

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### CASA EX65/20 — Extension of Airworthiness Review Certificate (COVID-19) Exemption 2020

##### Purpose

Continuing airworthiness management organisations (*CAMOs*) for aircraft are facing difficulties in carrying out airworthiness reviews of aircraft due to a lack of resources and non-availability of personnel for the carrying out of the reviews. This has arisen because of the COVID-19 pandemic, and consequent emergency situation in Australia.

One purpose of *CASA EX65/20 — Extension of Airworthiness Review Certificate (COVID-19) Exemption 2020* (the *instrument*) is to enable a CAMO to extend the time for which an airworthiness review certificate (an *ARC*) for an aircraft is in force a third time and for a maximum period of 6 months.

Another purpose of the instrument is to enable a CAMO to extend the time for which an ARC for a relevant aircraft (a *relevant aircraft*) is in force, even though the aircraft may not be airworthy. The term *relevant aircraft* is defined, for Part 3 of the instrument, as follows:

*relevant aircraft* means an aircraft that:

- (a) is not in operation; and
- (b) is parked in accordance with the storage requirements in the instructions for continuing airworthiness for the aircraft.

##### 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*).

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 compliance with 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 11.170 (3) of CASR, in deciding whether to grant an exemption, CASA must regard as paramount the preservation of at least an acceptable level of aviation safety. CASA has regard to the same criterion 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.

Subpart 42.I of CASR applies to an aircraft:

- (a) that is authorised to operate under an AOC (as defined in subsection 3 (1) of the Act); or
- (b) that is a large aircraft (as defined in Part 3 of the CASR Dictionary).

Under Part 1 of the CASR Dictionary, ***continuing airworthiness management organisation*** means a person who holds an approval under regulation 42.590 of CASR that is in force.

The term ***instructions for continuing airworthiness***, for an aircraft, is defined in clause 10 of Part 3 of the CASR Dictionary.

The term ***airworthy*** has the meaning given by subregulation 42.015 (2) of CASR.

Under regulation 42.860 of CASR, a document is an ARC only if it is in the approved form.

Under subregulation 42.840 (1) of CASR, the CAMO for an aircraft may issue an ARC for the aircraft. Under subregulation 42.840 (2), if a CAMO issues an ARC for the aircraft, the organisation must ensure the certificate is issued on behalf of the organisation by an individual:

- (a) who is an airworthiness review employee (as defined in subregulation 42.015 (1) of CASR) of the organisation; and
- (b) whose authorisation as an airworthiness review employee permits the employee to issue an ARC for the aircraft.

Regulation 42.880 of CASR sets out the requirements for extending the time for which an ARC for an aircraft is in force. One requirement, under subregulation 42.880 (4), is that the time for which the certificate is in force may be extended no more than twice. Another requirement, under subregulation 42.880 (5), is that the aircraft must be airworthy.

Under subregulation 42.885 (1) of CASR, a CAMO must ensure that an individual does not extend an ARC on its behalf for an aircraft unless the requirements mentioned in regulation 42.880 are met. Subregulation 42.885 (2) makes it an offence for a CAMO to breach this obligation.

Under subregulation 42.890 (1) of CASR, an individual must not extend an ARC for an aircraft unless the requirements mentioned in regulation 42.880 are met. Subregulation 42.890 (2) makes it an offence for an individual to breach this obligation.

Under regulation 42.895 of CASR, to extend the time for which an ARC is in force, an individual must:

- (a) sign the certificate; and
- (b) record on the certificate the date of the extension and the new date of expiry of the certificate.

### **Overview of instrument**

For an aircraft to which Subpart 42.I applies, a periodic review of the aircraft's airworthiness status must be carried out by the CAMO for the aircraft. The CAMO may issue an ARC for the aircraft only if the requirements stated in regulation 42.845 of CASR are met. Similarly, an individual must not issue an ARC, on behalf of the CAMO, for an aircraft unless the requirements mentioned in regulation 42.845 are met.

Under regulation 42.870 of CASR, an ARC for an aircraft is initially issued for a period of 1 year. Also, if the organisation that issued the certificate has been the CAMO for the aircraft since the date of issue of the certificate, the CAMO may, under subregulations 42.880 (3) and (4), extend the time for which the ARC for the aircraft is in force for 2 consecutive periods of 1 year each. This allows for an airworthiness review, for the aircraft, to be carried out by the CAMO every 3 years.

An aircraft must not be operated unless there is a current ARC for the aircraft.

Due to the lack of resources and availability of personnel, CAMOs are facing difficulties in carrying out the airworthiness reviews of aircraft. This has arisen because of the impacts of the COVID-19 pandemic. This includes difficulty in a CAMO engaging airworthiness review employees to carry out the airworthiness reviews on behalf of the organisation. Also, in many cases, airworthiness review employees of a CAMO are unable, due to COVID-19 travel restrictions, to access aircraft located interstate and carry out airworthiness reviews of the aircraft.

The inability of CAMOs for aircraft to carry out airworthiness reviews of the aircraft would otherwise lead to the grounding of the aircraft, including those aircraft that are required to be operated for the provision of essential aviation services during the emergency situation.

The other consequence of not being able to carry out airworthiness reviews of aircraft in accordance with the regular review schedule would be a large backlog of aircraft requiring airworthiness reviews when the situation returns to normal. This would constrain the operation of aircraft into the future.

In particular circumstances, the instrument grants exemptions to a CAMO for an aircraft, to enable the CAMO to extend, for a third time, the time for which the ARC for the aircraft remains in force, up to a maximum period of 6 months. Also, the instrument grants a similar exemption to an individual who, on behalf of the CAMO, extends, for a third time, the time for which the ARC for the aircraft remains in force.

