

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX65/18 — Private Pilot Licence Medical Certification (Basic Class 2 Medical Certificate) Exemption 2018

Purpose

The purpose of this legislative instrument is to permit holders of a private pilot licence to exercise the privileges of the licence if they meet the AUSTRROADS commercial vehicle driver medical standards, instead of the aviation-specific medical standards prescribed under the *Civil Aviation Act 1988* (the *Act*), subject to conditions and operational limitations.

Legislation

Section 98 of 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)* and *Civil Aviation Regulations 1988 (CAR)*.

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 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.

For Part 11 of CASR, in deciding whether to grant an exemption, CASA will regard as paramount the preservation of at least an acceptable level of aviation safety.

Regulation 11.205 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.

Part 61 of CASR prescribes a scheme for the licensing of flight crew, including pilots. A private pilot licence is one of the kinds of licence that may be issued under Part 61.

The Part 61 scheme also prescribes different kinds of ratings and endorsements that authorise more specialised aviation activities. Among these ratings and endorsements are “flight activity endorsements”, “instrument endorsements” and “operational ratings”, each of which is defined in regulation 61.010. In summary:

- flight activity endorsements authorise aerobatics, “spinning” and formation flying activities;
- instrument endorsements authorise flying in low visibility conditions in particular kinds of aircraft (for example at night or in cloud);
- operational ratings authorise activities for pilot instruction and examination, flying in low visibility conditions (for example at night or in cloud), low-level flying, and “aerial application” activities.

Subregulation 61.065 (1) of CASR relevantly prohibits the holder of a flight crew licence to exercise the privileges of the licence in a flight if the holder is not authorised under Part 61 to conduct the flight.

Regulation 61.410 of CASR prescribes medical certification requirements for the holders of a private pilot licence. Among other things, the holder of such a licence is authorised to exercise the privileges of the licence if the holder also holds a current class 1 or class 2 medical certificate, issued under Part 67 of CASR.

Subsection 98 (5D) of the Act provides that a legislative instrument made under the Act or the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time, even if the other instrument or writing does not yet exist when the legislative instrument is made.

Background

Feedback from private pilots in the aviation industry has identified that the aviation-specific medical standards are unnecessarily onerous, and access to specialised aviation doctors that assess compliance against those standards is unnecessarily difficult and expensive.

CASA has determined that private pilots engaged in low risk flying activities, and carrying small numbers of passengers, should be permitted to exercise the privileges of their private pilot licence if they meet the AUSTROADS medical standard that applies to drivers of heavy vehicles, public passenger vehicles or vehicles carrying dangerous goods. CASA will issue pilots who meet that standard, on application and based on certification from a medical practitioner, an *Aviation Medical Certificate (Basic Class 2)*.

However, an exemption is required for such pilots against the requirement in subregulation 61.065 (1) insofar as it requires the pilots to meet the medical certification requirement in paragraph 61.410 (1) (a).

Overview of instrument

The instrument exempts a person who holds a private pilot licence from the requirement in subregulation 61.065 (1) to the extent that it requires the person to meet the medical certification requirement in paragraph 61.410 (1) (a), if the person has applied for, and been issued, an *Aviation Medical Certificate (Basic Class 2)* and if the date for the person's next medical review has not passed. The exemption is subject to operational limitations and conditions, imposed in the interests of safety.

Documents incorporated by reference

The legislative instrument incorporates a person's *Fitness Report* and the commercial vehicle driver medical standards that apply to drivers of heavy vehicles, public passenger vehicles or vehicles carrying dangerous goods, published by AUSTROADS (the ***AUSTROADS standard***).

The Fitness Report, in relation to a person, is a completed version of CASA form 1474. CASA developed form 1474 for the purpose of the basic class 2 medical standard scheme of which this instrument forms a part. The form is based on the AUSTROADS fitness report, and is to be used by medical practitioners to assess a pilot against the commercial AUSTROADS standard, to certify whether or not a person meets the standard, and to specify when the person should next undergo a medical review. The form is freely available on the

CASA website but the instrument does not regulate whether any particular version of the form must be used by medical practitioners.

