continues to exempt the operators, and pilots in command, of aeroplanes conducting operations under Parts 91 and 121 of CASR from certain provisions of the Parts. The exemptions are subject to stated conditions. Also, the instrument continues to issue directions to the operators and pilots in command.

The few changes that have been made to the previous instrument are to save the operation of certain approvals under the previous instrument, delete obsolete provisions and make a small number of minor amendments and corrections.

Human rights' implications

The instrument engages with the following human rights and freedoms, recognised or declared in the following 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*).

Right to life under the ICCPR***Right to safe and healthy working conditions under the ICESCR***

Although the instrument contains exemptions from compliance with various provisions in Parts 91 and 121, it does so subject to conditions imposed, and directions issued, in the interests of aviation safety. To the extent that the conditions and directions are expected to play a critical part in the avoidance of aviation accidents or incidents, the instrument may reasonably be said to support the right to life, and to contribute to safe and healthy working conditions, in the operation of Part 121 aircraft.

Conclusion

The instrument is compatible with human rights, and to the extent that it may engage certain rights it does so in a way that is reasonable, necessary and proportionate in the interests of aviation safety.

Civil Aviation Safety Authority