



# Australian Government

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## Civil Aviation Safety Authority

Instrument number CASA EX98/23

I, CHRISTOPHER PAUL MONAHAN, Executive Manager, National Operations & Standards, a delegate of CASA, make this instrument under regulations 11.160, 11.205 and 11.245 of the *Civil Aviation Safety Regulations 1998*.

**[Signed Chris Monahan]**

Christopher P. Monahan

Executive Manager, National Operations & Standards

29 November 2023

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### **CASA EX98/23 – Amendment of CASA EX86/21 – Instrument 2023 (No. 2)**

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**1 Name**

This instrument is *CASA EX98/23 – Amendment of CASA EX86/21 – Instrument 2023 (No. 2)*.

**2 Commencement**

This instrument commences on 2 December 2023.

**3 Amendment of CASA EX86/21**

Schedule 1 amends *CASA EX86/21 – Part 138 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021*.

**Schedule 1 Amendments**

**[1] Section 2**

*repeal and substitute*

**2 Repeal**

This instrument is repealed at the end of 1 December 2024.

**[2] Subsection 3 (1), definition of CAR**

*repeal and substitute*

**CAR** means the *Civil Aviation Regulations 1988*.

**[3] Subsection 6 (2)**

*omit*

regulations 138.050 and 138.055,

*insert*

paragraph 138.050 (1) (b) and regulation 138.055,

**[4] Subsection 7 (1)**

*omit*

CAR).

*insert*

CAR, as in force immediately before 2 December 2021.

**[5] Subsection 7 (2)**

*omit*

regulations 138.050 and 138.055:

*insert*

paragraph 138.050 (1) (b) and regulation 138.055, but:

**[6] Subsection 8 (2)**

*omit*

regulations 138.050 and 138.055,

*insert*

paragraph 138.050 (1) (b) and regulation 138.055,

**[7] Section 9**

*repeal and substitute*

**9 Training and checking system requirements for operational safety-critical personnel — exemption**

- (1) This section applies to an aerial work certificate holder (the ***operator***) to whom subregulation 138.125 (3) applies.
- (2) The operator is exempted from compliance with paragraph 138.050 (1) (d) and regulation 138.055, but:
  - (a) only to the extent of the requirement that the operator must comply with the condition in paragraph 138.050 (1) (d) in relation to subregulation 138.125 (3); and
  - (b) for paragraph (a), only to the extent of the requirement under subregulation 138.135 (1) that the operator's training and checking system must include those operational safety-critical personnel (the ***relevant personnel***) who are not any of the following:
    - (i) flight crew members;
    - (ii) other crew members who are assigned duties on board an aircraft in relation to the flying or safety of the aircraft.
- (3) The exemption in subsection (2) is subject to the condition that the operator's training and checking system must include a description of how the operator will satisfy itself:
  - (a) that each of its relevant personnel:
    - (i) is competent to carry out their assigned duties; and
    - (ii) in carrying out the duties — is not likely to have an adverse effect on aviation safety; and

- (b) that immediate action will be taken in the interests of aviation safety if a relevant person:
    - (i) loses competence; or
    - (ii) is likely to have an adverse effect on aviation safety.
- (4) This section ceases to have effect at the end of a date to be specified in writing by CASA.

*Note* Through its website, and in communications to relevant operators, CASA will give at least 3 months' notice of any appropriate specified dates.

## **[7A] After section 9A in Part 2**

*insert*

### **9B Crew experience – exemption**

- (1) This section applies to an aerial work certificate holder (the **operator**) and the pilot in command, conducting an NVIS firebombing operation mentioned in Division 2 of Chapter 16 of the Part 138 MOS.
- (2) The operator and the pilot in command are each exempted from compliance with subregulations 138.425 (3), (4) and (5), but only to the extent of the requirement under subsection 16.06 (3) of the Part 138 MOS that each pilot for the operation must have the aeronautical experience mentioned in the subsection.

