Explanatory Statement

Civil Aviation Safety Regulations 1998

Exemption — from holding an air traffic control licence

**Legislation**

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.

Under subregulation 65.035 (1) of the *Civil Aviation Safety Regulations 1998* (***CASR 1998***), a person may only carry out an air traffic control (***ATC***) function at a place in Australian territory if he or she holds a current 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 persons 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) or (2) 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 an applicant 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 an applicant 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 regulation 65.030.

Under subsection 33 (3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

**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. Under subregulation 11.170 (3), 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 3 years after its commencement), or if no day is specified, 3 years after commencement.

**Civil ATC resources**

Civil ATC is carried out in Australia by air traffic controllers who hold the appropriate licence or rating.

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).

There is often a delay between a person qualifying for award of an ATC licence and AA submitting an application to CASA, and the successful applicant receiving the ATC licence through the mail. This delay adversely affects the potential productivity of the qualified person and prevents AA from optimising its rostering.

To overcome this resourcing constraint, 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.

Subsection 3 (3) of the instrument places a 21 day limit on the exemption period. It states that the exemption 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, rating or endorsement.

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 qualified 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**

Exemptions issued under regulation 11.160 of CASR 1998 are issued under subsection 98 (5A) of the Act. Paragraph 98 (5A) (a) states that the regulations may empower CASA to issue an instrument relating to the safe navigation and operation, or the maintenance, of aircraft. Subsection 98 (5AA) of the Act states that an instrument issued under paragraph 98 (5A) (a) of the Act is a legislative instrument if it applies to a class of persons. Being applicable to a class of AA employees, this exemption is, therefore, a legislative instrument.

As a legislative instrument, it is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the *Legislative Instruments Act 2003* (the ***LIA***).

**Consultation**

AA first raised concerns about the constraint of ATC resourcing in 2009, whereupon CASA issued an instrument for AA employees to be exempt from the requirements of subregulation 65.035 of CASR 1998 for 21 days (CASA EX78/10). A subsequent instrument was issued in 2011 renewing the exemption on the same conditions (CASA EX108/11). Given the long‑standing understanding between CASA and AA on the importance of this exemption for AA’s resourcing considerations, consultation for this instrument under section 17 of the LIA was not considered necessary in this case.

**Statement of Compatibility with Human Rights**

A Statement of Compatibility with Human Rights is at Attachment 1.

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

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

**Making and commencement**

The instrument has been issued by a delegate of CASA relying on the power of delegation under subregulation 11.260 (1) of CASR 1998.

The instrument commences on the day of registration and expires at the end of 30 September 2015, as if it had been repealed by another instrument.

[Instrument number CASA EX108/13]

**Attachment 1**

**Statement of Compatibility with Human Rights**

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

**Exemption — from holding an air traffic control licence**

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 newly qualified Airservices Australia controllers, for a period of 21 days, from the requirement to hold a relevant air traffic control (***ATC***) licence or rating before carrying out ATC functions.

The primary purpose of the legislative instrument is to allow Airservices Australia to optimise its resourcing and rostering arrangements by avoiding the delay between a person qualifying for the award of an ATC licence and that person applying for, and receiving, their ATC licence through the mail.

The exemption is subject to conditions imposed by CASA in the interests of the safety of air navigation.

**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**