Once completed in relation to a person, the form becomes a ***Fitness Report***. A person cannot rely on the exemption in the instrument beyond the date stated on the Fitness Report by which the person should next undergo a medical review. This has the effect that the completed Fitness Report is incorporated into the instrument by reference. A Fitness Report exists only in the form in which it is completed by the relevant medical practitioner for a person. It is available to the person in relation to whom the Fitness Report is created.

The AUSTROADS standard specifies the commercial vehicle driver medical standards that apply to drivers of heavy vehicles, public passenger vehicles or vehicles carrying dangerous goods. It is published by AUSTROADS and is freely available from the AUSTROADS website. In accordance with subsection 98 (5D) of the Act, the instrument incorporates the standard as it exists when a medical practitioner assesses a person and issues a Fitness Report. In accordance with subsection 98 (5D) of the Act, the instrument also incorporates the standard as it exists when CASA issues an *Aviation Medical Certificate (Basic Class 2)*. The current version of the standard, and where it can be obtained, is stated in a note in the instrument.

Notes on sections

Section 1 of the instrument states the instrument's name.

Section 2 of the instrument states when the instrument commences and when it will be repealed.

Section 3 states defined terms for the instrument, and notes to the section indicate the location of terms used in the instrument that are defined in the Act and CASR. Important terms defined in the section include ***Fitness Report*** and ***medical standard basic class 2***.

Fitness Report is defined, for a particular person, to be the CASA form 1474, *Fitness Report*, that is completed by a medical practitioner as evidence that the person met, on the day the report was generated, the medical standard basic class 2.

Section 3 defines ***medical standard basic class 2*** to mean commercial vehicle driver medical standards that apply to drivers of heavy vehicles, public passenger vehicles or vehicles carrying dangerous goods. The definition applies the standard only as it is applied without requiring the imposition of conditions or restrictions, other than a requirement to wear glasses or a hearing aid. That is, the standard is not met by a person if the standard would require, in relation to a driver with the same medical status, the imposition of a limitation or condition on the driver's medical certification, unless the limitation or condition is for the wearing of glasses or a hearing aid. The standards are published by AUSTROADS (see the incorporation by reference section above).

Section 4 grants the exemption to a person who holds a private pilot licence. The exemption is from compliance with subregulation 61.065 (1) to the extent that it requires the person to meet the medical certification requirement in paragraph 61.410 (1) (a) to exercise the privileges of the licence in a single-pilot operation. The exemption does not apply to any operation for which 2 pilots are required under CASR.

To have the benefit of the exemption, for a single-pilot operation:

- the person must have applied for, and been issued, an *Aviation Medical Certificate (Basic Class 2)* and certify that the person has been assessed by a medical practitioner as meeting the medical standard basic class 2, as the standard exists at the time the application is made; and
- CASA must have issued the person an *Aviation Medical Certificate (Basic Class 2)* on the basis that it is satisfied that the person meets the medical standard basic class 2, as the standard exists at the time CASA issues the certificate; and
- the operation must be conducted before the recommended date of next review of the person against the medical standard basic class 2, as stated in the person's most recent Fitness Report.

If there is a change in the applicable standard between the date a person is issued a Fitness Report and the date of the issue of an *Aviation Medical Certificate (Basic Class 2)*, such that it is unclear whether the person meets the revised standard, CASA may refuse to grant the certificate and request a new medical assessment.

The Fitness Report includes a field for an assessing medical practitioner to state the date on which the practitioner recommends the person to next undergo a medical assessment. The duration of the medical certificates will be linked to this date, such that a person cannot rely on the exemption in this instrument if he or she is overdue for a medical review.

Subsection 4 (2) states that the exemption is subject to the person complying with the conditions in section 5.

Section 5 states the conditions on the exemption.

Subsection 5 (1) prohibits the person from exercising the privileges of the licence, in reliance on the exemption:

- in conjunction with an operational rating, instrument endorsement or flight activity endorsement; and
- while carrying more than 5 passengers.

Subsection 5 (2) imposes operational limitations on the exercise of the privileges of a private pilot licence in reliance on the exemption. The operation must be conducted under the visual flight rules (V.F.R.), below 10 000 feet altitude, within Australian territory, in a piston-engined aircraft with a maximum take-off weight less than 8 168 kg, and while the person carries a copy of his or her *Aviation Medical Certificate (Basic Class 2)*.

