

## **Explanatory Statement**

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

### **CASA EX84/21 – Part 133 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021**

#### **Purpose**

The purpose of this instrument is to make a number of exemptions and directions in relation to Part 133 of the *Civil Aviation Safety Regulations 1998 (CASR)*.

#### **Background**

Part 133 applies to rotorcraft used in Australian air transport operations. Part 133 works with Part 91 to provide a comprehensive code of safety rules for air transport operations using rotorcraft.

Part 133 is a part of the suite of CASA's new Flight Operations Regulations (**FOR**). The FOR includes new Parts 91, 119, 121, 133, 135 and 138 of CASR, each of which commences on 2 December 2021.

The instrument will facilitate implementation of Part 133 in accordance with CASA's transition policies for the FOR.

There were some technical errors and omissions in Part 133 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 this instrument variously require operator oversight of the actions of operator personnel and otherwise are intended to maintain current regulatory requirements where the FOR inappropriately failed to reflect requirements of the regulations that the FOR is replacing. 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 133 requirements instead of Part 91 requirements.

#### **Legislation — exemptions**

Section 98 of the *Civil Aviation Act 1988* (the **Act**) empowers the Governor-General to make regulations for the Act and the safety of air navigation.

Subpart 11.F of CASR deals with exemptions. Under subregulation 11.160 (1), and for subsection 98 (5A) of the Act, CASA may, by instrument, grant an exemption from a provision of CASR in relation to a matter mentioned in subsection 98 (5A). Subsection 98 (5A) matters are, in effect, those affecting the safety, airworthiness or design of aircraft.

Under subregulation 11.160 (2), an exemption may be granted to a person or a class of persons. Under subregulation 11.160 (3), CASA may grant an exemption on application, or on its own initiative. Under subregulation 11.170 (3), for an application for an exemption, CASA must regard as paramount the preservation of an acceptable level of safety. For making a decision on its own initiative, CASA is guided by the

requirement in subsection 9A (1) of the Act that in exercising its powers and functions CASA must regard the safety of air navigation as the most important consideration.

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.

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.).

### **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 to contravene a direction under regulation 11.245 that is applicable to the person.

### **Description of supplementary exemptions and supplementary directions**

#### Part 1 — Preliminary, Definitions and Application

Section 2 — Duration provides that the instrument commences on 2 December 2021 and is repealed at the end of 1 December 2024.

Section 3 — Definitions provides definitions for the instrument.

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

#### Part 2 — Exemptions from Part 133

Section 5 — Application of Part 133 – Australian air transport operations in foreign countries – exemption

This section exempts the operator and the pilot in command of a rotorcraft in a Part 133 operation that is conducted in a foreign country from complying with a provision of Part 133 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 133. There is no inconsistency, however, if the provision of Part 133 and the law of the foreign country can operate concurrently.

## Section 6 — Minimum equipment list for Part 133 operations – exemption

This section provides an exemption to the operator of a rotorcraft in a Part 133 operation from complying with the requirement of regulation 133.035 that there must be a minimum equipment list (*MEL*) for a rotorcraft on Instrument Flight Rules (*IFR*) and international flights when there is a master minimum equipment list (an MMEL) for the rotorcraft. The exemption applies to an operator who immediately before 2 December 2021 held an Air Operator's Certificate (*AOC*) or was an early applicant for an AOC that authorised charter operations or aerial work (air ambulance) operations in the rotorcraft but did not authorise regular public transport operations in the rotorcraft.

It is a condition of the exemption that the operator must not commence scheduled air transport operations using the rotorcraft.

The exemption ceases to have effect the earliest of:

- (a) the day the operator commences using the relevant rotorcraft for scheduled air transport operations; and
- (b) the day an approval of a MEL for the aeroplane, under regulation 91.935, takes effect; and
- (c) the end of 3 December 2023.

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

This section exempts the operator and pilot in command of a rotorcraft in a Part 133 operation from complying with the requirement of subregulation 133.075 (2), to record in the journey log, at the time the flight begins, the actual time the flight begins as specifically required under subparagraph 133.075 (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 readily available document kept by the operator, not later than as soon as reasonably practicable after the flight ends.

