**Explanatory Statement**

**Civil Aviation Safety Regulations 1998**

**CASA EX88/23 — Overseas Training and Assessment, and Instrument Proficiency Check, Exemption 2023**

**Purpose**

*CASA EX88/23 — Overseas Training and Assessment, and Instrument Proficiency Check, Exemption 2023* (the ***instrument***) continues, in effect, transitional regulations 202.278 and 202.279 of the *Civil Aviation Safety Regulations 1998* (***CASR***), which expire at the end of 31 August 2023. This is achieved by the Civil Aviation Safety Authority (***CASA***) granting to an applicant for a pilot type rating an exemption from meeting certain requirements for the grant of the rating, subject to certain conditions being met. Also, this is achieved by CASA granting the holder of a multi-crew pilot licence, air transport pilot licence or instrument rating an exemption from meeting certain requirements relating to having a valid instrument proficiency check for the relevant aircraft or aircraft type, subject to certain conditions being met.

Also, the instrument exempts the holder of a pilot type rating for an aircraft type from meeting certain requirements relating to having a valid instrument proficiency check for the aircraft type, subject to certain conditions being met.

**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, 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 11.170(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 11.225 of CASR requires an exemption to be published on the internet. Under subregulation 11.230(1) of CASR, the maximum duration of an exemption is 3 years.

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

(a) the holder conducts an activity mentioned in Part 61 of CASR while:

 (i) piloting a registered aircraft; or

 (ii) acting as flight engineer of a registered aircraft; or

 (iii) acting as an instructor or examiner; and

(b) the holder is not authorised under the Part to conduct the activity.

Under subregulation 61.650(1) of CASR, the holder of a multi-crew pilot licence is authorised to exercise the privileges of the licence under the IFR only if the holder has a valid instrument proficiency check for the aeroplane category. Also, under subregulation 61.650(2), the holder is authorised to exercise the privileges of the licence under the IFR in a multi-engine aeroplane only if the holder has a valid instrument proficiency check for multi-engine aeroplanes. Subregulation 61.650 (3) states what the holder needs to do to be taken to have a valid instrument proficiency check for the aeroplane category or for multi-engine aeroplanes, and the period during which this applies. In particular, paragraphs 61.650(3)(d) and (e) deal with the situation where the holder successfully completes an instrument proficiency check for the relevant aeroplane.

Under subregulation 61.695(1) of CASR, the holder of an air transport pilot licence is authorised to exercise the privileges of the licence under the IFR in an aircraft of a particular category only if the holder has a valid instrument proficiency check for the aircraft category. Also, under paragraph 61.695(2)(a), the holder is authorised to exercise the privileges of the licence in a multi-engine aeroplane only if the holder has a valid instrument proficiency check for multi-engine aeroplanes. Also, under paragraph 61.695(2)(b), the holder is authorised to exercise the privileges of the licence in a multi-engine helicopter only if the holder has a valid instrument proficiency check for multi-engine helicopters. Subregulation 61.695(3) states what the holder needs to do to be taken to have a valid instrument proficiency check for the aircraft category or for multi-engine aeroplanes or multi‑engine helicopters, and the period during which this applies. In particular, paragraphs 61.695(3)(d) and (e) deal with the situation where the holder successfully completes an instrument proficiency check for the relevant aircraft.

Under subregulation 61.805(1) of CASR, the holder of a pilot type rating is authorised to exercise the privileges of the rating under the IFR only if the holder has a valid instrument proficiency check for the aircraft type covered by the rating.

Subregulation 61.805(2) states what the holder needs to do to be taken to have a valid instrument proficiency check for an aircraft type, other than a single-pilot turbojet aeroplane type, and the period during which this applies. In particular, paragraphs 61.805(2)(e) and (f) deal with the situation where the holder successfully completes an instrument proficiency check for the relevant aircraft type.

Subregulation 61.805(3) states what the holder needs to do to be taken to have a valid instrument proficiency check for a single-pilot turbojet aeroplane type, and the period during which this applies. In particular, paragraphs 61.805(3)(e) and (f) deal with the situation where the holder successfully completes an instrument proficiency check for the relevant aircraft type.

