Explanatory Statement

Civil Aviation Safety Regulations 1998

Exemption — aerial application rating and firefighting endorsement

**Purpose**

The purpose of this exemption instrument is to allow certain pilots who, before 1 September 2014, had significant experience in the conduct of low-level aerial agricultural operations in aeroplanes and helicopters, to train for and engage in firefighting operations.

**Legislation — the Act**

Section 98 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 – CASR Part 61**

Part 61 of the *Civil Aviation Safety Regulations 1998* (***CASR 1998***), which commenced on 1 September 2014, sets out flight crew licensing requirements.

Under subregulation 61.065 (1) of CASR 1998, it is an offence if the holder of a flight crew licence pilots a registered aircraft in an aviation activity under Part 61 without being authorised under Part 61 to conduct the activity.

Regulation 61.375 of CASR 1998 sets out limitations on the exercise of the privileges of a pilot licence. Under subregulation 61.375 (7), and item 6 in Table 61.375, the holder of a pilot licence is authorised to conduct a Part 61 aerial application operation below 500 ft above ground level (***AGL***) only if he or she holds an aerial application rating.

Under regulation 61.1100 of CASR 1998, and items 4 and 5, respectively, in Table 61.1120, the holder of an aerial application rating is authorised to conduct a firefighting operation below 500 ft AGL only if the holder holds (respectively) an aeroplane firefighting endorsement, or a helicopter firefighting endorsement.

Under paragraph 4.11 of Civil Aviation Order (***CAO***) 29.5, for a miscellaneous dropping of articles operation, which includes the dropping of substances in operations such as firefighting, the pilot of an aircraft must be authorised under Part 61.

Under subregulation 137.235 (1) of CASR 1998, the operator of an aeroplane commits an offence if the aeroplane is used to conduct an application operation and the pilot in command is not authorised under Part 61 of CASR 1998 to pilot the aeroplane in the operation. Under regulation 137.010, an application operation includes application of water to a fire.

**Legislation — exemptions**

Subpart 11.F of CASR 1998 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 1998 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. 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 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 (but not an exceptional circumstances exemption for regulation 11.185 about major emergencies) 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.).

**The exemption instrument — Post-1 September 2014 firefighting operations**

To conduct firefighting operations, Parts 61 and 137 of CASR 1998, in effect, require that a pilot must have (among other things) an aerial application rating and a firefighting endorsement.

CASA grants such ratings and endorsements only if:

1. a pilot satisfies (among other things) the qualifying requirements for the rating and endorsement set out in Subpart 61.R of Part 61; or
2. immediately before 1 September 2014, the pilot was a “grandfathered” pilot entitled to the benefit of the transitional provisions set out in Subpart 202.CB of CASR 1998. These provisions define relevant pre-September 2014 aviation activity authorisations (“old authorisations”) and provide for them to continue in force after 1 September 2014 “as if” they were “the equivalent” rating or endorsement under Part 61 (“new authorisations”). (Regulation 202.264 specifically deals with the continuation of suspended old authorisations.) These provisions also require CASA to grant the equivalent new authorisations if the person is the holder of the relevant old authorisations.

CASA previously issued Instrument EX114/14 (continued in force by EX148/15) to allow pilots who had (prior to 1 September 2014) been engaged in firefighting operations in aeroplanes and helicopters to continue conducting those operations, and to qualify for the issue of a firefighting endorsement under CASR Part 61 in circumstances where there was doubt as to whether the qualifications of those pilots previously obtained under Part 5 of the *Civil Aviation Regulations 1988* entitled them to a firefighting endorsement under the transitional provisions which were enacted to facilitate the introduction of CASR Part 61.

However, these exemptions applied only to pilots who had been engaged in the conduct of firefighting operations prior to 1 September 2014.

There is also a significant cohort of pilots who, prior to 1 September 2014, had accumulated substantial operational experience in the conduct of low-level aerial work operations (such as aerial mustering or crop dusting) but who had not (and have not) previously gained experience in firefighting operations.

