**Explanatory Statement**

**Civil Aviation Regulations 1988**

**Civil Aviation Safety Regulations 1998**

**CASA EX44/19 — Aerial Baiting Operations Exemption 2019**

**Purpose**

The purpose of *CASA EX44/19 — Aerial Baiting Operations Exemption 2019* (the ***instrument***) is to exempt operators, and pilots in command, of aircraft conducting aerial baiting operations from certain pilot qualification and operator requirements set out in Parts 61 and 137 of the *Civil Aviation Safety Regulations 1998* (***CASR***) and Part 11 of the *Civil Aviation Regulations 1988* (***CAR***). The exemptions are granted subject to stated conditions.

**Legislation**

Section 98 of the *Civil Aviation Act 1988* (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 CASR and 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, the Civil Aviation Safety Authority (***CASA***) may grant an exemption from a provision of the regulations.

Under subregulation 11.160 (2), 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.

Under subregulation 11.160 (3), an exemption may be granted on application by a person or on CASA’s own initiative.

Under subregulation 11.175 (4) of CASR, in deciding whether to reissue an exemption, CASA must regard as paramount the preservation of at least an acceptable level of aviation safety. CASA has regard to the same test when deciding whether to grant an exemption on its own initiative.

Regulation 11.205 of CASR provides that CASA may impose conditions on an exemption if necessary in the interests of the safety of air navigation. Under regulation 11.210 of CASR, 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) of CASR, the maximum duration of an exemption is 3 years.

**Aerial baiting operations**

The term ***aerial baiting operation*** is defined in section 3 of the instrument to mean

an aircraft operation that is solely for one of the following:

(a) dropping poison bait to eradicate feral animals;

(b) training for such dropping;

but does not include an operation for mosquito control or eradication.

An aerial baiting operation is an agricultural operation within the meaning of subregulation 2 (1) of CAR, that is “the broadcasting of chemicals, seeds, fertilizers and other substances from aircraft for agricultural purposes, including the purposes of pest and disease control”. An aerial baiting operation is also an aerial application operation within the meaning of regulation 137.010 of CASR, being a flight to apply application material. Regulation 137.010 defines ***application material*** as “fertiliser, trace elements, seeds, baits, water, pesticides or other material”. Some aerial baiting operations will involve elements of both definitions.

**Aerial application rating**

Under subregulation 61.065 (1) of CASR, the holder of a flight crew licence commits an offence if the holder conducts an activity mentioned in Part 61 of CASR while, among other things, piloting a registered aircraft, and the holder is not authorised under Part 61 to conduct the activity.

Under subregulation 61.375 (7) of CASR, the holder of a pilot licence is authorised to conduct an activity mentioned in Table 61.375 of CASR only if the holder also holds the rating mentioned for that activity. Item 5 of Table 61.375 states that for a low‑level operation activity, the required rating is either a low-level rating or an aerial application rating. Item 6 of Table 61.375 states that for an aerial application operation below 500 ft above ground level, the required rating is an aerial application rating.

Subpart 61.R of CASR deals with aerial application ratings. Regulation 61.1100 of CASR states that the holder of a pilot licence with an aerial application rating is authorised to conduct the activity mentioned in Table 61.1120 of CASR only if the holder also holds the corresponding endorsement mentioned in Table 61.1120.

Under regulation 61.1115 of CASR, the applicant for an aerial application rating must, among other things, hold a commercial pilot licence or an air transport pilot licence and have passed the flight test mentioned in the Part 61 Manual of Standards for the aerial application rating.

**Low-level rating**

Subpart 61.Q of CASR deals with low-level ratings. Regulation 61.1050 of CASR states that the holder of a pilot licence with a low-level rating is authorised to conduct an activity mentioned in Table 61.1075 of CASR only if the holder also holds the corresponding endorsement mentioned in Table 61.1075.

Table 61.1075 sets out, in column 3, the requirements for the corresponding endorsement. For Item 1 of Table 61.1075 (aeroplane low-level endorsement), for the holder of a pilot licence to conduct a low-level operation in an aeroplane, the holder must have an aeroplane category rating and at least 5 hours of dual flight in an aeroplane while receiving training in low-level operations. For Item 2 of Table 61.1075 (helicopter low-level endorsement), for the holder of a pilot licence to conduct a low-level operation in a helicopter, the holder must have a helicopter category rating and at least 5 hours of dual flight in a helicopter while receiving training in low-level operations.

Under regulation 61.1070 of CASR, the applicant for a low-level rating must, among other things, hold a private pilot licence, a commercial pilot licence or an air transport pilot licence. Subregulation 61.1070 (3) provides that the holder of an aerial application rating is taken to meet the requirements for the grant of, and to have applied for, a low-level rating.

**Dropping operations**

Under regulation 150 of CAR, contained in Part 11 of CAR, the pilot in command of an aircraft may not permit anything to be dropped from the aircraft except in accordance with directions issued by CASA under subregulation 150 (2). CASA has issued dropping directions in Civil Aviation Order (***CAO***) 29.5. However, these directions are expressed not to apply to aircraft conducting agricultural or aerial application operations, or training for such operations.

**Low flying**

Under subregulation 157 (1) of CAR, the pilot in command of an aircraft must not fly over a non-populous area at a height lower than 500 ft. Under paragraph 157 (4) (b), CASA may issue a general or specific permit to the owner or operator of an aircraft conducting an aerial work operation that requires low flying to permit flight below 500 ft during the operation. CAO 29.5 includes a general low-flying permission for operations conducted in accordance with the CAO.