## Section 8 — Journey log – recording flight information – exemption

The section exempts the operator and pilot in command of a rotorcraft in a Part 133 operation from complying with the requirement of subregulation 133.075 (5), to record in the journey log, as soon as practical after the flight ends, the place of arrival and incidents and observations (if any) relevant to the flight as specifically required under paragraphs 133.075 (6) (a) and (e). The exemption is subject to the condition that these entries must be recorded in the journey log, or another readily available document kept by the operator, not later than as soon as reasonably practicable after the flight ends.

## Section 9 — VFR flights at night – instrument rating – exemption

This section applies to a Part 133 operation that is either a passenger transport operation or a medical transport operation that is conducted as a VFR flight at night. The operator is exempted from compliance with subregulation 133.370 (1) in relation to paragraph 133.370 (2) (e), about a flight crew member holding an instrument rating, on condition that at least one flight crew member is authorised to pilot the rotorcraft under the IFR.

### Part 3 — Exemptions from Part 91 and related directions

#### Section 10 — Use of Part 133 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 a rotorcraft included in the operator's operations specifications.

The flight-related document requirements under Division 133.C.3 must be complied with instead.

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

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.

#### Section 11 — Application of Part 133 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 a rotorcraft included in the operator's operations specifications.

The fuel requirements under regulation 133.190 must be complied with instead.

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

#### Section 12 — Application of Part 133 fuelling requirements instead of Part 91 fuelling requirements – exemption and direction

This section provides for an exemption against the requirements of regulation 91.510 (Fuelling requirements) when an Australian air transport operator conducts a private operation using a rotorcraft included in the operator's operations specifications.

The fuelling requirements under regulation 133.195 must be complied with instead.

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

#### Section 13 — Application of Part 133 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 a rotorcraft included in the operator's operations specifications.

The safety briefings, instructions and demonstrations requirements under regulation 133.240 must be complied with instead.

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

Section 14 — Application of Part 133 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 a rotorcraft included in the operator's operations specifications.

The performance requirements under Subpart 133.F must be complied with instead.

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

Section 15 — Application of Part 133 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 a rotorcraft included in the operator's operations specifications.

The weight and balance requirements under Subpart 133.J must be complied with instead.

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

Section 16 — Application of Part 133 equipment requirements instead of Part 91 equipment requirements – exemptions and directions

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

The equipment requirements under Subpart 133.K must be complied with instead.

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

Section 17 — Application of Part 133 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 when an Australian air transport operator conducts a private operation using a rotorcraft included in the operator's operations specifications.

The cabin crew requirements under Subpart 133.P 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 — Other exemptions from Part 91 and related directions

##### Section 18 — Picking up or setting down people or things during flight – exemption and direction

This section applies to the operator and the pilot in command of a rotorcraft for a flight that is a medical transport operation in which a thing is picked up or set down. The pilot in command is exempted from compliance with regulation 91.195 about things picked up or set down.

The operator and the pilot in command must comply instead with the relevant requirements under Division 1 of Chapter 5 of the Part 133 MOS. The operator must also ensure that the exposition provides for the operation and that the pilot in command complies with MOS requirements.

##### Section 19 — Carriage of persons in certain parts of a rotorcraft – exemption and direction

This section applies to the operator, and the pilot in command, of a rotorcraft for a flight that is a medical transport operation in which a person is carried, during the operation, on, or in, a thing (for example, a stretcher or a harness) attached to the rotorcraft by a winching cable.

The operator and the pilot in command are each exempted from compliance with regulation 91.200 in relation to such carriage but only to the extent of the requirement under paragraph 91.200 (1) (b) that for subparagraph 91.200 (1) (a) (ii) (carriage of a person on a thing attached to an aircraft) the operator or the pilot in command must hold an approval under regulation 91.045 for the carriage of the person on, or in, the thing.

The exemption is subject to the condition that the operator and the pilot in command must comply instead with the requirements under Division 1 of Chapter 5 of the Part 133 MOS. The operator must also ensure that the exposition provides for the operation and that the pilot in command complies with the MOS requirements.

#### Part 5 — Other directions

##### Section 20 — Compliance before and after flight with flight manual instructions – direction

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 rotorcraft, to be carried out before or after the flight is carried out in compliance with any relevant requirements and limitations under the AFM instructions.

#### Part 6 — Part 133 – Performance requirements – exemptions and directions

##### Division 6.1 Preliminary

Section 21 — Definitions etc. provides definitions for Part 6.