Regulation 61.810 of CASR states the requirements that must be met for the grant of a pilot type rating if the applicant is not taken to meet the requirements for the grant of the rating under regulation 61.815 or 61.820 of CASR. As far as is relevant, under subregulation 61.810(3), the applicant must have:

(a) completed an approved course of training for the rating that includes:

 (i) theory and technical training; and

 (ii) flight training in accordance with the approved course, consisting of:

(A) dual flight in an aircraft of the type covered by the rating; or

(B) dual simulated flight in an approved flight simulator for the training; and

(b) passed an examination, conducted by the operator or organisation that conducted the training mentioned in paragraph (a), testing the applicant’s aeronautical knowledge against the standards mentioned in the *Part 61 Manual of Standards* (the ***Part 61 MOS***) for the rating; and

(c) passed the flight test mentioned in the Part 61 MOS for the rating.

Under subregulation 61.880(1) of CASR, the holder of an instrument rating is authorised to exercise the privileges of the rating in an aircraft of a particular category only if the holder has a valid instrument proficiency check for the aircraft category. Also, under paragraph 61.880(2)(a), the holder is authorised to exercise the privileges of the rating in a multi-engine aeroplane only if the holder has a valid instrument proficiency check for multi‑engine aeroplanes. Also, under paragraph 61.880(2)(b), the holder is authorised to exercise the privileges of the rating in a multi-engine helicopter only if the holder has a valid instrument proficiency check for multi-engine helicopters. Subregulation 61.880(3) states what the holder needs to do to be taken to have a valid instrument proficiency check for the aircraft category or for multi-engine aeroplanes or multi-engine helicopters, and the period during which this applies. In particular, paragraphs 61.880(3)(e) and (f) deal with the situation where the holder successfully completes an instrument proficiency check for the relevant aircraft.

Under subsection 14(1) of the *Legislation Act 2003* (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.

**Overview of instrument**

Part 61 of CASR requires that flight training be conducted by a Part 141 or 142 operator that is authorised under Part 141 or 142 of CASR to conduct the training, or the holder of an approval under regulation 141.035 or 142.040 of CASR to conduct the training. However, it is not always feasible for pilot licence holders to access training in Australia, as providers may not deliver all the necessary flight training for the grant, or renewal, of a licence.

Also, Part 61 requires certain flight training to be conducted in a flight simulator. A significant component of this training has to be undertaken overseas, partly due to the limited availability, and capability, of flight simulators in Australia.

The expiring transitional regulations 202.278 and 202.279 of CASR (the ***expiring regulations***) allow for a pilot licence holder to undertake certain flight training and instrument proficiency checks overseas, despite the requirements of Part 61. This is subject to stated safeguards, including that the training and checks meet the standards stated in the Part 61 MOS.

The instrument, in effect, allows pilot licence holders to continue to be able to utilise these flight training and instrument proficiency check options after the repeal of the expiring regulations.

**Document incorporated by reference**

The instrument incorporates the Part 61 MOS, as in force from time to time. The document was issued under regulation 61.035 of CASR. It sets out standards relating to flight crew licences. It is available for free on the Federal Register of Legislation.

**Content of instrument**

Section 1 states the name of the instrument.

Section 2 states that the instrument commences on 1 September 2023 and is repealed at the end of 31 August 2026.

Section 3 defines various terms for the instrument. Other terms are defined in the Act or CASR Dictionary.

Section 4 grants an exemption to an applicant for a pilot type rating from compliance with subregulation 61.810(3). The exemption applies only if the applicant meets the requirements stated in subsection 4(1).

Subsection 5(1) grants an exemption to the holder of a multi-crew pilot licence from compliance with regulation 61.065 to the extent that the holder is not authorised to exercise the privileges of the licence under the IFR in an aeroplane of a particular category or a multi‑engine aeroplane, under subregulation 61.650(1) or (2), because the holder does not meet the requirements stated in paragraph 61.650(3)(d) or (e) in relation to the relevant aeroplane. The exemption applies only if the holder meets the requirements stated in subsection 5(6).

Subsection 5(2) grants an exemption to the holder of an air transport pilot licence from compliance with regulation 61.065 to the extent that the holder is not authorised to exercise the privileges of the licence under the IFR in an aircraft of a particular category, or a multi‑engine aeroplane or multi-engine helicopter, under subregulation 61.695(1) or (2), because the holder does not meet the requirements stated in paragraph 61.695(3)(d) or (e) in relation to the relevant aircraft. The exemption applies only if the holder meets the requirements stated in subsection 5(6).

Subsection 5(3) grants an exemption to the holder of a pilot type rating from compliance with regulation 61.065 to the extent that the holder is not authorised to exercise the privileges of the rating under the IFR in an aircraft type covered by the rating, other than a single-pilot turbojet aeroplane type, under subregulation 61.805(1), because the holder does not meet the requirements stated in paragraph 61.805(2)(e) or (f) in relation to the aircraft type. The exemption applies only if the holder meets the requirements stated in subsection 5(6).

