

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### CASA EX94/20 — Exemption from Regulation 42.150 of CASR (Time Allowed to Vary Approved Maintenance Program) Instrument 2020

##### Purpose

The purpose of the instrument is to allow more time for the person responsible for the continuing airworthiness of an aircraft (the *responsible person*) to vary the approved maintenance program (*AMP*) for the aircraft following changes to its instructions for continuing airworthiness (*ICA*) and to recognise that there may be reasons not to vary the AMP in accordance with the ICA.

##### Legislation

Section 98 of the *Civil Aviation Act 1988* (the *Act*) empowers the Governor-General to make regulations for the Act and in the interests of the safety of air navigation. Relevantly, the Governor-General has made the *Civil Aviation Safety Regulations 1998* (*CASR*).

##### *Continuing airworthiness*

Part 42 of CASR sets out continuing airworthiness requirements, including requirements for carrying out maintenance, for aircraft and aeronautical products to which that Part applies. It also empowers the Civil Aviation Safety Authority (*CASA*) to issue a Manual of Standards for that Part (the *Part 42 MOS*).

Subpart 42.C sets out requirements relating to the continuing airworthiness of an aircraft that apply to the responsible person. Regulation 42.140 states that the responsible person must ensure that there is an AMP for the aircraft. Regulation 42.145 states that the responsible person must ensure that maintenance is carried out on the aircraft as required by its maintenance program.

The term *instructions for continuing airworthiness* (or *ICA*) is defined in clause 10 of Part 3 of the CASR Dictionary. It covers a wide range of written instructions that are issued by manufacturers of aircraft or aeronautical products.

Regulation 42.150 of CASR contains requirements for varying the AMP for an aircraft following a change to its ICA. If, as a result of the change, the AMP no longer complies with the ICA, in relation to maintenance required to be carried out on a regular basis on the aircraft or an aeronautical product fitted to the aircraft, the responsible person must take specified action within 90 days after the occurrence of the change. The specified action is that the responsible person must vary the AMP so that it complies with the ICA in relation to regular maintenance, and approve the variation in accordance with Division 42.J.4 of CASR or apply for approval of the variation in accordance with Division 42.J.5 of CASR.

Division 42.J.5 of CASR provides for a responsible person to apply to CASA for approval of a proposed variation of the AMP for an aircraft. The responsible person must apply to CASA for approval if the AMP, as varied by the proposed variation, would not comply with the ICA for the aircraft, or for an aeronautical product fitted to the aircraft, that relate to maintenance that is required by the ICA to be carried out on a regular basis. The application must include the technical justification for the variation. Under regulation 42.1025 of CASR, to approve a proposed variation of an AMP, CASA must be satisfied that the AMP, as varied by the

proposed variation, would comply with the requirements specified in the Part 42 MOS and would adequately provide for the continuing airworthiness of the aircraft.

Section 2.9 of the Part 42 MOS relates to compliance with ICA. Subsection 2.9.2 provides that CASA may approve a proposed maintenance program, or a variation to an AMP, that does not comply with a requirement in the ICA that relates to maintenance to be regularly carried out on the aircraft and aeronautical product if:

- (a) the program provides another means of compliance with the requirement in the ICA; or
- (b) non-compliance with the requirement is supported by technical justification including data derived from an approved reliability program for the aircraft; or
- (c) CASA is satisfied that non-compliance with the requirement will have no adverse effect on the continuing airworthiness of the aircraft.

Under regulation 42.110 of CASR, it is an offence to fail to comply with each of regulations 42.115 to 42.165 of CASR. As explained below, under the heading **Overview of instrument**, this instrument has been issued, subject to conditions, to grant an exemption from compliance with regulation 42.150.

### *Exemptions*

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

Under subregulation 11.160 (2) of CASR, 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) of CASR, an exemption may be granted on application by a person or on CASA's own initiative.

Under subregulation 11.170 (3) of CASR, in deciding whether to grant 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 of CASR provides that CASA may impose conditions on an exemption if necessary in the interests of the safety of air navigation. Under regulation 11.210, it is a strict liability offence not to comply with the obligations imposed by a condition.

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

### **Background**

Problems have been recognised in respect of regulation 42.150 of CASR. The first is that the 90-day period allowed to vary the AMP to accord with the changed ICA is too inflexible. Due to the COVID-19 pandemic, operators may be unable to meet that requirement due to a lack of availability of staff. The period can also on occasion be too long. The appropriate period can be much more than 90 days in the case of long-term maintenance tasks, but there may be occasions on which urgent variation of the AMP is required for some maintenance changes that need to be put into effect without delay.

Regulation 42.150 also only recognises variation to the AMP due to changes to the ICA. There could be a need to vary the AMP arising out of the installation or removal of aeronautical products or changes to the aircraft's configuration, utilisation or operating environment. Such changes may lead to the AMP not complying with the existing ICA.

Another problem with regulation 42.150 is that it is inconsistent with Subpart 42.J of CASR. The Subpart allows variation to be made to the AMP, based on technical justification, even though the varied AMP does not provide compliance with the ICA. A responsible person may also decide not to comply with the change to the ICA, if that decision is based on technical justification and approved by CASA. These situations are not recognised by regulation 42.150.