The subsection also limits the purposes of operations that may be conducted in reliance on the exemption. Private operations are permitted. The only other permitted operations are operations for a flight test or a ***relevant check or review***, in either case in conjunction with the issue of, or the exercise of the privileges of, a private pilot licence or a recreational pilot licence.

The conditions in subsections 5 (1) and (2) are subject to relief on the terms set out in subsection 5 (3). Subsection 5 (3) permits the conduct of operations prohibited in subsections 5 (1) and (2) if another pilot occupies a flight control seat of the aircraft and if the other pilot:

- is authorised to conduct the operation as pilot in command; and

- holds a class 1 or class 2 medical certificate.

The instrument does not require the other pilot to conduct the operation, but ensures that a second pilot is available to take over if the pilot relying on the exemption suffers medical incapacitation. The subsection does not have effect to authorise multi-crew operations.

Subsection 5 (4) imposes conditions on a pilot relying on the exemption to produce, to a CASA officer who is an authorised person for regulation 302 of CAR, the pilot's *Aviation Medical Certificate (Basic Class 2)* and his or her most recent Fitness Report.

Section 6 imposes conditions in relation to the carriage of passengers. It requires notice of the matters mentioned in subsection 6 (2) to a legal guardian of each passenger who has a guardian, and to each other passenger. The matters to be notified ensure that passengers, or their legal guardians, have notice that the pilot is conducting the relevant flight on the basis of a medical certification that is accepted by CASA but that is based on a lower standard than that which usually applies to pilots. It is also intended that section 6 will ensure that passengers and legal guardians are able to review the conditions and limitations to which a relevant flight is subject, in order to assess whether they wish to accept any higher level of risk.

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 regulation 61.065 of CASR and is, therefore, a legislative instrument that is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

A discussion paper seeking industry and community views on the medical certification regime was published in December 2016 with a comment period closing on 31 March 2017. Around 160 submissions to the discussion paper were received. Responses included feedback from pilots, industry associations, flying organisations and medical professionals. A report on all the feedback received was published in November 2017 together with submissions where the author had given permission for publication.

Following this public consultation, a policy was developed in consultation with both aviation and medical stakeholders, which proposed the scheme that is facilitated by the legislative instrument. The final policy was considered and supported in November 2017 by the Aviation Safety Advisory Panel (ASAP), a body of aviation industry representatives covering all industry sectors.

Public notification of the policy was made at the beginning of December 2017 and received significant commentary in both mainstream and aviation media. The policy was also highlighted in the December CASA briefing newsletter distributed to a large aviation industry subscriber base and CASA social media channels.

Further communication of the policy was made concurrent with the launch of the most recent aviation medicine reforms (Class 2 commercial operations and DAME-issued Class 2 medicals) during February and April.

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 is compatible with the relevant human rights and freedoms.

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 2 July 2018 and is repealed at the end of 30 June 2021.

Statement of Compatibility with Human Rights

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

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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

This legislative instrument provides an exemption to holders of a private pilot licence to permit them to exercise the privileges of the licence if they meet the AUSTROADS commercial vehicle driver medical standards, instead of the aviation-specific medical standards prescribed under the *Civil Aviation Act 1988*, subject to conditions and operational limitations.

Human rights implications

This legislative instrument engages with the right to privacy.

The right to protection against arbitrary and unlawful interference with privacy, contained in Article 17 of the International Covenant on Civil and Political Rights, provides that no one shall be subjected to arbitrary or unlawful interference with their privacy.

The right to privacy is engaged by a condition in the instrument that requires a person relying on the exemption in the instrument to produce, to a CASA officer, the document that a medical practitioner uses to record the assessment of whether the person meets the AUSTROADS standard. The condition incorporates the requirement so that CASA, as the aviation safety regulator, can check that a person relying on the exemption meets the standard.

The protections afforded by the *Privacy Act 1988* continue to apply.

The requirement is necessary in order to ensure proper administration and enforcement of Australia's aviation safety system, as modified by the legislative instrument. Any potential limitation on the right to privacy is necessary, reasonable and proportionate in promoting the objective of improving aviation safety.

Conclusion

The legislative instrument is compatible with human rights. To the extent that it may also limit human rights, those limitations are reasonable, necessary and proportionate in order to ensure the safety of aviation operations and to promote the integrity of the aviation safety system, and therefore promote the rights to life and health.

Civil Aviation Safety Authority