

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### CASA EX37/21 – Educational, Training or Research Use of Certain RPA as if They were Model Aircraft – Prescription and Exemption Instrument 2021

##### Purpose

The purpose of *CASA EX37/21 – Educational, Training or Research Use of Certain RPA as if They were Model Aircraft – Prescription and Exemption Instrument 2021* is to ameliorate the effects of the delay, until 1 March 2022 of the application of a new definition of **model aircraft**.

This is so that schools and higher education providers may use remotely piloted aircraft (**RPA**) with a gross weight of not more than 7 kg **as if** they were, legally, model aircraft, provided the use is in connection with educational, training or research purposes: in other words, as if the new definition of **model aircraft** had come into force.

This will allow the educational, training and research use of drones that are, in practical effect, model aircraft, but that, until the new definition of **model aircraft** commences, would otherwise have to be treated legally as RPA and subject to RPA operational rules which differ from the rules applying to model aircraft as such. To achieve this outcome an exemption instrument is used.

##### Legislation — exemptions

Section 98 of the *Civil Aviation Act 1988* (the **Act**) empowers the Governor-General to make regulations for the Act and the safety of air navigation.

Subpart 11.F of the *Civil Aviation Safety Regulations 1998* (**CASR**) deals with exemptions. Under subregulation 11.160 (1), and for subsection 98 (5A) of the Act, CASA may, by instrument, grant an exemption from a provision of CASR in relation to a matter mentioned in subsection 98 (5A). Subsection 98 (5A) matters are, in effect, those affecting the safety, airworthiness or design of aircraft.

Under subregulation 11.160 (2), an exemption may be granted to a person or a class of persons. Under subregulation 11.160 (3), CASA may grant an exemption on application, or on its own initiative. Under subregulation 11.170 (3), for an application for an exemption, CASA must regard as paramount the preservation of an acceptable level of safety. For making a decision on its own initiative, CASA is guided by the requirement in subsection 9A (1) of the Act that in exercising its powers and functions CASA must regard the safety of air navigation as the most important consideration.

Under regulation 11.205, CASA may impose conditions on an exemption if this is 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. Under regulation 11.225, CASA must, as soon as practicable, publish on the Internet details of all exemptions under Subpart 11.F.

Under subregulation 11.230 (1), an exemption may remain in force for 3 years or for a shorter period specified in the instrument.

Under subregulation 11.230 (3), an exemption, in force in relation to a particular aircraft owned by a particular person, ceases to be in force when the aircraft ceases to be owned

by that person. Under regulation 11.235, an exemption is not transferable (as between operators, aircraft etc.).

### **Legislation — Unmanned aircraft**

Currently, the definition of a **model aircraft** is contained in the CASR Dictionary which provides that a model aircraft is an aircraft that is used for sport or recreation but which cannot carry a person.

New regulation 101.023 of CASR contains a not-yet-in-effect new definition of **model aircraft**. Paragraph 101.023 (1) (a) generally reflects the current CASR Dictionary definition. But paragraph 101.023 (1) (b) provides that an aircraft is also a model aircraft if the aircraft has a gross weight of not more than 7 kg, and is being operated in connection with the educational, training or research purposes of: (a) a school in relation to which there is an approved authority under the *Australian Education Act 2013*; or (b) a higher education provider within the meaning of the *Higher Education Support Act 2003*.

However, under regulation 202.466 of CASR, this new definition is expressed not to apply until the *model aircraft stage 1 application day* which, under regulation 202.229 (as amended) is 1 March 2022. Until then, the current CASR Dictionary definition applies and confines the meaning of model aircraft to aircraft used in sport and recreation.

“Model aircraft” used for other purposes, including educational, training or research purposes of a school or a higher education provider, would, consequentially, be subject to relevant RPA registration requirements under Part 47 of CASR, and RPA operating requirements under Part 101 of CASR. In addition to aircraft registration, these requirements include, under regulation 101.252, holding a remote pilot licence (a **RePL**), under regulation 101.270, holding a remote operator’s certificate (a **ReOC**) — in each case unless the RPA was an excluded aircraft (that is subject to strict and specific operating rules under regulation 101.237).

### **Background**

These RPA requirements would be onerous for schools and higher education providers who mainly use “model aircraft”, not for sport or recreation, but for education, training and research. The RPA requirements would remain in force requiring such “model aircraft” to be treated as RPA until the start of 1 March 2022 when these RPA “model aircraft” would legally become model aircraft as such and be relieved from the more onerous obligations.

It is not possible within the time available to obtain regulation amendments to ameliorate these unforeseen synchronised timing issues for the application of new rules to RPA and model aircraft. Hence, an exemption instrument is used as explained below.

