

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX69/21 — Medical Certification (Private Pilot Licence Holders with Basic Class 2 Medical Certificate) Exemption 2021

Purpose

The purpose of the instrument is to continue to permit a person in a particular class of private pilot licence holders (a **relevant private pilot licence holder**) to exercise the privileges of their licence in single-pilot operations if related circumstances mentioned in the instrument exist and related conditions mentioned in the instrument are met. Those circumstances include that CASA:

- (a) is satisfied that a relevant private pilot licence holder, instead of meeting the medical standard for a class 2 medical certificate in Part 67 of the *Civil Aviation Safety Regulations 1998 (CASR)*, meets the **medical standard basic class 2**; and
- (b) therefore, has issued to the relevant private pilot licence holder an Aviation Medical Certificate (Basic Class 2).

The class of persons, standards, circumstances and conditions are described in more detail under the headings “Overview of instrument” and “Content of instrument”.

The instrument continues to be necessary because of unexpected delays in adding related provisions to Part 67 of CASR and making subsequent consequential amendments of Part 61 of CASR. To ensure that relevant private pilot licence holders can, subject to the circumstances and conditions mentioned above, continue to exercise the privileges of their licences in single-pilot operations, the instrument is required to remain in force until the proposed additions to Part 67 of CASR commence.

The Civil Aviation Safety Authority (**CASA**) expected that the post-implementation review (**PIR**) of Part 67 of CASR would have incorporated the principles underlying the medical standard basic class 2 before the repeal of *CASA EX65/18 — Private Pilot Licence Medical Certification (Basic Class 2 Medical Certificate) Exemption 2018 (CASA EX65/18)* on 30 June 2021. The PIR of Part 67 of CASR has been deferred for several reasons, including the impacts of the COVID-19 pandemic on the aviation sector.

CASA has established a related Technical Working Group (**TWG**) and, in December 2020, tabled a discussion paper at a TWG meeting. The PIR of Part 67 of CASR is expected to be completed in 2023, when the TWG will be able to consider and assess the implementation and outcomes of the Aviation Medical Certificate (Basic Class 2).

CASA intends Part 67 of CASR to include provisions related to the medical standard basic class 2 and the Aviation Medical Certificate (Basic Class 2) and intends to make related consequential amendments of Part 61 of CASR. TWG meetings will review, develop and update the policy for Part 67 of CASR. After the policy development process is complete, CASA intends to prepare drafting instructions and compile a related package of documents so that it is ready for submission to the Office of Parliamentary Counsel. Although CASA anticipates that those amendments to CASR will commence before the instrument is repealed,

it has a duration of 3 years. However, CASA will repeal the instrument if, after the proposed additions to Part 67 of CASR are made, they include content that:

- (a) has the same effect as the instrument as a whole; and
- (b) commences before the instrument is repealed.

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 the *Civil Aviation Regulations 1988* (**CAR**).

CASR — Exemptions (Subpart 11.F)

Each provision mentioned in this section is a provision of CASR.

Subpart 11.F provides for the granting of exemptions from particular provisions of the regulations. Subregulation 11.160 (1) provides that, for subsection 98 (5A) of the Act, 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 11.175 (4), 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 an obligation imposed by a condition.

Regulation 11.225 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

Each provision mentioned in this section is a provision of CASR.

Part 61 sets out the licensing scheme for pilots and flight engineers of registered aircraft. Part 61 also includes content related to different kinds of ratings and endorsements that authorise holders to conduct more specialised aviation activities. Those ratings and endorsements include a flight activity endorsement, an instrument endorsement and an operational rating, each of which is defined in regulation 61.010.

Flight activity endorsements authorise aerobatics, spinning, and formation flying activities — columns 1 and 2 of table 61.1145 set out the different kinds of flight activity endorsements and the activities their holders are authorised to perform.

Instrument endorsements authorise flying in low-visibility conditions in particular kinds of aircraft (for example at night or in cloud) — columns 1 and 2 of table 61.890 set out the different kinds of instrument endorsements and the activities their holders are authorised to perform.