Subsection 5(4) grants an exemption to the holder of a pilot type rating from compliance with regulation 61.065 to the extent that the holder is not authorised to exercise the privileges of the licence under the IFR in a single-pilot turbojet aeroplane type, under subregulation 61.805(1), because the holder does not meet the requirements stated in paragraph 61.805(3)(e) or (f) in relation to the aircraft type. The exemption applies only if the holder meets the requirements stated in subsection 5(6).

Subsection 5(5) grants an exemption to the holder of an instrument rating from compliance with regulation 61.065 to the extent that the holder is not authorised to exercise the privileges of the licence in an aircraft of a particular category, or a multi-engine aeroplane or multi‑engine helicopter, under subregulation 61.880(1) or (2), because the holder does not meet the requirements stated in paragraph 61.880(3)(e) or (f) in relation to the relevant aircraft. The exemption applies only if the holder meets the requirements stated in subsection 5(6).

Subsection 5(6) states the requirements that must be met for the exemptions granted by the section to apply.

***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. Also, 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 applies to classes of persons, namely, an applicant for a pilot type rating, or the holder of a multi-crew pilot licence, air transport pilot licence, pilot type rating or instrument rating. 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.

**Sunsetting**

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 (in accordance with item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). However, the instrument will be repealed at the end of 31 August 2026, 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 the instrument.

**Consultation**

Consultation under section 17 of the LA has not been undertaken in relation to the instrument. This is because the instrument is of general benefit to pilot licence holders and continues, in effect, the expiring regulations. With the same policy objective, the instrument provides for an exemption against compliance with an additional regulation of CASR, which was not dealt with in the expiring regulations.

In these circumstances, CASA is satisfied that no consultation is appropriate, or reasonably practicable, for the 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) states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9(1)(c) of the Act, 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 economic and cost impact of the instrument has been determined by:

(a) the identification of individuals and businesses affected by the instrument; and

(b) consideration of how the requirements to be imposed on individuals and businesses under the instrument will be different compared to existing requirements; and

(c) a valuation of the impact, in terms of direct costs on individuals and businesses affected by the instrument to comply with the different requirements. This valuation is consistent with the principles of best practice regulation of the Australian Government; and

(d) a valuation of the impact the different requirements 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; and

(e) consideration of community impacts, beyond those direct impacts on individuals and businesses affected by the instrument, which are relevant if the instrument were to result in flow-on effects to other aviation businesses, or local non‑aviation businesses that experience a change in their activity due to the instrument.

The instrument enables pilot licence holders to continue to have the benefit of being able to complete flight training and be assessed, or undergo an instrument proficiency check, overseas under the oversight of the national aviation authority of a recognised foreign State. This continues what is allowed under the expiring regulations. In these circumstances, the instrument does not impose any economic or cost impact on individuals, businesses and the community.

**Impact on categories of operations**

The instrument does not have an impact on specific categories of operations. Rather, the instrument is of benefit to the aviation industry as a whole.

**Impact on regional and remote communities**

The instrument does not have an impact that is specific to regional and remote communities.

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

An Impact Analysis (***IA***) is not required for the instrument as the exemptions are 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*. The instrument does not directly engage any of the applicable rights or freedoms, and is compatible with human rights, as it does not directly 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 1 September 2023 and is repealed at the end of 31 August 2026.

**Attachment 1**

**Statement of Compatibility with Human Rights**

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

**CASA EX88/23 — Overseas Training and Assessment, and Instrument Proficiency Check, Exemption 2023**

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*.

**Overview of the legislative instrument**

*CASA EX88/23 — Overseas Training and Assessment, and Instrument Proficiency Check, Exemption 2023* (the ***instrument***) continues, in effect, transitional regulations 202.278 and 202.279 of the *Civil Aviation Safety Regulations 1998*, which expire at the end of 31 August 2023. This is achieved by the Civil Aviation Safety Authority (***CASA***) granting to an applicant for a pilot type rating an exemption from meeting certain requirements for the grant of the rating, subject to certain conditions being met. Also, this is achieved by CASA granting the holder of a multi-crew pilot licence, air transport pilot licence or instrument rating an exemption from meeting certain requirements relating to having a valid instrument proficiency check for the relevant aircraft or aircraft type, subject to certain conditions being met.

Also, the instrument exempts the holder of a pilot type rating for an aircraft type from meeting certain requirements relating to having a valid instrument proficiency check for the aircraft type, subject to certain conditions being met.

**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**