### **The exemption instrument**

Subsection 5 (2) of the instrument creates a category of RPA called **relevant class of RPA** meaning RPA that are micro RPA, very small RPA, and small RPA whose gross weight is not more than 7 kg, that, but for the delayed timing effect of subregulation 202.466 (1) of CASR, would be defined as model aircraft within the extended meaning in paragraph 101.023 (1) (b) of CASR.

Under subsection 5 (1) of the instrument, for paragraph 47.015 (1) (i) of CASR, the relevant class of RPA is prescribed as not required to be registered.

This is possible because under paragraph 47.015 (1) (i) (as amended) an aircraft is required to be registered *unless* it is prescribed by an instrument under paragraph 47.015 (1B) (a). This provides that CASA may issue an instrument (in effect, the current exemption instrument which is itself also an instrument made under subregulation 47.015 (1B) of CASR) prescribing classes of RPA which then do not require to be registered. Thus, the category of RPA called relevant class of RPA (in practical effect, although RPA, are the school/higher education “model aircraft”), do not require to be registered. A Note explains the effect of section 5.

Under subsection 6 (1) of the instrument, the owner and the operator (as the case requires) of each RPA within the relevant class of RPA are exempted from compliance with the requirements of each regulation in Subpart 101.F of CASR, subject to the conditions in section 7. A Note explains that Subpart 101.F of CASR contains rules for the operation of RPA, for remote pilot licences, for certification of RPA operators, and for operation of RPA for hire or reward, and that the effect of the exemption is that none of these RPA rules will have any application to an RPA within the relevant class of RPA which are, in practical terms, not RPA but “model aircraft”.

Under subsection 6 (2) of the instrument, the owner and the operator (as the case requires) of each RPA within the relevant class of RPA are exempted from compliance with the requirements of each regulation in Subpart 101.FA of CASR, subject to the conditions in section 7. A Note explains that Subpart 101.FA of CASR contains rules for excluded RPA, micro RPA and newly defined model aircraft *accreditation*. The effect of the exemption is that none of these accreditation rules will have any **direct** application to an RPA within the relevant class of RPA because such an RPA is not an excluded RPA, not a micro RPA and not a newly defined model aircraft. However, the accreditation rules under Subpart 101.FA will, as intended by this instrument, apply **indirectly** to an RPA within the relevant class of RPA by virtue of the condition in subsection 7 (2).

Under subsection 7 (1) of the instrument, the operator of each RPA within the relevant class of RPA must comply with the requirements of CASR Subpart 101.G — Model aircraft (the specific rules for model aircraft however defined) as if:

- (a) each RPA within the relevant class of RPA were a model aircraft; and
- (b) the requirements of Subpart 101.G — Model aircraft applied to each such RPA as they would apply to a model aircraft.

Under subsection 7 (2) of the instrument, the operator of each RPA within the relevant class of RPA must comply with the requirements of Subpart 101.FA of CASR (for accreditation) as if:

- (a) each RPA were a model aircraft; and
- (b) the requirements of Subpart 101.FA applied to each RPA as they would apply to a model aircraft.

A Note explains that the effect of this is that the operator of an RPA within the relevant class of RPA must hold a valid accreditation under Subpart 101.FA in order to operate that RPA as a model aircraft. Under subregulation 101.374E (2) of CASR, accreditation may only be given to a person who is at least 16 years old. Under subregulation 101.374B (2), a person must be accredited (or hold a RePL) in order to

operate a model aircraft of gross weight of more than 250 g. However, under subregulation 101.374B (4), persons who are under 16 may operate a model aircraft if supervised by a person who is at least 18 years old and is relevantly accredited or holds a relevant RePL.

Under subsection 7 (3) of the instrument, the operator of each RPA within the relevant class of RPA must not operate the RPA:

- (a) other than in accordance with the requirements of Subpart 101.G, as if the RPA were a model aircraft to which the Subpart applies; or
- (b) for any purpose other than in connection with the educational, training or research purposes of:
  - (i) a school in relation to which there is an approved authority under the *Australian Education Act 2013*; or
  - (ii) a higher education provider within the meaning of the *Higher Education Support Act 2003*; or
- (c) for, or on behalf of, any entity other than a school or higher education provider mentioned in subparagraph (b) (i) or (b) (ii), or for any purpose other than the educational, training or research purposes of that school or higher education provider.

### ***Legislation Act 2003 (the LA)***

As noted above, exemptions under Subpart 11.F of CASR are “for subsection 98 (5A)” of the Act, that is, for regulations which empower the issue of certain instruments, like exemptions, in relation to “(a) matters affecting the safe navigation and operation, or the maintenance, of aircraft”, and “(b) the airworthiness of, or design standards for, aircraft”.