**Instrument**

The instrument has the effect of replacing instrument CASA EX69/16, which expired at the end of April 2019.

The instrument exempts pilots in command from the requirement to hold an aerial application rating under subregulation 61.375 (7) of CASR, for the purpose of conducting aerial application operations under 500 ft. It also exempts the pilot in command from subregulation 61.065 (1) of CASR, being a general requirement that the holder of a flight crew licence must be authorised under Part 61 of CASR to conduct an activity. This means that, under this exemption, pilots in command and operators may conduct aerial baiting operations below 500 ft without the pilot holding an aerial application rating. The requirement to hold an aerial application rating does not apply if aerial baiting operations are conducted above 500 ft, however, the instrument is required to apply to aerial baiting operations conducted above 500 ft as Part 137 of CASR applies to application operations which have no upper height limit.

The instrument also exempts the pilot in command of an aeroplane conducting an aerial baiting operation from compliance with directions issued by CASA, under subregulation 150 (2) of CAR, in relation to agricultural operations. Operators, and pilots in command, of aeroplanes conducting aerial baiting operations will also be exempt from Part 137 of CASR. Part 137 requires a pilot to be trained in low flying and the delivery of application materials before using an aeroplane to conduct an aerial baiting operation. However, aerial baiting operations are not always conducted at a low level. Furthermore, an aerial baiting operation does not have the same risk profile as the aerial application of application materials such as dispersing pesticides, fertilisers and similar substances.

CASA considers that, provided alternative safety risk mitigators are in place and relevant processes are set out in the operator’s operations manual, an aerial baiting operation does not require the operator or pilot in command to satisfy all of the wide range of requirements mentioned above that arise from various legislative sources not directly related to the specific activity of aerial baiting.

Part 61 of CASR has specific rating requirements, in the interests of aviation safety, that licence holders must meet before being granted a low‑level rating or an aerial application rating. By exempting pilots from the requirement to hold an aerial application rating, the pilots and operators are subject to conditions that CASA has imposed in the interests of aviation safety.

The pilot exemptions in sections 5 and 6 of the instrument are subject to the conditions in section 8 that, for an operation below 500 ft, the operator for whom the pilot is flying must have a general (that is, a dropping authorisation in the operator’s air operator’s certificate) or specific permit from CASA permitting aerial work in the form of aerial baiting below 500 ft. The pilot must also hold a low-level rating in accordance with Subpart 61.Q of CASR for the category of aircraft being operated. Meeting the requirements for the grant of a low‑level rating is less onerous, in terms of flight time requirements, than meeting the requirements for the grant of an aerial application rating (for which the instrument provides an exemption).

The operator exemption in section 7 of the instrument is subject to the conditions in Schedule 1. The operator’s operations manual must have relevant procedures for the conduct of aerial baiting operations, including for operations below 500 ft, if applicable.

The instrument includes risk management procedures, which have been included in the conditions, to clarify the operator’s obligations with regard to relevant procedures. Paragraph 3 (e) of Schedule 1 includes a requirement to ensure that pilots hold a low‑level rating for the category of aircraft being operated, before conducting an aerial baiting operation below 500 ft. Clause 1 of Schedule 1 also specifies a condition that, for an operation below 500 ft, the operator must have a general or specific permit from CASA permitting aerial work in the form of aerial baiting below 500 ft, consistent with the requirements of CAO 29.5.

The instrument requires the operator to ensure that records in relation to the risk management processes identified in clause 4 of Schedule 1 are kept for at least 5 years, and made available to CASA for inspection and audit.

The instrument will be in force for a period of 3 years. It is expected that during this period, the operators will have completed a transition to Part 137 or 138 of CASR under which the subject activity can be carried out as an aerial work dispensing operation. CASA will also, during this period, consider amending Part 61 or 137 of CASR to remove the requirement that the pilot in command of an aircraft conducting an aerial baiting operation hold an aerial application rating, or to disapply Part 137 to aerial baiting operations and allow the activity to continue under Part 138.

***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 applies to classes of persons, being operators, and pilots in command, of aircraft conducting aerial baiting operations. The instrument is, therefore, a legislative instrument, and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

In granting the exemptions, CASA has regarded as paramount the preservation of at least an acceptable level of aviation safety. In imposing the conditions on the exemptions, CASA has determined the conditions were necessary in the interests of the safety of air navigation.

**Consultation**

Industry requested that instrument CASA EX69/16 be renewed.

The instrument reflects CASA’s continued approach to exempting operators, and pilots in command, of aircraft conducting aerial baiting operations from the requirement to hold an aerial application rating, to comply with agricultural operations directions issued by CASA under CAO 20.21 or to comply with aerial application requirements for aeroplanes under Part 137 of CASR. The instrument has a beneficial operation.

In these circumstances, CASA is satisfied that no consultation is appropriate or reasonably practicable for the instrument for section 17 of the LA.

**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 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.

**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 (OBPR id: 14507).

**Making and commencement**

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

The instrument commences on 1 May 2019, and is repealed at the end of 30 April 2022.

**Attachment 1**

**Statement of Compatibility with Human Rights**

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

**CASA EX44/19 — Aerial Baiting Operations Exemption 2019**

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 legislative instrument is to exempt operators, and pilots in command, of aircraft conducting aerial baiting operations from certain pilot qualification and operator requirements set out in Parts 61 and 137 of the *Civil Aviation Safety Regulations 1998* and Part 11 of the *Civil Aviation Regulations 1988*. The exemptions are granted subject to conditions imposed by the Civil Aviation Safety Authority.

The instrument has the effect of replacing instrument CASA EX69/16, which expired at the end of April 2019.

**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**