The definition of **operational rating** in regulation 61.010 defines that term to mean any of 8 kinds of rating: an aerial application rating; an examiner rating; an instructor rating; an instrument rating; a low-level rating; a night visual flight rules rating (expressed as a night VFR rating); a night vision imaging system rating; and a private instrument rating. Subparts 61.M to 61.R, 61.T, 61.U, 61.X and 61.Y each relates to one of those ratings. However, there are 2 kinds of examiner rating so there is a Subpart for each kind: Subpart 61.U (for a flight examiner rating) and Subpart 61.Y (for a flight engineer examiner rating). In the same way, there are 2 kinds of instructor rating so there is a Subpart for each kind: Subpart 61.T (for a pilot instructor rating) and Subpart 61.X (for a flight engineer instructor rating). Each Subpart includes provisions that authorise, and limit, the activities that holders of the rating are authorised to conduct.

The definition of **conduct**, as a verb, in regulation 61.010 conveys the meaning of flight control seat in relation to, relevantly at paragraph (a), a flight operation. Paragraph (a) of that definition indicates that the flight control seat is in an aircraft and occupied while the flight operation takes place.

The definition of **flight crew licence** in regulation 61.010 provides that that term means, relevantly at paragraph (a), a pilot licence. The definition of **pilot licence** (also in regulation 61.010) provides that that term means, relevantly at paragraph (d), a private pilot licence.

Under subregulation 61.065 (1), the holder of a flight crew licence commits an offence if:

- (a) the holder conducts an activity mentioned in Part 61 while:
 - (i) piloting a registered aircraft; or
 - (ii) acting as a flight engineer of a registered aircraft; or
 - (iii) acting as an examiner or instructor; and
- (b) the holder is not authorised under Part 61 to conduct the activity.

Under subregulation 61.410 (1), the holder of a private pilot licence is authorised to exercise the privileges of the licence only if the holder also holds:

- (a) a current class 1 or 2 medical certificate; or
- (b) a medical exemption for the exercise of the privileges of the licence.

Part 67 of CASR

Each provision mentioned in this section is a provision of CASR.

The following provisions of Part 67 are mentioned because the standard for a **medical standard basic class 2** is, in this Explanatory Statement, expressed as an alternative to the medical standard for a class 2 medical certificate. Therefore, while identifying those provisions for easy reference, this Explanatory Statement does not describe in detail the operation of regulation 67.155 or the criteria for medical standard 2, set out in table 67.155.

Paragraph (b) of the definition of **relevant medical standard** in regulation 67.015 provides that that term means, for a class 2 medical certificate — medical standard 2. Regulation 67.015

defines **medical standard 2** as the standard set out in table 67.155. Regulation 67.155 is composed of provisions related to who meets medical standard 2, including the criteria for medical standard 2 set out in table 67.155.

CAR — regulation 302

Regulation 302 of CAR relates to the production of licences and other documents for inspection by an authorised person. Subregulation 302 (2) requires the owner or pilot in command of any aircraft to, on demand, produce or cause to be produced for inspection by an authorised person, any certificates, licences, log books or other documents relating to the aircraft and, if it carries passengers or cargo, the list of names of the passengers or the bills of lading and the manifest, as the case may be. Under subregulation 302 (3), an offence against subregulation 302 (2) is an offence of strict liability.

The *Legislation Act 2003* (the **LA**) and the *Act*

Under subsection 14 (1) of the LA, a legislative instrument may make provision in relation to matters by applying, adopting or incorporating provisions of an Act or disallowable legislative instrument as in force at a particular time or as in force from time to time. A legislative instrument may also make provision in relation to matters by applying, adopting or incorporating any matter contained in any other instrument or writing as in force at, or before, the time the legislative instrument commences. Under subsection 14 (2) of the LA, unless the contrary intention appears, the legislative instrument may not make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time. However, subsection 98 (5D) of the Act provides that, a legislative instrument made under the Act or the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time, even if the other instrument or writing does not yet exist when the legislative instrument is made.

Background

The instrument renews CASA EX65/18, which was made in substantially similar terms. In particular, the instrument retains the exemption and the related conditions in CASA EX65/18. Like CASA EX65/18, the instrument permits a private pilot licence holder of the same particular kind to exercise the privileges of their licence in single-pilot operations if related circumstances mentioned in the instrument exist and related conditions mentioned in the instrument are met.

The Explanatory Statement for CASA EX65/18 includes the following background information:

Feedback from private pilots in the aviation industry has identified that the aviation-specific medical standards are unnecessarily onerous, and access to specialised aviation doctors that assess compliance against those standards is unnecessarily difficult and expensive.