### **Overview of instrument**

The exemption extends the period allowed for compliance with regulation 42.150 from 90 days to 12 months. Within the period of 12 months, the responsible person may take one of a number of options, including varying the AMP to fully comply with the maintenance requirements in the ICA or providing another means of compliance as set out in paragraph 2.9.2 (a) of the Part 42 MOS.

If maintenance under the changed requirements of the ICA becomes due before the variation is put into effect or approved, the maintenance must be carried out. This ensures essential maintenance requirements are not deferred pending approval of variation to the AMP.

CASA does not consider the exemption has any effect on aviation safety. Any maintenance due under the changed ICA must be carried out until the change to the AMP has been made or varied, or deemed unnecessary, or been replaced by an approved alternative.

### **Content of instrument**

Section 1 names the instrument.

Section 2 sets the duration of the instrument.

Section 3 defines words and terms used in the instrument. (The note to section 3 states that in the instrument certain terms and expressions have the same meaning as they have in the Act and the regulations.)

Section 4 states who the instrument applies to (namely a person responsible for continuing airworthiness for an aircraft and their obligations under regulation 42.150 of CASR).

Section 5 sets out the extent of the exemption. The responsible person is exempt from compliance with subregulation 42.110 (1) of CASR to the extent that it would require the responsible person to comply with regulation 42.150 of CASR.

Section 6 states that the exemption is subject to the conditions in Schedule 1.

#### *Schedule 1 (conditions)*

- 1 This clause sets out the alternative courses of action available under the exemption for a responsible person.

- 2 This clause states what a responsible person may do if they decide that there is technical justification not to take action under clause 1. The notes to the clause clarify certain situations in relation to maintenance requirements under the ICA and AMP.
- 3 This clause sets out the manner of an application under clause 1 not to take action.
- 4 This clause sets out what an application in accordance with clause 3 must contain.
- 5 This clause sets out what CASA may do after considering a technical justification relied on under clause 3.
- 6 This clause states that a decision by CASA to refuse to grant an approval not to vary the AMP, or to impose conditions on an approval, is subject to merits review by the Administrative Appeals Tribunal.
- 7 This clause states that if CASA approves an application under clause 5, the responsible person must keep a copy of the approval for as long as the approval is relevant to the AMP.
- 8 This clause states that if maintenance is due on an aircraft before the variation of the AMP for the aircraft is approved, or before CASA decides whether to grant an approval not to vary the AMP, the responsible person must carry out the maintenance when due under the ICA.
- 9 This clause states what a responsible person must do if an application that is made under clause 3 is not approved under clause 5. A variation must be submitted to, and approved by, CASA within the time allowed under the clause and any maintenance required by the ICA to be carried out on a regular basis must be carried out when due.
- 10 This clause requires the responsible person to ensure that there are procedures in their exposition to ensure compliance with these clauses.

### ***Legislation Act 2003 (the LA)***

Paragraph 98 (5A) (a) of the Act provides that CASA may issue instruments in relation to matters affecting the safe navigation and operation, or the maintenance, of aircraft. Additionally, paragraph 98 (5AA) (a) of the Act provides that an instrument issued under paragraph 98 (5A) (a) is a legislative instrument if the instrument is expressed to apply in relation to a class of persons. The instrument exempts a class of persons from complying with the provisions in regulations 42.110 and 42.150 of CASR. The instrument is, therefore, a legislative instrument, and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

### **Consultation**

An industry-wide consultation was not conducted to avoid delay in issuing the instrument which would delay the alleviation of the problem being faced by the operators due to the COVID-19 pandemic. Informal consultation on the draft instrument was carried out with a limited number of operators who in the past either sought exemption from the strict 90-day requirement of regulation 42.150 of CASR to vary the AMP for their aircraft or otherwise sought changes to the regulation because of the problems associated with the regulation. The purpose of the consultation was to ensure that the underlying policy in the instrument is

practical and efficient in resolving the issues associated with the current regulation. CASA also sought response from a large helicopter charter operator, to ensure that the policy is suitable for the helicopter sector. Feedback from these operators supported the objectives and provisions of the exemptions. CASA is satisfied that no further consultation is necessary for this instrument for section 17 of the LA.

#### **Office of Best Practice Regulation (OBPR)**

A Regulation Impact Statement (*RIS*) is not required in this case, as the exemption is covered by a standing agreement between CASA and OBPR under which a RIS is not required for exemptions (OBPR id: 14507).

#### **Statement of Compatibility with Human Rights**

The Statement of Compatibility with Human Rights at Attachment 1 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. 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 the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

The instrument commences on the day after it is registered and is repealed at the end of 31 May 2023.

## **Statement of Compatibility with Human Rights**

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

### **CASA EX94/20 — Exemption from Regulation 42.150 of CASR (Time Allowed to Vary Approved Maintenance Program) Instrument 2020**

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 legislative instrument exempts persons responsible for the continuing airworthiness of certain aircraft from complying with a 90-day limit imposed under regulation 42.150 of the *Civil Aviation Safety Regulations 1998* for varying an aircraft's approved maintenance program.

This is partly to afford relief from what has become more of a burden due to staff shortages caused by the COVID-19 pandemic and also to recognise additional courses of action available to those persons under the Regulations and the Part 42 Manual of Standards.

#### **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**