

## Explanatory Statement

### Civil Aviation Regulations 1988

### Civil Aviation Safety Regulations 1998

### CASA EX82/20 — Non-Destructive Testing and Aircraft Welding Authorities (Visual Testing) Exemption 2020

#### Purpose

The purpose of *CASA EX82/20 — Non-Destructive Testing and Aircraft Welding Authorities (Visual Testing) Exemption 2020* (the **instrument**) is to allow the Civil Aviation Safety Authority (**CASA**) to grant 6-month renewals of authorities for non-destructive testing of aircraft and aircraft components, and authorities for aircraft welding, that expire during a specified 6-month period, without requiring the authority holder to undergo certain face-to-face tests or examinations that cannot be carried out while COVID-19 restrictions are in place. This will ensure that the authority holders will not be disadvantaged and will be able to continue to service aircraft, minimising disruption due to the COVID-19 pandemic.

#### 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**).

#### NDT authority

Under paragraph 33B (1) (d) of CAR, CASA may issue an authority for the non-destructive testing of aircraft and aircraft components (**NDT authority**) in accordance with the Civil Aviation Orders. These authorities are issued and renewed under *Civil Aviation Order 100.27 Instrument 2007* (**CAO 100.27**).

Under subsection 10 of CAO 100.27, the holder of an NDT authority must, when conducting non-destructive testing, at all times comply with the visual acuity requirements of Australian Standard AS 3669-2006 — *Non-destructive testing—Qualification and approval of personnel—Aerospace* (**AS 3669**). Under section 6 of AS 3669, a holder must undergo annual visual acuity testing and practical examinations.

Under paragraph 11.1 of CAO 100.27, the holder of an NDT authority must, when applying to renew the authority, produce evidence to CASA that the holder continues to satisfy the visual acuity requirements, and must undergo the practical assessment requirements, set out in AS 3669 for reapproval at the specific NDT qualification level.

Paragraph 11.2 of CAO 100.27 provides for the evidence that must accompany an application for renewal of an NDT authority. Under subparagraphs 11.2 (c) and (d), this includes details of specific examinations for, and practical assessments of, visual acuity as required under AS 3669.

Paragraph 11.3 of CAO 100.27 provides that an application for renewal of an NDT authority must be accompanied by the results of the most recent visual acuity test conducted within the last 12 months.

### *Aircraft welding authority*

Regulation 33G of CAR provides for renewal of an aircraft welding authority.

Subregulation 33G (3) provides that CASA may only renew an aircraft welding authority if it is satisfied that the applicant has passed the aircraft welding examinations that CASA considers necessary in the interests of the safety of air navigation. CASA issued Civil Aviation Advisory Publication 33-1(1) *Aircraft Manual Welding — Approvals and Qualifications (CAAP 33-1(1))* in July 2011 to provide guidance on applications for the issue or renewal of aircraft welding authorities. Appendix A of CAAP 33-1(1) sets out the types of welding examinations that an applicant to renew an authority must satisfactorily complete.

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 a Civil Aviation Order.

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 11.160 (3) of CASR, 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 on application, 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.

### **Background**

There are an estimated 33 NDT authority holders and 21 aircraft welding authority holders whose authorities have either expired since COVID-19 restrictions were put in place on 22 March 2020, or are due to expire before September 2020. With social distancing restrictions in place, NDT authority holders are currently unable to undertake visual acuity checks, as required by AS 3669, as the checks are conducted face-to-face with an optometrist. Similarly, aircraft welding authority holders are unable to undertake welding examinations required under regulation 33G of CAR and CAAP 33-1(1), as these welding examinations are practical examinations where the work is done under the supervision of, and inspected by, an examiner.

The instrument provides a 6-month exemption from these in-person testing and examination requirements, so that CASA may renew the NDT authorities and aircraft welding authorities for a period of 6 months, to allow the holders to exercise the privileges of the authority, during the COVID-19 pandemic.

### **Overview of instrument**

The effect of section 4 of the instrument is to exempt an applicant for renewal of an NDT authority that expires during the period from 22 March 2020 to 16 September 2020 (the **COVID-19 period**) from the various requirements under CAO 100.27 to undergo an annual visual acuity test. The conditions on the exemption are that the applicant must provide a copy of any visual acuity test that has not already been provided to CASA with the applicant's application, and if the authority is renewed, must still operate under a certificate of approval (within the meaning of regulation 30 of CAR) when exercising the privileges of the authority.