CASA has determined that private pilots engaged in low risk flying activities, and carrying small numbers of passengers, should be permitted to exercise the privileges of their private pilot licence if they meet the AUSTROADS medical standard that applies to drivers of heavy vehicles, public passenger vehicles or vehicles carrying dangerous goods. CASA will issue pilots who meet that standard, on application and based on certification from a medical practitioner, an *Aviation Medical Certificate (Basic Class 2)*.

Overview of instrument

The instrument, which renews CASA EX65/18, continues to permit a person in a particular class of private pilot licence holders (a **relevant private pilot licence holder**) to exercise the privileges of their licence in single-pilot operations if:

- (a) instead of meeting the medical standard for a class 2 medical certificate set out in Part 67 of CASR, they meet the Austroads commercial vehicle driver medical standards that apply to drivers of heavy vehicles, public passenger vehicles or vehicles carrying dangerous goods (other than the requirement to meet those standards without glasses or a hearing aid) — the **medical standard basic class 2**; and
- (b) related circumstances mentioned in the instrument exist and related conditions mentioned in the instrument have been met.

The instrument is not intended to permit a relevant private pilot licence holder to exercise the privileges of their licence in a **multi-crew operation**, defined in regulation 61.010 of CASR as an operation that requires at least 2 pilots in:

- (a) a multi-crew aircraft; or
- (b) an aircraft that is equipped, and required by CAR or CASR, to be operated by a crew of at least 2 pilots.

During the period that CASA EX65/18 has been in force, CASA has not identified any negative effects on aviation safety related to the operations covered by that instrument. On that basis, CASA has assessed that renewing CASA EX65/18 and continuing to permit those operations would not have a negative effect on aviation safety.

Documents incorporated by reference

The instrument incorporates by reference:

- (a) a relevant private pilot licence holder's **Fitness Report**; and
- (b) the commercial vehicle driver medical standards that apply to drivers of heavy vehicles, public passenger vehicles or vehicles carrying dangerous goods, published by Austroads.

The Fitness Report, in relation to a relevant private pilot licence holder, is a completed version of CASA Form 1474, *Health Assessment against the Commercial Austroads Standard – Aviation Medical Certificate (Basic Class 2)*. Once completed in relation to a relevant private pilot licence holder, the form becomes a Fitness Report. A Fitness Report exists only in the form in which it is completed by a medical practitioner for a particular relevant private pilot licence holder. A copy of a Fitness Report is given to the relevant private pilot licence holder to whom the Fitness Report relates by the examining medical practitioner.

The commercial vehicle driver medical standards that apply to drivers of heavy vehicles, public passenger vehicles or vehicles carrying dangerous goods are included in the publication titled *Assessing Fitness to Drive for commercial and private vehicle drivers, 5th edition 2016 (as amended up to August 2017)*. That publication is freely available to view or download by searching for the publication title on the Austroads Publications page, located at <https://austroads.com.au/publications>.

Content of instrument

Section 1 names the instrument.

Section 2 sets out the duration of the instrument.

Section 3 contains definitions. In particular, the following provisions signpost several definitions located in the Act, CAR or CASR:

- (a) notes 1 and 2 below the heading of section 3;
- (b) the definition of *flight control seat*;
- (c) the definition of *relevant check or review*.

Consistent with paragraph 13 (1) (b) of the LA and the definitions of *enabling legislation* and *primary law* in the LA, each of those definitions has the same meaning as in the Act, CAR or CASR (whichever applies), as in force from time to time.

Note 1 below the definition of *medical standard basic class 2* in section 3 is intended to assist primary users of the instrument by clarifying the relationship between that definition and assessing a person as meeting that standard.

Note 2 below the definition of *medical standard basic class 2* in section 3 is a signpost note, intended to assist users of the instrument to:

- (a) identify the publication containing the commercial vehicle driver medical standards mentioned in that definition; and
- (b) locate a freely available version of that publication online.

Subsection 4 (1) exempts a relevant private pilot licence holder from compliance with subregulation 61.065 (1) of CASR, to the extent that paragraph 61.410 (1) (a) of CASR requires that, to be authorised to exercise the privileges of the licence in a single-pilot operation, the relevant private pilot licence holder must also hold a current class 1 or class 2 medical certificate.

Subsection 4 (2) provides that the exemption in subsection (1) is subject to the conditions mentioned in sections 5 and 6.

Subsections 5 (1), (2), (3) and (5) impose conditions on a relevant private pilot licence holder, related to their conduct of single-pilot operations and the exercise of the privileges of their licence. The conditions in subsections 5 (2) and (3) are expressed to be subject to subsection (4).