*Note* Crew minimum experience requirements are managed by operators under their SMS and Training and Checking system, to ensure that crews are competent for the firebombing operation.

## **[8] Section 17**

*repeal and substitute*

### **17 Training and checking — direction**

- (1) In this section:
  - non-normal exercise** means an aircraft flight that involves the simulated failure of a vital system.
  - specified training or check** means an aircraft training or check event that involves carrying out a non-normal exercise.
  - vital system** means a system whose simulated failure in flight would adversely affect the safety of the aircraft as compared to normal operation.
- (2) This section applies to an aerial work certificate holder (the **operator**) who, immediately before 2 December 2021:
  - (a) conducted aerial work operations in an aircraft; and
  - (b) did not hold an approval under subregulation 217 (3) of CAR, as in force immediately before 2 December 2021, for a training and checking organisation for the aircraft in the operations.
- (3) The operator must not use an individual to conduct the specified training or check for a flight crew member of the operator's personnel that is required under Part 138, unless a requirement mentioned in subsection (4) or (5) is met.
- (4) For subsection (3), if a registered aircraft is used:
  - (a) the individual must be able to exercise the privileges of one of the following for the relevant type or class (as applicable) of aircraft being used for the specified training or check:

- (i) a flight instructor rating and appropriate training endorsement;
- (ii) a flight examiner rating and appropriate flight examiner endorsement;
- (iii) if the specified training or check is conducted in a flight training device — a simulator instructor rating and appropriate training endorsement;
- (iv) an approval under regulation 61.040 that confers equivalent privileges to those under subparagraph (i), (ii) or (iii), as applicable to the specified training or check; or
- (b) the operator must hold CASA's approval that their training and checking system, as applied to the individual, produces a safety outcome equivalent to that under paragraph (a).

*Note 1* The effect of subsection (4) is that if the operator uses an individual to conduct a specified training or check, the individual must have appropriate CASR Part 61 qualifications to conduct the training or check unless the operator obtains CASA's approval.

*Note 2* The requirements under regulation 138.505 of CASR, and subsection 23.10 (2) of the Part 138 MOS, must still be met in addition to the requirements in paragraph (4) (a) or (b).

*Note 3* For **registered**, see the definition in the CASR Dictionary.

- (5) For subsection (3), if a foreign registered aircraft is used:
  - (a) the individual used by the operator must be able to exercise the privileges of an authorisation (however described) from the national aviation authority of the State of Registry for the aircraft, that are at least equivalent to the privileges described in paragraph (4) (a); or
  - (b) the operator must hold CASA's approval that their training and checking system, as applied to the individual, produces a safety outcome equivalent to that under paragraph 4 (a).

*Note 1* An operator conducting specified training or check must also comply with the requirements of section 9A.

*Note 2* For **foreign registered aircraft**, see the definition in section 3 of the *Civil Aviation Act 1988*.

## **[9] Section 18**

*repeal*

## **[10] Subsection 22 (1)**

*repeal and substitute*

- (1) In this section:
 

**safety information** means any safety data or information that satisfies all of the following:

  - (a) is in any form; and
  - (b) is generated within, or captured, collected or held by and within, an aerial work certificate holder's approved safety management system (including a flight data analysis program (**FDAP**), if any); and
  - (c) has been approved, whether directly or indirectly, by CASA as fulfilling the relevant safety management system or FDAP obligations of the aerial work certificate holder under the civil aviation legislation; and
  - (d) may include personal information relating to individuals.

*Note 1* **Civil aviation legislation** has the meaning given in section 3 of the *Civil Aviation Act 1988*. It includes, for example, CAR, CASR, relevant Manuals of Standards, and legislative instruments.

*Note 2* Safety information may have been approved by CASA in an indirect way, for example: by virtue of the issue of an initial aerial work certificate to an operator who is required by the civil aviation legislation to have an SMS for that purpose; or by virtue of an operator taking the benefit of an exemption under CASA EX87/21 relating to SMS under which requirements to introduce an SMS are taken to have been complied with.

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