These kinds of low-level operations have many similarities to aerial firefighting operations and it is considered that the skills gained in those operations could be readily transferred to aerial firefighting operations.

However, presently, no flying training schools have been established to provide the training (under CASR Part 141) necessary for such pilots to qualify for the issue of a firefighting endorsement under CASR Part 61. As such, there is currently no pathway for pilots who have significant experience in other forms of low-level aerial work operations, to qualify for a firefighting endorsement.

This exemption instrument has been issued in order to create such a pathway.

The exemption allows a pilot who, before 1 September 2014, held an agricultural pilot rating (helicopter or aeroplane category) to conduct aerial firefighting operations as pilot in command of a helicopter or an aeroplane.

The exemption is subject to conditions to ensure that an acceptable level of safety is preserved. The applicable conditions include:

* in the case of an aeroplane — the pilot must have accumulated not less than 1 000 hours of flight time as pilot in command in the conduct of low-level operations
* in the case of a helicopter — the pilot must accumulated not less than 300 hours as pilot in command in the conduct of low-level operations
* before conducting firefighting operations, the pilot must undergo a course of training in the conduct of such operations and be assessed as competent to engage in firefighting operations
* the training and competency assessment must be conducted by the holder of an Air Operator’s Certificate (AOC) which authorises the conduct of firefighting operations
* any firefighting operations must be conducted under the supervision of an operator who holds an AOC authorising the conduct of such operations.

Training and competency assessment of pilots engaged in firefighting operations has historically been conducted by AOC holders whose AOCs authorise the conduct of such operations in accordance with a syllabus of training contained in the operator’s operations manual. For these reasons, CASA does not consider that allowing already experienced agricultural pilots to train for and conduct firefighting operations under the supervision of such operators will lead to any diminishment in safety standards.

***Legislative Instruments Act 2003* (the *LIA*)**

As noted above, exemptions under Subpart 11.F of CASR 1998 are “for subsection 98 (5A)” of the Act, that is, for regulations which empower the issue of certain instruments, like exemptions, in relation to “(a) matters affecting the safe navigation and operation, or the maintenance, of aircraft”, and “(b) the airworthiness of, or design standards for, aircraft”.

The exemption is clearly one in relation to matters affecting the safe navigation and operation of aircraft. Under subsection 98 (5AA) of the Act, an exemption issued under paragraph 98 (5A) (a), for such matters, is a legislative instrument if expressed to apply in relation to a class of persons, a class of aircraft or a class of aeronautical products (as distinct from a particular person, aircraft or product).

The exemption applies to a class of persons (the members of the firefighting cohort described above) and is, therefore, a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under sections 24, and 38 and 42 of the LIA.

**Consultation**

An exemption of its nature is always beneficial and does not require statutory consultation. However, CASA had informal discussions with the Aerial Agricultural Association of Australia and the Australian Helicopter Industry Association about its proposal to issue this instrument. Both organisations were supportive of the proposal.

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

A Regulation Impact Statement is not required for OBPR in this case because the exemption is of beneficial effect to those who fall within its scope and comply with its conditions. A preliminary assessment of business compliance costs in the context of the nature of the instrument indicates that it will have a nil negative impact on business.

**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 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.

**Commencement, duration and making**

Under section 1, the exemption commences on the day of registration and expires at the end of 31 August 2016. The exemption is intended to facilitate the training of new firefighting pilots in the period before formal establishment of flight training providers who can provide that training in the manner required under CASR Parts 61 and 141.

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

[Instrument number CASA EX226/15]

Appendix 1

**Statement of Compatibility with Human Rights**

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

Civil Aviation Safety Regulations 1998

Exemption — aerial application rating and firefighting endorsement

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 purpose of this exemption instrument is to allow certain pilots to conduct firefighting operations without meeting certain of the licensing requirements of Part 61 of the *Civil Aviation Safety Regulations 1998*. The exemption is, of its nature, an instrument to benefit those who satisfy its terms and meet its conditions and are, thereby, relieved from certain licencing obligations that might otherwise apply.

**Human rights implications**

The exemption in the 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*. The 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**