## Division 6.2 Exemptions and directions

### Section 22 — Flight in a performance class – exemptions

This section, in effect, conditionally exempts the operator, and the pilot in command, for the flight of a rotorcraft in an Australian air transport operation, from the requirement that, during particular stages of flight, the rotorcraft must be flown in the otherwise applicable performance class.

This section also conditionally exempts the operator and pilot in command for the flight of a rotorcraft in an Australian air transport operation, from the requirement that, during take-off, take-off and initial climb, and approach and landing, or baulked landing stages of the flight, the rotorcraft must be flown in the relevant performance class for the stage required by subregulation 133.335 (3).

## Division 6.3 Conditions

### Section 23 — Compliance with requirements

This section provides that each exemption under Division 6.2 is subject to the condition that the operator and the pilot in command must each comply with the applicable requirements set out in this Division.

### Section 24 — Requirements for a multi-engine rotorcraft

This section provides that certain operations must be conducted in a multi-engine rotorcraft capable of complying with the category A performance supplement contained within the rotorcraft's flight manual. The operations are: passenger transport operations under the IFR, or under the VFR at night; passenger transport operation with a maximum operational passenger seating configuration of more than 9; and medical transport operations (*MTO*) under the IFR, or under the VFR at night.

The section also sets out requirements and directions in relation to the availability of suitable forced landing areas during a flight over a populous area, and the requirements to be met if a suitable forced landing area is not always available.

### Section 25 — Additional requirements for a multi-engine rotorcraft

This section sets out additional operational flying requirements and directions for exempted flight in a multi-engine rotorcraft. However it does not apply to an MTO operating below 300 feet AGL into or out of a medical transport operating site. The requirements relate to climb performance, obstacle avoidance and en-route performance during certain periods of flight in the event that the rotorcraft had one engine inoperative.

### Section 26 — Requirements for a single engine rotorcraft or certain other multi-engine rotorcraft

This section applies to the operator of a single-engine rotorcraft, or a multi-engine rotorcraft, including a multi-engine rotorcraft complying with the category B performance supplement contained within the rotorcraft's flight manual, if conducting an operation other than one mentioned in section 28.

The section sets out additional operational flying requirements and directions for exempted flight in a relevant rotorcraft. The requirements relate to take-off and climb performance, obstacle avoidance, and landing performance, including appropriate rotorcraft weight and climb performance requirements.

#### Section 27 — Medical transport operations – additional requirements

This section applies to an MTO conducted at a medical transport operating site. It requires the operator to ensure that the exposition has risk assessment and management procedures, and that the operational risks are assessed and minimised through risk mitigation. In addition, there must be procedures for the pilot in command of the rotorcraft to make certain determinations about safety, including in relation to the rotorcraft's take-off weight, obstacles and other hazards, and suitable flight paths.

#### Division 6.4 Directions and cessation

#### Section 28 — Directions and cessation

Under this section, by not later than the end of 2 June 2023, an operator who takes the benefit of an exemption under Division 6.2, or whose pilot in command takes the benefit of an exemption under Division 6.2 must give CASA their proposed Part 133 performance class exposition content that shows how they intend to comply with the Part 133 performance class requirements, and they must have CASA's approval of that content by the end of 3 December 2023 when Divisions 6.2 and 6.3 cease to have effect. A Note explains that an operator may voluntarily seek earlier approval of the exposition content if planning to commence using that content at an earlier date but should allow at least 90 days before their planned start date.

#### Division 6.5 Medical transport operations — additional exemptions and directions

#### Section 29 – Medical transport operations – flight performance class – exemption and direction

This section exempts the operator and pilot in command for a flight of a rotorcraft that is a medical transport operation conducted by day in VMC, from the performance requirements of subregulations 133.335(2) and (3), provided the rotorcraft is operated in accordance with at least performance class 3 and section 10.07 of the Part 133 MOS.

An operator taking advantage of the exemption in this section must provide CASA their proposed exposition content for compliance with the exempted provisions by not later than the end of 4 September 2023.

The exemption ceases at the end of 3 December 2023.

#### Section 30 — Medical transport operations – climb performance and obstacle avoidance – exemption

This section exempts the operator and pilot in command for a flight of a rotorcraft that is a medical transport operation conducted under the VFR by night or under the IFR in IMC by day or under the IFR at night, below the specified minimum height in specified stages of flight, from complying with subregulations 133.335 (2) and (3). The exemption is conditional on specified requirements being met, related to climb performance and obstacle avoidance.



