

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX64/22 — Flight Training and Flight Tests by Grade 1 Training Endorsement Holders (Exemptions and Approvals) Instrument 2022

Purpose

CASA EX64/22 — Flight Training and Flight Tests by Grade 1 Training Endorsement Holders (Exemptions and Approvals) Instrument 2022 (the **instrument**) provides for an exemption from certain requirements of the *Civil Aviation Safety Regulations 1998 (CASR)* to allow flight instructors who hold a grade 1 training endorsement to conduct flight training for a grade 2 training endorsement, design feature training endorsement, flight activity training endorsements and low-level training endorsements, despite not holding an instructor rating training endorsement. It provides for related exemptions for certain operators and associated personnel who are required to ensure that those flight instructors are authorised under Part 61 of CASR to undertake the flight training concerned. It also approves such flight instructors who have, within the previous 24 months, successfully completed an instructor proficiency check and who have successfully completed certain flight examiner training, to carry out flight tests and grants of certain ratings and endorsements.

The instrument enables flight instructors to train other flight instructors and to assess and grant endorsements to other flight instructors and pilots. A range of targeted conditions will apply to ensure the flight instructors are competent to conduct those activities.

The instrument is intended to address the problem of the diminishing availability of suitably qualified flight instructors who can provide these services to other flight instructors and who are available to take up positions as head of operations (**HOO**) of organisations that provide flight training.

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.

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 11.160 (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, 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 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, 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 the licensing scheme for pilots and flight engineers of registered aircraft. Regulation 61.065 makes it an offence for the holder of a flight crew licence to conduct an activity while acting as an instructor or examiner if the person is not authorised under Part 61 to conduct the activity.

Subregulation 61.1175 (1) of CASR authorises a flight instructor to conduct flight training mentioned in column 2 of an item in table 61.1235 only if the instructor also holds the endorsement mentioned in column 1 of the item.

Item 14 of table 61.1235 in regulation 61.1235 of CASR authorises a flight instructor to conduct flight training for a flight instructor rating, simulator instructor rating or training endorsement in an aircraft of a specified category if they hold an instructor rating training endorsement for the category.

Regulation 61.040 of CASR empowers CASA to grant approvals for the purpose of specified provisions of Part 61 of CASR. Relevantly for this legislative instrument, Part 61 contemplates approvals under regulation 61.040 in relation to the following matters:

- the conduct of a flight test for a licence, rating or endorsement (subregulation 61.245 (3))
- the grant of certain flight crew ratings and flight crew endorsements (subregulation 61.150 (7)).

Under regulation 11.015 of CASR, an approval of this type is an authorisation under Part 11 of CASR, with Subpart 11.BA of CASR applying to the authorisation.

Regulation 11.055 of CASR sets out criteria that apply to CASA when granting an authorisation. Regulation 11.056 provides that an authorisation may be granted subject to any condition that CASA is satisfied is necessary in the interests of the safety of air navigation. Under regulation 11.077, a person commits an offence of strict liability if the person contravenes a condition of an authorisation.

Background

Since the commencement of Part 61 of CASR in 2014, it has become apparent that certain barriers hamper the efficient conduct of flight training and entry control testing. The intended proportionate approach to flight testing has not materialised.

Under Part 61 of CASR, the holder of a pilot instructor rating may apply for a training endorsement which permits them to conduct flight training for specific pilot authorisations. One of these is the grade 1 training endorsement, which permits the supervision of grade 2 and grade 3 training endorsement holders. Grade 1 training endorsement holders usually have

operational and instructional experience that far exceeds that of grade 2 training endorsement holders including in areas of assessment and attending to challenging training cases. However, the grade 1 training endorsement privileges do not reflect the responsibilities that would normally be associated with these instructors. As there are minimal differences between the grade 1 and grade 2 training endorsements (apart from higher experience levels and the additional privilege of supervision), there is a diminished incentive for flight instructors to seek a grade 1 training endorsement. This is believed to be one of the reasons for the diminishing availability of suitably qualified flight instructors to become the HOO for Part 141 operators. Another disincentive is the additional requirements these instructors need to complete in order to gain additional training endorsements to allow them to conduct a wider scope of training and assessments.

The instrument seeks to address these shortfalls by expanding the privileges for grade 1 training endorsement holders, subject to a range of targeted conditions.

Overview of instrument

The instrument provides exemptions from certain requirements of CASR to allow flight instructors who hold a grade 1 training endorsement to conduct flight training for a grade 2 training endorsement, design feature training endorsement, flight activity training endorsements and low-level training endorsements, despite not holding an instructor rating training endorsement. Out of an abundance of caution, it provides for related exemptions for certain operators and associated personnel who are required to ensure that those flight instructors are authorised under Part 61 of CASR to undertake the flight training concerned. It also approves such flight instructors who have, within the previous 24 months, successfully completed an instructor proficiency check and who have successfully completed certain flight examiner training, to carry out flight tests and grants of certain ratings and endorsements.

