

## **Explanatory Statement**

### **Civil Aviation Safety Regulations 1998**

#### **CASA EX29/23 — Designated Aviation Medical Examiners (Extending Medical Certificates) Exemption 2023**

##### **Purpose**

The purpose of the instrument is to provide an exemption from compliance with subregulation 67.220(4) of the *Civil Aviation Safety Regulations 1998 (CASR)* to enable Designated Aviation Medical Examiners (**DAMEs**) to extend certain medical certificates issued by the Civil Aviation Safety Authority (**CASA**) for a period that is up to 4 months. Under that provision, DAMEs are currently permitted to extend these medical certificates for a period not more than 2 months.

Amending the maximum period that a certificate can be extended would improve efficiency in the administrative process in CASA for assessing applications for renewals of medical certificates in the situation where there is no medical condition under surveillance that would be of aeromedical significance in the extension period. CASA, therefore, does not anticipate there to be any aeromedical safety impact. CASA has assessed that the exemption will have the greatest impact on Class 1 medical certificates (which constitute around 75% of the applications for extensions that CASA receives). The Class 1 medical certificate is required for the holder of a commercial, multi-crew or transport pilot licence to conduct operations under the licence, and the exemption would, therefore, enable the continuity of flying where it is reasonable to do so.

CASA intends to amend the regulations to effect this change as part of its review of Part 67 of CASR, due to be implemented by or during 2025.

##### **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*.

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 compliance with 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 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 67 of CASR provides for all aspects of medical certificates, including standards and administrative arrangements relating to holders of, or applications for, various aviation licences. Part 67 provides for:

- (a) the appointment of appropriately qualified persons as DAMEs or Designated Aviation Ophthalmologists (**DAOs**) and for cancellation of such appointments; and
- (b) procedures for declaring that particular persons, or persons who hold or perform the duties of certain positions or offices, are to be taken to be DAMEs or DAOs; and
- (c) medical standards for the issue of medical certificates; and
- (d) the issue and administrative control of medical certificates; and
- (e) modified Austroads medical standards; and
- (f) offences in relation to holders of medical certificates and recreational aviation medical practitioner certificates.

Regulation 67.205 of CASR provides for the period in force of medical certificates. Under subregulation 67.210(1), the holder of a current medical certificate issued by CASA may apply for an extension of the period during which the certificate remains in force. Under subregulation 67.210(2), the application may be made to CASA, or, if the certificate is not subject to a condition to the effect that the period during which the certificate remains in force may be extended only by CASA, to a DAME.

Regulation 67.220 provides for the assessment by a DAME of an application for extension of a medical certificate under regulation 67.210. Subregulation 67.220(4) limits the period within which a DAME may extend a medical certificate to 2 months after the day when the certificate would have expired if the period had not been extended.

Under subregulation 67.220(1) of CASR, a DAME must deal with an application, for the extension in force of a medical certificate, in accordance with the Designated Aviation Medical Examiner's Handbook, and must only extend the certificate if satisfied that this will not adversely affect the safety of air navigation. Regulation 67.060 of CASR sets out conditions that apply to the appointment of a person as a DAME.

### **Overview of instrument**

The exemption will permit a DAME to extend medical certificates for up to 4 months under Part 67 of CASR for medical certificates issued by CASA which are not conditional on extension by CASA only. An extension period typically covers the period of time CASA takes to assess applications for renewals of medical certificates, which has been found to be insufficient. CASA will consider this issue when it conducts its review of Part 67 of CASR.

### ***Content of instrument***

Section 1 is the citation provision, providing that the instrument is *CASA EX29/23 — Designated Aviation Medical Examiners (Extending Medical Certificates) Exemption 2023*.

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

### Section 3

Subsection 3(1) provides that section 3 applies to a DAME who is dealing with an application made by a person under regulation 67.210 of CASR for an extension of the person's medical certificate. Applications under regulation 67.210 concern medical certificates that have been issued by CASA. Under subregulation 67.210(2), an application may be made to a DAME in the case of a medical certificate that does not have a condition attached requiring an extension to be made by CASA only.

Subsection 3(2) provides that the DAME is exempt from compliance with subregulation 67.220(4) to the extent that subregulation requires the DAME to limit the period of the extension to not more than 2 months after the day when the certificate would otherwise expire.

Subsection 3(3) places a condition on the exemption, being that the DAME must not extend the period that the certificate remains in force for longer than 4 months after the day when the certificate would otherwise expire.

The note to the section explains that certain terms and expressions occurring in the section are defined in the Act or the regulations.