The exemption is clearly one in relation to matters affecting the safe navigation and operation of aircraft. Under subsection 98 (5AA) of the Act, an exemption issued under paragraph 98 (5A) (a), for such matters, is a legislative instrument if expressed to apply in relation to a class of persons, a class of aircraft or a class of aeronautical products (as distinct from a particular person, aircraft or product).

The exemption applies to a classes of RPA operators being schools and higher education providers and is, therefore, a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under sections 15G, and 38 and 42, of the LA.

### **Consultation**

Under section 16 of the Act, in performing its functions and exercising its powers CASA must consult government, industrial, commercial consumer and other relevant bodies and organisations insofar as CASA considers such consultation to be appropriate.

Under section 17 of the LA, before a legislative instrument is made, CASA must be satisfied that it has undertaken any consultation it considers appropriate and practicable, in order to draw on relevant expertise and involve persons likely to be affected by the proposals.

Exemptions from regulatory requirements are considered to be beneficial for those to whom they apply, who voluntarily elect to take advantage of them, and who comply with their conditions. It is, therefore, rarely necessary to engage in extensive public consultation on a proposed exemption. However, it is CASA’s policy to consult, where

possible, in an appropriate way with those parts of the aviation industry most likely to avail themselves of, or be affected by, an exemption so that they may have the opportunity to comment on the possible or likely terms, scope and appropriateness of the exemption.

The exceptions to this are when matters are urgent, and when CASA considers that the relevant state of affairs as well as informal feedback suggests that consultation would add little if anything to the proposed solution but would delay its promulgation to those who need to plan to take advantage of it.

CASA considered that it was not appropriate to formally consult in relation to the exemption instrument because it was already in receipt of correspondence from educational providers seeking clarification of operational requirements arising from the delayed application of the new definition of *model aircraft*.

Without the exemption, the continued use of relevant unmanned aircraft in the educational, training and research activities of these providers would give rise to the expense, and delay, of obtaining relevant RePLs and ReOCs which, in all the circumstances, while otherwise legally required without the exemption, would be an unnecessary imposition.

Because of this potentially adverse impact, CASA has acted with urgency to address it through the exemption instrument.

#### **Office of Best Practice Regulation (OBPR)**

A Regulation Impact Statement (*RIS*) is not required because the exemption instrument is covered by a standing agreement between CASA and OBPR under which a RIS is not required for an exemption (OBPR id: 14507).

#### **Statement of Compatibility with Human Rights**

The Statement in Appendix 1 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The exemption instrument is compatible with human rights and, to the extent that it engages certain rights (the right to work), it does so in a way that is reasonable, necessary and proportionate.

#### **Commencement and making**

The new exemption instrument commences on 9 April 2021.

The exemption has been made by the Acting Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

## Statement of Compatibility with Human Rights

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

### **CASA EX37/21 – Educational, Training or Research Use of Certain RPA as if They were Model Aircraft – Prescription and Exemption Instrument 2021**

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 *CASA EX37/21 – Educational, Training or Research Use of Certain RPA as if They were Model Aircraft – Prescription and Exemption Instrument 2021* is to ameliorate the effects of the delay, until 1 March 2022 of the application of a new definition of ***model aircraft***.

This is so that schools and higher education providers may use remotely piloted aircraft (***RPA***) with a gross weight of not more than 7 kg **as if** they were, legally, model aircraft, provided the use is in connection with educational, training or research purposes: in other words, as if the new definition of ***model aircraft*** had come into force.

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#### **Human rights implications**

The exemption instrument may engage the following human right, namely, the right to work under Article 6 (1) of the International Covenant on Economic, Social and Cultural Rights (the ***ICESCR***).

#### ***Right to work under the ICESCR***

Under pre-existing requirements in Part 101 of CASR, persons who may earn their livelihood through the educational, training or research use of what, on and from 1 March 2022 will be model aircraft, but which until then are legally RPA, would be obliged to go to the time and expense of obtaining remote pilot licences and remote operator's certificates.

This would arise from the delayed commencement of the new definition of ***model aircraft*** whose effect, when it comes into effect on 1 March 2022, would be to relieve such operators of those obligations (provided that the operators had completed an online accreditation quiz to test safety knowledge).

The exemption instrument recognises the right to work of this class of persons and, in effect, provides them with advance relief from those licencing and certification obligations.

**Human rights implications**

The exemption in 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*.

**Conclusion**

This legislative instrument is compatible with human rights, and to the extent that it may engage certain rights it does so in a way that is reasonable, necessary and proportionate in the interests of aviation safety.

**Civil Aviation Safety Authority**