A range of targeted conditions will apply to ensure the flight instructor is competent to conduct those activities.

CASA has assessed the impact on aviation safety of the instrument and is satisfied that it will not adversely impact the safety of pilots or aircraft operations.

Document incorporated by reference

The *Flight examiner rating course* is the course in respect of which the e-learning modules are required to be successfully completed by a flight instructor seeking the benefit of the approvals in section 6. It is included under paragraph 6 (1) (c) of the instrument as the course prepared by CASA, as existing from time to time.

Paragraph 14 (1) (b) of the *Legislation Act 2003* (the *LA*) authorises the incorporation into a legislative instrument of any matter contained in any other instrument or writing as in force or existing at the time the 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.

The details of this course are, as specified in the note to paragraph 5 (1) (c) of the instrument, freely available on the internet at: <https://www.casa.gov.au/licences-and-certificates/flight-examiners/flight-examiner-rating-course>.

Content of instrument

Section 1 gives the instrument its name.

Section 2 provides that the instrument commences on the day after it is registered and is repealed at the end of 30 September 2025.

Section 3 sets out the definitions for the instrument which are mostly terms defined in or otherwise deriving meaning from Part 61 of CASR.

Subsection 4 (1) exempts a flight instructor who holds a grade 1 training endorsement from compliance with subregulation 61.065 (1) of CASR (when taken together with subregulation 61.1175 (1) as it relates to item 14 of table 61.1235) to the extent that the flight instructor may conduct the following kinds of flight training in relation to the holder of a flight instructor rating without holding an instructor rating training endorsement:

- (a) flight training for a grade 2 training endorsement;
- (b) flight training for a training endorsement of a kind mentioned in column 1 of item 7, and items 16 – 22, of table 61.1235.

The first note to subsection 4 (1) confirms that the effect of the exemption is that the flight instructor may conduct the training mentioned despite not holding an instructor rating training endorsement. The second note specifies all of the training endorsements mentioned in paragraph 4 (1) (b).

Under subsection 4 (1), for the exemption to apply, the person receiving the training must hold a flight instructor rating. Under subsection 4 (2), the exemption in paragraph 4 (1) (b) is also subject to the condition that the flight instructor must hold the same kind of training endorsement as that for which the flight training is conducted.

Section 5 provides for related exemptions for Part 141 and 142 operators and associated personnel who are required to ensure that those flight instructors are authorised under Part 61 of CASR to undertake the flight training concerned. It exempts Part 141 and 142 operators (and their heads of operations) who employ such flight instructors, from provisions (for example, regulations 141.175 and 142.230 and subparagraphs 141.130 (4) (b) (i) and 142.190 (2) (n) (i)) that require them to ensure that the flight instructor, in conducting the flight training concerned is authorised under Part 61 to do so. Section 5 is included to avoid doubt as to whether the exemption of a flight instructor under section 4 of the instrument constitutes an authorisation under Part 61 of CASR. For example, under regulation 141.175 of CASR, a Part 141 operator commits an offence if a flight instructor for the operator conducts authorised Part 141 flight training without being authorised under Part 61 to do so. Section 5 ensures that the Part 141 operator will not commit that offence because they will be exempt from that provision in the way mentioned.

Subsection 6 (1) sets out the preconditions applying to the approval of flight instructors in that section. These are that the flight instructor must hold a grade 1 training endorsement, must, within the previous 24 months, have successfully completed an instructor proficiency

check and must have successfully completed the e-learning modules of the Flight examiner rating course.

Under subsection 6 (2) of the instrument, such a flight instructor is approved, under regulation 61.040 of CASR, for the purposes of subregulation 61.245 (3), to conduct a flight test for the grant of an authorisation mentioned in column 1 of Table 1 in relation to the holder of a pilot licence.

Under subsection 6 (3) of the instrument, the flight instructor is also approved, under regulation 61.040 of CASR, for the purposes of subregulation 61.150 (7), to grant an authorisation mentioned in column 1 of Table 1 of the instrument in relation to the holder of a pilot licence.

