

Explanatory Statement

Civil Aviation Safety Regulations 1998

Exemption — from holding an air traffic control licence

Subsection 98 (1) of the *Civil Aviation Act 1988* (the **Act**) provides that the Governor-General may make regulations for the Act and the safety of air navigation.

Legislation

Under subregulation 65.035 (1) of the *Civil Aviation Safety Regulations 1998* (**CASR 1998**), a person may only carry out an air traffic control function at a place in Australian territory if he or she holds a current air traffic control (**ATC**) licence with a rating for the function and an endorsement for the place, and satisfies the recency and currency requirements for the endorsement and rating (an **ATC licence holder**).

Under subregulation 65.035 (2) of CASR 1998, certain classes of person may carry out an ATC function under the supervision of an ATC licence holder.

Under regulation 65.045 of CASR 1998, it is an offence to carry out an ATC function without complying with subregulation 65.035 (1) of CASR 1998.

Under subregulation 65.070 (1) of CASR 1998, a person is eligible to be granted an ATC licence if he or she is 18 years old, holds a Class 3 medical certificate, can communicate effectively in English and has completed the training set out in the relevant Manual of Standards (the **MOS**) for the licence, rating and endorsement.

Under subregulation 65.080 (1) of CASR 1998, CASA may grant a rating to a person who is eligible to be granted an ATC licence and who has successfully completed the training set out in the MOS for the grant of the rating.

Under subregulation 65.085 (2) of CASR 1998, CASA, but in practice Airservices Australia (**AA**) on delegation from CASA, may grant an endorsement to a person who is eligible to be granted an ATC licence with a rating and who has successfully completed the training set out in the MOS for the grant of the endorsement.

The recency requirements for an endorsement are set out in subregulation 65.025 (1) of CASR 1998 and the currency requirements for an endorsement or a rating are set out in subregulation 65.030 (1).

Exemptions from CASR 1998

Under subregulation 11.160 (1) of CASR 1998, CASA may grant an exemption from compliance with a provision of CASR 1998. Under subregulation 11.160 (3), CASA may grant an exemption on its own initiative. In deciding whether to grant an exemption CASA must regard as paramount the preservation of an acceptable level of safety.

Under subregulation 11.205 (1) of CASR 1998, 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 an offence to fail to comply with a condition of an exemption. Under regulation 11.225, an exemption must be published on the internet. Under subregulation 11.230 (1), an exemption ceases on the day specified within it (but no longer than 2 years after its commencement), or if no day is specified, 2 years after commencement.

Civil ATC resources

Civil air traffic control is a technically specialised function carried out in Australia by qualified air traffic controllers employed by AA. Among other things, performance of the function depends on the availability, and effective rostering, of these highly trained and skilled individuals.

There is invariably some delay between a person qualifying to hold the relevant licence or rating, their application for it and its issue by CASA in response to the application. Under subregulations 65.035 (1) and 65.045 (1) of CASR 1998, a person is not permitted to carry out ATC functions unless the person actually holds the relevant licence, rating and endorsement (or, in certain cases, is supervised by such a person). Effective recruitment, training and rostering arrangements in AA ensure that this delay in meeting the formal requirements of holding the licence, rating or endorsement, has no effect on the efficient performance of ATC functions. Similarly, CASA responds with expedition to applications for relevant licences or ratings by suitably qualified AA employees.

However, in December and January, and during other periods when the demand for ATC services is high, the availability of appropriate staff in AA and CASA can affect the speed with which properly qualified AA employees receive from CASA official copies of the licence or rating for which they are eligible. Sometimes unavoidable delays can impact on the availability, and cost to AA, of qualified air traffic controllers at these times.

The instrument

To overcome this, the instrument provides a 21 day exemption for qualified air traffic controllers from the formal requirement to “hold” a relevant licence or rating before carrying out ATC functions. The exemption is subject to compliance with a series of safety conditions. If a condition is not complied with, the exemption, including the exemption from the offence provision in subregulation 65.045 (1) of CASR 1998, is no longer available to the person using it.

Conditions

This instrument applies to AA employees (*exempt controllers*) employed to carry out ATC functions in Australian territory who have satisfied the requirements for the initial grant of an ATC licence or of a rating not already held (the *initial grant*) and are awaiting receipt of the documents from CASA.

To simplify and clarify the process, the exemption does not apply to an exempt controller whose ATC licence is cancelled or suspended, or who has a relevant rating or endorsement that is no longer valid, or who does not satisfy relevant recency and currency requirements, or who does not hold a current Class 3 medical certificate. Further, an exempt controller must not supervise certain other persons.

At the time of carrying out an ATC function (a *function*), an exempt controller must be a person who is eligible to be granted or to hold the ATC licence, rating or endorsement

To operate the 21 day exemption period, the exemption states that it does not apply to an exempt controller who carries out a function at a place more than 21 days after the day the AA qualified workplace assessor signed and endorsed the exempt controller’s application for the relevant ATC licence or rating.

Before an exempt controller may carry out a function at a place, AA must have prepared and filed in its records a statement, signed by an authorised AA manager, that the exempt controller meets the eligibility requirements for the ATC licence and has successfully completed the training required by the MOS for the current grant of the relevant rating and endorsement. The AA workplace assessor must also sign and endorse the exempt controller’s application to CASA.

The exempt controller must stop exercising a function if he or she ceases to be eligible to be granted or to hold the licence, rating or endorsement, or ceases to hold a valid Class 3 medical certificate, or if CASA requires him or her to stop and does not withdraw that requirement.

Legislative Instruments Act

Under subparagraph 6 (d) (i) of the *Legislative Instruments Act 2003* (the *LIA*), an instrument is a legislative instrument for section 5 of the LIA if it is declared to be a disallowable instrument

under legislation in force before the commencement of the LIA. Regulation 11.215 of CASR 1998 declares an exemption to be a disallowable instrument. The exemption is, therefore, a legislative instrument and it is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

Consultation

Consultation under section 17 of the LIA has not been undertaken in this case. It remakes a previous instrument which ceases to have effect at the end of September 2009. It is also an interim measure while Part 65 of CASR 1998 is being amended. Drafting of CASR part 65 is currently underway in the Office of Legislative Drafting and Publishing.

The instrument commences on 1 October 2009 and stops having effect at the end of 30 September 2010.

The exemption has been made by the Deputy Director of Aviation Safety, a delegate of CASA, appointed under regulation 11.260 of CASR 1998.

[Instrument number CASA EX71/09]