

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX46/20 — Class 1 Medical Certificate (Certain Flights by Holders of a Commercial Pilot Licence or Air Transport Pilot Licence) Exemption 2020

Purpose

The purpose of *CASA EX46/20 — Class 1 Medical Certificate (Certain Flights by Holders of a Commercial Pilot Licence or Air Transport Pilot Licence) Exemption 2020* (the **instrument**) is to renew an exemption that permits the holder of a commercial pilot licence or an air transport pilot licence to exercise the privileges of the licence to conduct certain flights while holding a class 2 medical certificate instead of a class 1 medical certificate. The exemption in the instrument covers a flight if it: is not conducted, wholly or in part, in a foreign country; is in an aircraft with a maximum take-off weight less than 8 618 kg; and does not carry a passenger.

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 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, the Civil Aviation Safety Authority (**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.

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 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 establishes a scheme for the granting, and exercising of the privileges, of licences to act as the pilot of an aircraft. Kinds of pilot licences relevantly include the **commercial pilot licence** (Subpart 61.I) and the more advanced **air transport pilot licence** (Subpart 61.K).

Subregulation 61.065 (1) of CASR relevantly prohibits a person from conducting activities mentioned in Part 61 of CASR as the pilot of a registered aircraft, or as an instructor or examiner, if the person is not authorised under Part 61 to conduct the activity. Breach of the subregulation is an offence of strict liability.

Subregulation 61.415 (1) of CASR provides that a person is not authorised to exercise the privileges of a commercial pilot licence or air transport pilot licence unless the person holds a class 1 medical certificate or has a medical exemption.

The requirements for a class 1 medical certificate are prescribed in Part 67 of CASR, together with the requirements for other classes of medical certificate, including the class 2 medical certificate.

Medical exemption is defined in regulation 61.010 of CASR and contemplates an administrative process based on an application by a person for the exemption.

Background

Australia's medical certification framework is part of a suite of controls against the risk that a pilot might become incapacitated during flight. The multi-tier framework is predicated on the principle that medical incapacitation events have increasingly more grave consequences as the operating environment becomes more complex in terms of systems, aircraft size and passenger load.

Having regard to the likelihood and consequence of pilot incapacitation risk, its likelihood is largely controlled by the class of medical certificate held by the pilot; a class 1 certificate equates to a lower likelihood than a class 2 certificate.

Similarly, and again having regard to the likelihood and consequence of pilot incapacitation risk, the consequences are mitigated by the type of licence privileges that are able to be exercised. Specifically, the full suite of pilot privileges that may be exhibited by air transport pilot licence holders and commercial pilot licence holders include the operation of very large and complex aircraft in challenging environments, and carrying large numbers of passengers. In contrast, operations conducted by holders of the private pilot licence – the kind that require a class 2 medical certificate – involve moderately-sized aircraft carrying fewer (non-paying) passengers. However, the environments can be equally as challenging, and the aircraft can be very complex.

Therefore, just as class 1 and class 2 medical certificates modify the likelihood of the risk of incapacitation of a pilot, the type of privileges that may be exercised (due to the type of licence held) modifies the consequences of risk for each.

In order to balance the theoretically higher likelihood of pilot incapacitation for a pilot with a class 2 medical certificate, the type of privilege that the instrument proposes to cover is limited in terms of aircraft size and passengers. By taking this approach, the incapacitation risk for non-passenger-carrying operations in smaller aircraft (***lower consequence operations***) conducted by a pilot with a class 2 medical certificate is not more than that which applies to a large aircraft, passenger-carrying operation conducted by a pilot with a class 1 medical certificate.

In light of these considerations, CASA introduced an exemption to allow the holder of a commercial pilot licence or an air transport pilot licence to exercise the privileges of the licence to conduct certain flights while holding a class 2 medical certificate instead of a class 1 medical certificate.

The exemption in the instrument was granted in substantially the same terms in instrument number CASA EX25/18 (the *previous instrument*).

Since the making of the previous instrument, the level of pilot experience available for lower consequence operations has increased, without an overall level of risk higher than that arising from the holder of a class 1 medical certificate conducting operations in a large aircraft passenger-carrying operation.

Going forward, CASA intends to amend CASR Part 61 to incorporate the policy underlying the exemption in the instrument into CASR. However, this will involve extensive work and there is no current timetable for such amendments. The exemption is required in the meantime, to ensure that licence holders are not subject to regulatory requirements not currently imposed due to the current exemption, and to avoid negative impact on the flying activities of licence holders who rely on the exemption.

Content of instrument

The instrument reduces the regulatory burden on pilots of lower consequence operations by enabling experienced pilots who no longer meet the class 1 medical certificate standard – either by circumstance or choice – to conduct operations where the instrument applies.

Section 1 of the instrument names the instrument.

Section 2 states that the instrument commences on 1 March 2020 and will be repealed at the end of 28 February 2023.

Section 3 provides definitions for the instrument. Many of the terms used in the instrument have the same meaning as the term has in the Act or CASR. **Exempted activity** is defined to mean a flight that is not conducted, wholly or in part, in a foreign country, is in an aircraft with a maximum take-off weight less than 8 618 kg and that does not carry a passenger. **Flight** is defined in the Act. **Maximum take-off weight** is defined in subregulation 2 (1) of CAR. **Passenger** is defined in the CASR Dictionary.