Subsection 6 (4) imposes the following conditions in relation to the approvals:

- (a) the flight instructor must hold the endorsements and any ratings mentioned in column 2 of Table 1 for the authorisation;
- (b) the flight instructor must not conduct the flight test, or grant the authorisation unless:
 - (i) the flight instructor is employed or engaged by a Part 141 or Part 142 operator who is authorised to conduct flight training of the kind to which the authorisation relates: and
 - (ii) the Part 141 or 142 operator has approved the flight instructor to conduct flight training of that kind;
- (c) the flight instructor must comply with the following requirements and obligations of Part 61 of CASR in respect of the flight test as if the instructor were a flight examiner:
 - (i) subregulations 61.1275 (2) and (3);
 - (ii) paragraph 61.1280 (2) (e);
 - (iii) regulation 61.1295;
 - (iv) subregulations 61.1300 (4) and (5).

The applied provisions under paragraph 6 (4) (c), as in force at the commencement of the instrument, have the following effect:

- subregulation 61.1275 (2) — the flight instructor is authorised to conduct a flight test for a rating on a pilot licence only if, when the flight test is conducted, the flight instructor meets the recent experience requirements mentioned in Part 61 for the exercise of the privileges of the rating
- subregulation 61.1275 (3) — the flight instructor is authorised to conduct a flight test for an endorsement on a pilot licence only if, when the flight test is conducted, the flight instructor meets the recent experience requirements mentioned in Part 61 for the exercise of the privileges of the rating to which the endorsement relates
- paragraph 61.1280 (2) (e) — the flight instructor is authorised to conduct a flight test for a rating on a pilot licence (other than an instrument rating, night vision imaging system rating, aerial application rating or instructor rating) only if, when the flight test is conducted, the flight instructor meets the flight review requirements for the rating
- regulation 61.1295, consisting of:
 - subregulation 61.1295 (1) — the flight instructor conducting the flight test must be nominated by the applicant's training provider under subregulation 61.245 (3) or by CASA under subregulation 61.245 (4)

- subregulation 61.1295 (3) — the flight instructor must conduct the flight test in accordance with the standards in the Part 61 Manual of Standards (the **Part 61 MOS**) and assess the applicant against the competency standards for the flight test in the Part 61 MOS
- subregulation 61.1295 (4) — the flight instructor must advise the applicant and the applicant's Part 141 or 142 operator of the results of the flight test including reasons for any failure in an element of the flight test, and must, within 14 days, provide a report of the results to the applicant, their Part 141 or 142 operator and CASA
- subregulation 61.1295 (5) — the flight instructor must give CASA at least 24 hours prior notice of an intention to conduct the flight test.
- subregulation 61.1300 (4) — the flight instructor must not begin a flight test unless satisfied that the applicant has passed the aeronautical knowledge examination for the rating or endorsement and has met the flight training and aeronautical experience requirements for the grant of the rating or endorsement
- subregulation 61.1300 (5) — the flight instructor must not begin a flight test unless satisfied that the applicant holds a current class 1 or 2 medical certificate or recreational aviation medical practitioner's certificate or a medical exemption for the exercise of the privileges of the rating.

The provisions of Part 61 of CASR as applied to flight instructors by paragraph 6 (4) (c) of the instrument constitute conditions imposed under regulation 11.056, contravention of which is a strict liability offence under regulation 11.077 of CASR attracting a penalty of 50 penalty units. This is to be contrasted with a contravention of those provisions by a flight examiner which would attract a penalty for the flight examiner as specified in the provision concerned.

Table 1 in the instrument sets out the authorisations for which flight tests may be conducted and that may be granted and the corresponding authorisations that the flight instructor must hold in order to carry out those flight tests and grants of authorisations.

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 exemptions and approvals in the instrument apply in relation to a specified class of persons, namely flight instructors who hold grade 1 training endorsements. 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.

As the instrument relates to aviation safety and is made under CASR, Part 4 of Chapter 3 of the LA (the ***sunsetting provisions***) does not apply to the instrument (as per item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). The instrument is repealed at the end of 30 September 2025 by virtue of section 2 of the instrument. Therefore, the exemption from sunsetting does not affect parliamentary oversight of the instrument.

Consultation

Industry feedback was sought in relation to a draft instrument reflecting the measures in this instrument between 17 and 31 August 2022 in accordance with the requirements of section 17 of the LA.

Forty-three responses were received, mostly from flight instructors and flight examiners, pilots and flight training operators.

Twenty-nine responses were expressly supportive of the draft instrument. Ten responses implied support for the objectives of the instrument, while either suggesting changes to the technical detail of the instrument (which were beyond the scope of the instrument) or posing questions on the operation of the instrument.

There was a commonly held view by respondents that the new rules would:

- encourage more uptake of grade 1 training endorsements and support the retention of experienced instructors in the flight training industry
- streamline the pathway for grade 1 training endorsement holders to attain flight examiner ratings
- provide better flexibility and efficiency, and reduce barriers and burdens for flight training operators
- improve access to training and assessment activities for nominated authorisations
- maintain aviation safety as the additional privileges are within scope of ability of grade 1 training endorsement holders.