Also, in particular circumstances, the instrument grants exemptions to a CAMO for a relevant aircraft, to enable the CAMO to extend the time for which the ARC for the aircraft remains in force, even though the aircraft may not be airworthy. Also, the instrument grants a similar exemption to an individual who, on behalf of the CAMO, extends the time for which the

ARC for the aircraft remains in force. The aircraft will not be able to be brought back into service until it has met the relevant requirements of Part 42 of CASR.

In granting the exemptions, CASA has regarded as paramount the preservation of at least an acceptable level of aviation safety.

The exemptions are required to remain in force until the end of 31 March 2023, to cater for the anticipated backlog in the airworthiness reviews of aircraft after the end of the emergency situation.

### **Content of instrument**

Section 1 states the name of the instrument.

Section 2 states the duration of the instrument.

Section 3 states that Part 2 applies if:

- (a) a CAMO (the **organisation**) for an aircraft has issued an ARC (the **certificate**) for the aircraft under regulation 42.840 of CASR; and
- (b) the organisation has, under regulation 42.875 of CASR, extended the time for which the certificate is in force for 2 consecutive periods; and
- (c) there remains a period of not more than 90 days before the certificate is due to expire; and
- (d) the organisation wishes, under regulation 42.875 of CASR, to further extend the time for which the certificate is in force.

Section 4 states that the organisation is exempt from compliance with:

- (a) subregulation 42.880 (4) of CASR to the extent the organisation further extends the time for which the certificate is in force; and
- (b) regulation 42.885 of CASR to the extent:
  - (i) under subregulation 42.875 (3) of CASR, an individual extends, on behalf of the organisation, the time for which the certificate is in force; and
  - (ii) the requirement mentioned in subregulation 42.880 (4) of CASR is not met in relation to the extension.

It also states an individual (the **individual**) who under subregulation 42.875 (3) of CASR extends, on behalf of the organisation, the time for which the certificate is in force is exempt from compliance with regulation 42.890 of CASR to the extent the requirement mentioned in subregulation 42.880 (4) of CASR is not met in relation to the extension.

Sections 5 and 6 state the conditions on which the exemptions are granted. In effect, the conditions require the organisation or individual to extend the time for which the certificate is in force once only and for a maximum period of 6 months.

Section 7 defines the term **relevant aircraft** for Part 3.

Section 8 states that Part 3 applies if:

- (a) a CAMO (the **organisation**) for an aircraft has issued an ARC (the **certificate**) for the aircraft under regulation 42.840 of CASR; and

- (b) the aircraft is a relevant aircraft; and
- (c) the organisation wishes, under regulation 42.875 of CASR, to extend the time for which the certificate is in force.

Section 9 states the organisation is exempt from compliance with:

- (a) subregulation 42.880 (5) of CASR to the extent the organisation extends the time for which the certificate is in force; and
- (b) regulation 42.885 of CASR to the extent:
  - (i) under subregulation 42.875 (3) of CASR, an individual extends, on behalf of the organisation, the time for which the certificate is in force; and
  - (ii) the requirement mentioned in subregulation 42.880 (5) of CASR is not met in relation to the extension.

It also states an individual who under subregulation 42.875 (3) of CASR extends, on behalf of the organisation, the time for which the certificate is in force is exempt from compliance with regulation 42.890 of CASR to the extent the requirement mentioned in subregulation 42.880 (5) of CASR is not met in relation to the extension.

It also states, to remove doubt, the exemptions stated in the section apply to a third extension, under Part 2, of the time for which the certificate is in force.

### ***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. Also, paragraph 98 (5AA) (a) 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, namely particular CAMOs for aircraft and individuals acting on behalf of the CAMOs. 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**

The exemptions would provide significant relief to the operators of aircraft whose operations are adversely affected by the COVID-19 pandemic. For the affected operators, the exemptions would provide increased certainty for the coming months and would reduce the complexities of returning the aircraft to normal services. It would also benefit the community at large by allowing the continuation of essential aviation services.

Compared to the benefit, the risks associated with the exemptions are not substantial and can be adequately managed.

Not providing the exemptions may lead to the grounding of aircraft and affect an operator's ability to provide essential aviation services. It would also impose significant practical and financial burdens on the operators, who must comply with the various personnel travel and proximity restrictions, and are struggling financially, during the emergency situation.

In these circumstances, CASA is satisfied no consultation is appropriate, or reasonably practicable, for the 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 exemptions are 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 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.

**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 the day after it is registered, and is repealed at the end of 31 March 2023.

## Statement of Compatibility with Human Rights

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

### CASA EX65/20 — Extension of Airworthiness Review Certificate (COVID-19) Exemption 2020

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*.

#### Overview of the legislative instrument

Continuing airworthiness management organisations (*CAMOs*) for aircraft are facing difficulties in carrying out airworthiness reviews of aircraft due to a lack of resources and non-availability of personnel for the carrying out of the airworthiness reviews. This has arisen because of the COVID-19 pandemic, and consequent emergency situation in Australia.

One purpose of the legislative instrument is to enable a CAMO to extend the time for which an airworthiness review certificate (an *ARC*) for an aircraft is in force a third time and for a maximum period of 6 months.

Another purpose of the instrument is to enable a CAMO to extend the time for which an ARC for a relevant aircraft (a *relevant aircraft*) is in force, even though the aircraft may not be airworthy. The term *relevant aircraft* is defined in the instrument as follows:

*relevant aircraft* means an aircraft that:

- (a) is not in operation; and
- (b) is parked in accordance with the storage requirements in the instructions for continuing airworthiness for the aircraft.

#### Human rights implications

The legislative instrument does not engage any of the applicable rights or freedoms.

#### Conclusion

The legislative instrument is compatible with human rights as it does not raise any human rights issues.

**Civil Aviation Safety Authority**