Australia will continue to comply with international medical certification requirements in relation to flights in a foreign country.

The limitation on the maximum take-off weight of the aircraft reflects the risk consequence control discussed above.

Similarly, the prohibition on the carriage of passengers reflects the risk consequence control discussed above.

Subsection 4 (1) provides an exemption to a person who holds a commercial pilot licence or air transport pilot licence from compliance with subregulation 61.065 (1) of CASR. The exemption has effect to the extent that subregulation 61.065 (1), read with

subregulation 61.415 (1), requires the person to hold a class 1 medical certificate in order to exercise the privileges of the person's licence to conduct an exempted activity.

A note after subsection 4 (1) explains the relationship between the operation of the instrument in relation to exempted activities and the application of subregulation 61.415 (1) to the exercise of the privileges of commercial and air transport pilot licences.

Subsection 4 (2) states that the exemption in subsection (1) is subject to the condition that the person must hold a current class 2 medical certificate.

By way of example, if the holder of a commercial or air transport pilot licence also held a low-level rating (see Subpart 61.Q of CASR), aerial application rating (Subpart 61.R of CASR), flight instructor rating (Division 61.T.1 of CASR), or flight examiner rating (Subpart 61.U of CASR), the exemption would permit the licence holder to exercise the privileges of the rating to conduct an exempt activity when holding a class 2 medical certificate instead of a class 1 medical certificate.

Similarly, the exemption would permit the holder of a commercial or air transport pilot licence to conduct aerial photography and aerial survey operations while holding a class 2 medical certificate if the operation is an exempt activity. Such a pilot could also conduct an exempt activity for the carriage of freight holding a class 2 medical certificate.

The exemption operates so that a pilot must hold a class 1 medical certificate for a flight if any part of an operation is not an exempt activity. For example, while a search operation may be an exempt activity if it does not carry a passenger, a rescue operation would not be an exempt activity because the rescued person would be a passenger. Similarly, an air ambulance flight to collect a patient and medical team may be an exempt activity if it does not carry a passenger, but the return flight with the patient and medical team would not be an exempt activity because the patient and medical team would be passengers. Accordingly, in both cases, the pilot conducting the flight cannot rely on the exemption and will require a class 1 medical certificate.

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 subregulation 61.065 (1) of CASR. 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.

Consultation

Before making the previous instrument, CASA published in December 2016 a discussion paper seeking industry and community views to the medical certification regime as a whole. Around 160 submissions to the discussion paper were received. Responses included feedback from pilots, industry associations, flying organisations and medical professionals. Several themes arose from the discussion paper process. Those themes included: a strong desire to change a system seen as overly complex and burdensome for lower consequence operations;

trust in the judgement of medical professionals; and consideration of successful overseas reforms. Overseas reforms that were highlighted in the discussion paper process included the American and United Kingdom self-certification medical processes for pilots engaged in lower consequence operations.

CASA developed the policy underpinning the instrument having regard to the abovementioned themes arising from the discussion paper process. CASA conducted some informal consultation with representative bodies for associations from both the aviation and medical sectors during this part of the process. The final policy was considered and supported in November 2017 by the Aviation Safety Advisory Panel, which is a consultative body of aviation industry representatives covering all industry sectors.

Public notification of the policy was made at the beginning of December 2017 and the policy was also highlighted in a December CASA briefing newsletter distributed to a large aviation industry subscriber base and CASA social media channels. Since the previous exemption was made, the policy has received overwhelmingly positive commentary in both mainstream and aviation media.

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

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 engages with the right to work and rights at work and is compatible with human rights.

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 March 2020 and is repealed at the end of 28 February 2023.

Statement of Compatibility with Human Rights

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

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The 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 instrument grants an exemption that permits the holder of a commercial pilot licence or an air transport pilot licence to exercise the privileges of the licence to conduct certain flights while holding a class 2 medical certificate instead of a class 1 medical certificate. The exemption in the instrument covers a flight if it: is not conducted (wholly or partially) in a foreign country; is in an aircraft with a maximum take-off weight less than 8 618 kg; and does not carry a passenger.

Human rights implications

The instrument engages with the right to work and rights at work by reducing the medical certification standard required for holders of commercial pilot licences and air transport pilot licences to conduct the covered aviation operations.

The instrument engages positively with the right to work by enabling pilots of aircraft to be employed for the covered operations, where they are commercial in nature, if they hold the lower class 2 medical standard instead of the higher class 1 medical certification standard required in the *Civil Aviation Safety Regulations 1998*.

The instrument also arguably engages negatively with rights at work by potentially exposing other workers on the aircraft to risk if a pilot who meets the lower class 2 medical certification standard suffers incapacitation during a commercial operation. This risk only arises in relation to an incapacitation event that would not have occurred if the pilot met the higher class 1 medical standard.

The engagement of the instrument with the right to work and rights at work promotes the general welfare of Australian society by increasing the number of commercial pilots available to conduct the covered operations where they are commercial in nature, including experienced pilots who no longer meet the higher class 1 medical certification standard. The arrangements in the instrument do not give rise to a level of risk that is higher overall than risks associated with the holder of a class 1 medical certificate conducting a passenger-carrying operation in a large aircraft. The arrangements in the instrument are a reasonable regulatory response to the current levels of risk for the affected aviation operations, and are proportional to the benefit.

Conclusion

The instrument is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Civil Aviation Safety Authority