Four responses did not support the proposed instrument, including because of the view that the instrument could:

- decrease the level of skill within the industry, and lead to reduced aviation safety or increased risk
- permit grade 1 training endorsement holders to conduct activities that they are not competent to conduct, and for which flight training operators are unable to adequately prepare the grade 1 training endorsement holders to conduct
- lead to conflict between the motivations of flight training operators and the required independence of assessment activities conducted by grade 1 training endorsement holders
- create 2 standards for assessments.

Having taken these submissions into account, CASA is satisfied that flight instructors who would be acting under the instrument are experienced in training pilots and/or other instructors. Assessment of competency is a fundamental capability of all instructors, and by holding the grade 1 training endorsement, the flight instructors have demonstrated their ability to assess trainees undergoing training. What they have not covered in their training is the administration aspects of conducting tests and granting authorisations. Even though the flight instructor could be conducting a flight test for a training endorsement which they themselves only recently attained, it should be noted that the core competency of the grade 1 training endorsement includes the ability to assess trainee competency. These flight instructors will continue to be required to comply with the general competency rule in regulation 61.385 of CASR and ensure they are competent to conduct the activity in an aircraft. They will also be required to comply with the range of targeted conditions in the instrument that CASA is satisfied will maximise safety outcomes.

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 and approvals (OBPR id: 14507).

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.

The instrument is anticipated to have a positive impact on flight instructors. It will create better career pathways through the flight instructor grades and will provide expanded privileges for grade 1 training endorsement holders. This will likely lead to increased work. The instrument will reduce the burden on grade 1 training endorsement holders who would otherwise need to spend considerable time and money to get a flight examiner rating to conduct assessment activities.

Flight instructors who wish to exercise the expanded privileges will need to complete the required training to ensure they are competent. If they wish to exercise the expanded privileges to conduct flight tests they will also be subject to expanded offences, to ensure that all persons conducting flight tests are subject to the same requirements.

The instrument will reduce the burden on flight examiners by expanding the pool of persons who can conduct certain assessment activities. Existing flight examiners may see reduced demand for certain assessment activities, however this impact is expected to be minor as the assessment activities involved comprise only a small segment of flight tests conducted.

Flight training operators are likely to benefit from the increased numbers of personnel capable of conducting training and assessment activities. To obtain that benefit, operators that conduct training for the grade 1 training endorsement will need to ensure their training course includes training that ensures the applicant can deliver the additional training associated with the expanded privileges such as training for the applicant to deliver grade 2 training endorsement training, general training in the delivery of flight instructor training, training in assessment of competency for the issue of an endorsement and the administrative matters relating to the issue of endorsements. This may require time and cost to develop such training.

Smaller operators conducting specialised operations and small-volume training activities are likely to see cost saving benefits, due to the opportunity to upskill instructors in-house and conduct an expanded range of training and assessment activities.

There is expected to be limited or no impact on larger commercial operators.

The instrument will have positive impacts for trainee pilots as there will be increased numbers of persons available to conduct certain training and assessment activities. This will also likely lead to decreased costs and may allow them to complete their training course more quickly.

Impact on regional and remote communities

The instrument is not likely to have a specific impact on operators in regional or remote communities in Australia.

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 30 September 2025.

Statement of Compatibility with Human Rights

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

CASA EX64/22 — Flight Training and Flight Tests by Grade 1 Training Endorsement Holders (Exemptions and Approvals) Instrument 2022

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 EX64/22 — Flight Training and Flight Tests by Grade 1 Training Endorsement Holders (Exemptions and Approvals) Instrument 2022 (the **instrument**) provides an exemption from certain requirements of the *Civil Aviation Safety Regulations 1998 (CASR)* to allow flight instructors who hold a grade 1 training endorsement to conduct flight training for a grade 2 training endorsement, design feature training endorsement, flight activity training endorsements and low-level training endorsements, despite not holding an instructor rating training endorsement. It provides for related exemptions for certain operators and associated personnel who are required to ensure that those flight instructors are authorised under Part 61 of CASR to undertake the flight training concerned. It also approves such flight instructors who have, within the previous 24 months, completed an instructor proficiency check and who have successfully completed certain flight examiner training, to carry out flight tests and grants of certain ratings and endorsements. This represents an expansion of the privileges of these flight instructors and will help alleviate a current shortfall in suitably qualified flight instructors who train other instructors and assess other instructors and pilots.

A range of targeted conditions will apply to ensure these flight instructors are competent to conduct the activities.

CASA has assessed the impact on aviation safety of the instrument and is satisfied that it will have no adverse impact on the safety of pilots or aircraft operations.

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