Subsection 5 (3) is not intended to enable a relevant private pilot licence holder to conduct a flight test for an initial private pilot licence.

Subsection 5 (4) sets out circumstances in which the conditions in subsections 5 (2) and (3) do not limit the exercise of the privileges of the relevant private pilot licence holder's licence for a single-pilot operation. Subsection 5 (4) is not intended to enable a relevant private pilot licence holder to conduct a solo flight.

Subsection 6 (1) provides that, if a relevant private pilot licence holder carries a passenger on a flight that is a single-pilot operation, the relevant private pilot licence holder must, before commencing the flight, inform each passenger or each passenger's legal guardian of the matters mentioned in subsection 6 (2).

Subsection 6 (2) sets out the matters for subsection 6 (1).

Together, subsections 6 (1) and (2) are intended to enable each passenger or passenger's legal guardian, in the knowledge that the pilot was assessed against the Austroads commercial vehicle driver medical standards and holds an Aviation Medical Certificate (Basic Class 2), to make an informed decision, before the flight commences, about whether to remain on the flight.

Legislation Act 2003

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 compliance with subregulation 61.065 (1) of CASR, to the extent mentioned in subsection 4 (1) of the instrument. 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

Between December 2016 and March 2017, CASA conducted initial consultation by seeking aviation industry and broader community responses to a related discussion paper.

Subsequently, CASA developed a policy in consultation with stakeholders from the aviation industry and the medical profession. In November 2017, the final policy was considered and supported by the Aviation Safety Advisory Panel, a body of aviation industry representatives covering all industry sectors. In December 2017, the policy was publicly announced, including on CASA social media channels and in the CASA briefing newsletter that was distributed to a large number of aviation industry subscribers.

By extending the operation of the exemption and conditions in CASA EX65/18, the instrument continues an existing arrangement that is beneficial to relevant private pilot licence holders.

Under those circumstances, and because CASA will undertake consultation in relation to the proposed amendments of Part 67 of CASR, CASA is satisfied that no further consultation is appropriate or reasonably practicable for this instrument for section 17 of the LA.

Sector risk, economic and cost impact

Subsection 9A (1) of the Act states that, in exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration.

Subsection 9A (3) of the Act states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9 (1) (c), CASA must:

- (a) consider the economic and cost impact on individuals, businesses and the community of the standards; and
- (b) take into account the differing risks associated with different industry sectors.

The cost impact of a standard refers to the direct cost (in the sense of price or expense) which a standard would cause individuals, businesses and the community to incur. The economic impact of a standard refers to the impact a standard would have on the production, distribution and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly. The economic impact of a

standard could also include the general financial impact of that standard on different industry sectors.

As the instrument replaces an expiring instrument with substantially the same provisions and conditions (CASA EX65/18), there will be no apparent change in the economic or cost impact on individuals, businesses or the community.

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 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 a delegate of CASA relying on the power of delegation under subregulation 11.260 (1) of CASR.

The instrument commences on 1 July 2021 and is repealed at the end of 31 May 2024.

Statement of Compatibility with Human Rights

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

CASA EX69/21 — Medical Certification (Private Pilot Licence Holders with Basic Class 2 Medical Certificate) Exemption 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 instrument continues to permit a person in a particular class of private pilot licence holders (a **relevant private pilot licence holder**) to exercise the privileges of their licence in single-pilot operations if:

- (a) instead of meeting the medical standard for a class 2 medical certificate set out in Part 67 of the *Civil Aviation Safety Regulations 1998 (CASR)*, they meet the Austroads commercial vehicle driver medical standards that apply to drivers of heavy vehicles, public passenger vehicles or vehicles carrying dangerous goods (other than the requirement to meet those standards without glasses or a hearing aid) — defined in the instrument as the **medical standard basic class 2**; and
- (b) related circumstances mentioned in the instrument exist and related conditions mentioned in the instrument are met.

The instrument is not intended to permit a relevant private pilot licence holder to exercise the privileges of their licence in a **multi-crew operation**, defined in regulation 61.010 of CASR as an operation that requires at least 2 pilots in:

- (a) a multi-crew aircraft; or
- (b) an aircraft that is equipped, and required by the *Civil Aviation Regulations 1988* or CASR, to be operated by a crew of at least 2 pilots.

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