The effect of section 6 of the instrument is to state that, for an application for renewal of an aircraft welding authority that expires during the COVID-19 period, CASA considers that no aircraft welding examinations are necessary, provided that the applicant has exercised the privileges of the authority in the previous 24-month period and only exercises the privileges of the authority under a certificate of approval.

### **Documents incorporated by reference**

This instrument incorporates the following documents:

- the whole of AS 3669
- CAO 100.27, paragraph 6.3.

CAO 100.27 is freely available on the Federal Register of Legislation website at <https://www.legislation.gov.au/>.

AS 3669 is publicly available but subject to copyright and, therefore, not freely available. The cost of obtaining a copy of AS 3669 is a matter for an affected person that elects to undergo, or conduct visual acuity tests. CASA has no effective control over those costs. However, by prior arrangement with CASA, a copy of the document can be made available for viewing free of charge at any office of CASA.

### **Content of instrument**

Section 1 sets out the name of the instrument.

Section 2 sets out the duration of the instrument. The instrument commences on the day after it is registered and will be repealed at the end of 16 September 2020.

Section 3 sets out definitions for the instrument.

**aircraft welding authority** is defined as an authority to carry out manual welding granted under regulation 33D of CAR.

**COVID-19 period** is defined as the period from 22 March 2020 to 16 September 2020.

**NDT authority** is defined as an authority to conduct non-destructive testing of aircraft and aircraft components issued by CASA under regulation 33B of CAR.

**visual acuity** is defined as a person's near vision and colour perception, confirmed in accordance with paragraph 6.3 of CAO 100.27. This is intended to be identical to the definition of **visual acuity** set out in paragraph 5 of CAO 100.27.

Subsection 4 (1) exempts the holder of an NDT authority that expires during the COVID-19 period from compliance with the following provisions of CAO 100.27 for the purposes of renewing the holder's NDT authority:

- (a) subsection 10, to the extent that it requires the holder to undergo visual acuity tests in accordance with paragraph 6.1.2 of AS 3669;
- (b) paragraph 11.1, to the extent that it requires the holder to continue to satisfy the visual acuity requirements and to undergo the practical assessment requirements of AS 3669 for reapproval at the specific NDT qualification level;
- (c) subparagraphs 11.2 (c) and (d), to the extent that they require details of specific examinations for, and practical assessments of, visual acuity (as required under AS 3669);
- (d) paragraph 11.3.

Subsection 4 (2) states that the exemption in subsection 4 (1) is subject to the conditions set out in section 5.

Section 5 sets out 2 conditions on the exemption in subsection 4 (1). Subsection 5 (1) states that the NDT authority holder must only exercise the privileges of the authority during the COVID-19 period under a certificate of approval. Subsection 5 (2) states that, for the purposes of an application for renewal of an NDT authority that expires during the COVID-19 period, the application must be accompanied by any near vision test by the applicant, being a test conducted in accordance with AS 3669 and paragraph 6.3 of CAO 100.27 to show that the applicant meets the required standard of visual acuity, that has not already been provided to CASA. .

Section 6 applies to the holder of an aircraft welding authority that expires in the COVID-19 period and who:

- (a) has exercised the privileges of the authority during the 24-month period before the COVID-19 period; and
- (b) only exercises the privileges of the authority under a certificate of approval.

Subsection 6 (2) states that CASA considers that, for the purposes of the renewal of an aircraft welding authority under regulation 33G of CAR during the COVID-19 period, for the holder, no aircraft welding examinations are necessary in the interests of the safety of air navigation.

***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 subsection 10, paragraph 11.1, subparagraphs 11.2 (c) and (d), and paragraph 11.3 of CAO 100.27. 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**

Consultation under section 17 of the LA has not been undertaken in this case. The instrument is provided to remove an unnecessary burden on holders of an NDT authority or an aircraft welding authority to exercise the privileges of the authority under a certificate of approval due to COVID-19 restrictions.

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*.

**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 16 September 2020.

## Statement of Compatibility with Human Rights

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

### **CASA EX82/20 — Non-Destructive Testing and Aircraft Welding Authorities (Visual Testing) Exemption 2020**

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**

*CASA EX82/20 — Non-Destructive Testing and Aircraft Welding Authorities (Visual Testing) Exemption 2020* (the **instrument**) allows the Civil Aviation Safety Authority to renew authorities for non-destructive testing of aircraft and aircraft components, and authorities for aircraft welding, that expire during a specified 6-month period, without requiring the authority holder to undergo certain face-to-face tests or examinations that cannot be carried out while COVID-19 restrictions are in place.

#### **Human rights implications**

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

#### **Conclusion**

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

**Civil Aviation Safety Authority**