### ***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 subregulation 67.220(4) of CASR. 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*). However, this instrument will be repealed at the end of 30 April 2025, which will occur before the sunsetting provisions would have repealed the instrument if they had applied. Any renewal of the instrument will be subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA. Therefore, the exemption from sunsetting does not affect parliamentary oversight of this instrument.

### **Consultation**

The instrument will provide relief in relation to applications for medical certificates that are caught in a current backlog within CASA. The instrument gives pilots, who hold medical certificates that are due to expire, the opportunity for a further 2 months' extension, thus relieving pressure on pilots and also CASA. CASA is satisfied that no 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 requirements of the instrument apply to DAMEs and to CASA in administering medical certificate applications. The instrument would have an impact on holders of flight crew licences who are required under Part 61 of CASR to hold a Class 1 or Class 2 medical certificate before being permitted to exercise privileges under their licence, and student pilots (who are required to hold a medical certificate before conducting solo flights). Also, under Part 65 of CASR, the holders of an air traffic control licence or air flight crew licence are required to hold a Class 3 medical certificate before being authorised to carry out an air traffic control function, or flight service function.

The instrument will have a beneficial effect on persons who require a current medical certificate in order to continue their activities under a civil aviation authorisation, for example, commercial pilots who can continue to earn an income and be productive in the community. There will be no additional cost impacts on applicants, DAMEs or CASA.

### **Impact on categories of operations**

The instrument is likely to have a beneficial impact on pilots and air traffic control operations as it allows a longer time for some existing medical certificates to continue in force while an assessment process for a new medical certificate is underway. This would allow the holder of the medical certificate to continue activities under a licence during that time.

### **Impact on regional and remote communities**

It is expected that the instrument would have a beneficial effect on pilots, student pilots and air traffic controllers in regional or remote communities for the reasons given above.

### **Office of Impact Analysis (OIA)**

An Impact Analysis (*IA*) is not required in this case as the exemption is covered by a standing agreement between CASA and OIA under which an IA is not required for exemptions (OIA 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 30 April 2025.

## Statement of Compatibility with Human Rights

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

### **CASA EX29/23 — Designated Aviation Medical Examiners (Extending Medical Certificates) Exemption 2023**

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 the instrument is to provide an exemption from compliance with subregulation 67.220(4) of the *Civil Aviation Safety Regulations 1998 (CASR)* to enable Designated Aviation Medical Examiners (**DAMEs**) to extend certain medical certificates issued by the Civil Aviation Safety Authority (**CASA**) for a period that is up to 4 months. Under that provision, DAMEs are currently permitted to extend these medical certificates for a period not more than 2 months.

The exemption will permit a DAME to extend medical certificates for up to 4 months under Part 67 of CASR for medical certificates issued by CASA which are not conditional on extension by CASA only. An extension period typically covers the period of time CASA takes to assess applications for renewals of medical certificates, which has been found to be insufficient. Amending the maximum period that a certificate can be extended would improve efficiency in the administrative process in CASA in assessing applications for renewals of medical certificates in the situation where there is no medical condition under surveillance that would be of aeromedical significance in the extension period. CASA, therefore, does not anticipate there to be any aeromedical safety impact. CASA has assessed that the exemption will have the greatest impact on Class 1 medical certificates (which constitute around 75% of the applications for extensions that CASA receives). The Class 1 medical certificate is required for the holder of a commercial, multi-crew or transport pilot licence to conduct operations under the licence, and the exemption would, therefore, enable the continuity of flying where it is reasonable to do so. CASA intends to amend the regulations to effect this change as part of its review of Part 67 of CASR, due to be implemented by or during 2025.

#### **Human rights implications**

##### *Right to work*

The right to work, mentioned in Article 6 (1) of the International Covenant on Economic, Social and Cultural Rights, includes the right of everyone to the opportunity to gain their living by work that they freely choose or accept. The right to work is promoted by the instrument, as it provides greater flexibility for pilots or air traffic controllers to obtain medical certificates that are necessary to perform duties.

The right to work is promoted by the instrument, as it allows the holder of a pilot licence to exercise the privileges of the licence when the pilot's medical certificate may otherwise have expired. This increases the availability of suitably-qualified pilots to pilot aircraft. The instrument similarly promotes the right to work for holders of an air traffic control licence or flight service licence, who are required to maintain a current medical certificate.

*Other rights*

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

**Conclusion**

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

**Conclusion**

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

**Civil Aviation Safety Authority**