An operator taking advantage of the exemption in this section must provide CASA their proposed exposition content for compliance with the exempted provisions by not later than the end of 4 September 2023.

The exemption ceases at the end of 3 December 2023.

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

The exemptions and directions in this instrument are for the safe navigation and operation of aircraft and apply to classes of persons. The instrument is a legislative instrument under the Act and the LA and subject to registration, and tabling and disallowance in the Parliament, under sections 15G, and 38 and 42, of the LA.

**Incorporation by Reference**

In accordance with paragraph 15J (2) (c) of the *Legislation Act 2003* and subsection 98 (5D) of the Act, the legislative instrument applies, adopts or incorporates matters contained in the following instruments:

- aircraft flight manual instructions
- exposition.

Subsection 98 (5D) of the Act permits a non-legislative instrument to be incorporated as in force or existing at a particular time or from time to time, including a non-legislative instrument that does not exist when the legislative instrument is made.

Each incorporated document is described below, together with the manner of incorporation and how it may be obtained.

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. Instructions are incorporated as they exist from time to time, consistent with the definition of “flight manual” in the CASR Dictionary.

These documents are publicly available but not for free. The aircraft flight manual instructions for an aircraft is proprietary to 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 or operations manual or training and checking manual or safety management system manual of an operator:

An exposition of an operator 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.

An “exposition”, for an operator generally means the exposition as changed from time to time, in accordance with the definition of “exposition” in the CASR Dictionary. Manuals are also incorporated as in force from time to time.

An exposition is not publicly or freely available. They are proprietary to the operator and will generally include commercial in confidence information about the operator’s business. The incorporated requirements of an exposition are at the operator-specific level and apply only to the operator and its personnel. Further, the operator is under obligations to make the exposition available to its personnel who have obligations under the document.

### **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 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.

For this instrument, from 16 July to 6 August 2021, CASA consulted the aviation community by providing descriptions of the exemptions and directions 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.

TWG input included questions on definitions and the need for the exemption referred to in section 5 of the instrument. In addition to the consultation with the TWG, CASA consulted on rotorcraft performance exemptions referred to in sections 29 and 30, as part of a broad consultation on CASA’s Flight Operations Regulations (FOR) transition policy. This consultation was conducted in June 2020.

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.

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

A Regulation Impact Statement (*RIS*) is not required because the instrument is covered by a standing agreement between CASA and OBPR under which a RIS is not required for Exemption or Direction instruments (OBPR id: 14507).

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

The Statement in Appendix 1 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 promotes both the right to life, and the right to safe and healthy working conditions, and it does so in a way that is reasonable, necessary and proportionate in the context of aviation safety.

**Commencement and making**

The new exemption instrument commences on the day after it is registered and is repealed at the end of 1 December 2024.

The exemption has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

## Statement of Compatibility with Human Rights

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

### CASA EX84/21 – Part 133 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021

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 133 of CASR applies to rotorcraft used in Australian air transport operations. Part 133 works with Part 91 to provide a comprehensive code of safety rules for air transport operations using rotorcraft.

Part 133 is a part of the suite of CASA's new Flight Operations Regulations (**FOR**). The FOR includes new Parts 91, 119, 121, 133, 135 and 138 of CASR, each of which commences on 2 December 2021.

The instrument will facilitate implementation of Part 133 in accordance with CASA's transition policies for the FOR.

There were some technical errors and omissions in Part 133 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 this instrument variously require operator oversight of the actions of operator personnel and otherwise are intended to maintain current regulatory requirements where the FOR inappropriately failed to reflect requirements of the regulations that the FOR is replacing. 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 133 requirements instead of Part 91 requirements.

#### Human rights implications

The legislative instrument engages with the following human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*:

- the right to life under Article 6 of the International Covenant on Civil and Political Rights (the **ICCPR**)
- the right to safe and healthy working conditions under Article 7 of the International Covenant on Economic, Social and Cultural Rights (the **ICESCR**).

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

Although the instrument contains exemptions from various provisions in Part 133 of CASR, it does so in the context of substitute, and acceptable, conditions and directions in the interests of aviation safety. To the extent that the conditions are expected to play a critical part in the avoidance of accidents and incidents, the instrument may reasonably be said to support the right to life, and to contribute to safe and healthy working conditions on board Part 133 aircraft.

**Conclusion**

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 is reasonable, necessary and proportionate in the interests of aviation safety.

**Civil Aviation Safety Authority**