

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### CASA EX62/24 – CASR Part 131 – Exemptions and Directions Instrument 2024

##### Purpose

The purpose of *CASA EX62/24 – CASR Part 131 – Exemptions and Directions Instrument 2024* (the **exemption instrument**) is to exempt certain operators of Part 131 aircraft (essentially balloons) from certain provisions of Part 131 of the *Civil Aviation Safety Regulations 1998 (CASR)*, Part 5 of the *Civil Aviation Regulations 1988 (CAR)* and the *Part 131 (Balloons and Hot Air Airships) Manual of Standards 2024 (the MOS)*.

The exemption instrument also contains directions to ensure that pilots comply with exemption conditions and carry applicable pilot authorisations and medical certificates with them during flight.

The exemption instrument is required to make Part 131 of CASR and the MOS operate effectively together on and from 12 November 2024 when the MOS commences and *Civil Aviation Order 95.53 (Commercial Balloon Flying Training and Balloon Transport Operations) Instrument 2021* and *Civil Aviation Order 95.54 (Part 131 Recreational Activity and Specialised Balloon Operations) Instrument 2021* are repealed.

The exemption instrument corrects misdescribed requirements for acting key personnel, facilitates the full activation of the air operator certificate (**AOC**) provisions, and operating rules, under Part 131 of CASR, corrects the omission of details concerning the pilot authorisations and medical certificates of foreign operators, carries a relocated exemption about requirements concerning the issue of relevant maintenance releases, and removes unnecessary requirements to be a registered operator for some circumstances.

##### Background

Part 131 of CASR commenced on 2 December 2021. Subparts 131.A and 131.B contain the operator certification and management rules for balloon transport operators, for example, AOCs, expositions, and pilot training. Some of the rules are similar to, but not identical with, the rules for aeroplane and rotorcraft Australian air transport operations in Part 119 of CASR.

However, pending the commencement of the MOS on 12 November 2024, the relevant operational rules were contained as conditions of exemptions under *Civil Aviation Order 95.53 (Commercial Balloon Flying Training and Balloon Transport Operations) Instrument 2021* and *Civil Aviation Order 95.54 (Part 131 Recreational Activity and Specialised Balloon Operations) Instrument 2021*.

The exemption instrument is required to make the legislation and these transitions work effectively by dealing with the following matters:

- misdescribed requirements for acting key personnel
- full activation (in effect) of the AOC provisions, and operating rules, under Part 131 of CASR

- omitted details concerning the pilot authorisations and medical certificates of foreign pilots
- the relocation of requirements concerning the issue of relevant maintenance releases
- unnecessary requirements to be a registered operator for some circumstances.

The provisions affected by the exemption instrument are described below, and the way in which the exemption instrument operates is described in Appendix 1.

### **Legislation — exemptions**

Section 98 of the *Civil Aviation Act 1988* (the *Act*) empowers the Governor-General to make regulations for the Act and the safety of air navigation.

Subpart 11.F of CASR deals with exemptions. Under subregulation 11.160(1), and for subsection 98(5A) of the Act, CASA may, by instrument, grant an exemption from a provision of CASR in relation to a matter mentioned in subsection 98(5A). Subsection 98(5A) matters are, in effect, those affecting the safety, airworthiness or design of aircraft.

Under subregulation 11.160(2), an exemption may be granted to a person or a class of persons. Under subregulation 11.160(3), CASA may grant an exemption on application, or on its own initiative.

Under subregulation 11.170(3), for an application for an exemption, CASA must regard as paramount the preservation of an acceptable level of safety. For making a decision on its own initiative, CASA is guided by the requirement in subsection 9A(1) of the Act that in exercising its powers and functions CASA must regard the safety of air navigation as the most important consideration. The preservation of an acceptable level of safety remains paramount.

Under regulation 11.205, CASA may impose conditions on an exemption if this is 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. Under regulation 11.225, CASA must, as soon as practicable, publish on the internet details of all exemptions under Subpart 11.F of CASR.

Under subregulation 11.230(1), an exemption may remain in force for 3 years or for a shorter period specified in the instrument.

Under subregulation 11.230(3), an exemption, in force in relation to a particular aircraft owned by a particular person, ceases to be in force when the aircraft ceases to be owned by that person. Under regulation 11.235, an exemption is not transferable (as between operators, aircraft, etc.).

### **Legislation — directions**

Under paragraph 11.245(1)(a) of CASR, for subsection 98(5A) of the Act, CASA may, by instrument, issue a direction about any matter affecting the safe navigation and operation of aircraft. Under subregulation 11.245(2), CASA may issue such a direction only if CASA is satisfied that it is necessary in the interests of safety, only if the direction is not inconsistent with the Act, and only for the purposes of CASA's functions.

Under regulation 11.250, a direction ceases to be in force on a day specified in the instrument or, if no day is specified, 1 year after the instrument commences. Under subregulation 11.255(1), it is an offence to contravene a direction under regulation 11.245 that is applicable to the person.

### **Other legislation**

Under regulation 131.070 of CASR, a balloon transport operator must comply with the conditions on their AOC. Under paragraph 131.090(f), one such condition is that the operator of a Part 131 aircraft must be the registered operator or hold a CASA approval under regulation 131.035.

The exemption instrument exempts from paragraph 131.090(f) as further policy reviews by CASA have determined it is not essential to aviation safety that to operate a Part 131 aircraft a person must be the registered operator.

Under subparagraph 131.195(1)(e)(iv) of CASR, a balloon transport operator's exposition must identify the persons who will act for key personnel when they are absent.

The exemption instrument exempts from subparagraph 131.195(1)(e)(iv), because it was not intended to mandate the nomination of acting key personnel, but leave the matter optional. This will ensure policy consistency in the context of the requirement in paragraph 131.125(2)(a), which clearly contemplates a scenario where the operator does not have a pre-approved acting key person.

The exemption instrument exempts relevant operators and foreign pilots of Part 131 aircraft from the following provisions.

Under subregulation 131.245(2) of CASR, for the flight of a Part 131 aircraft, at least one pilot must hold a Part 131 pilot authorisation. However, as defined in the CASR Dictionary, such authorisations are Australian documents that foreign pilots would not hold. Under Article 33 of the Chicago Convention, to which Australia is a signatory, Australia has an obligation to recognise certain foreign pilot qualifications in relation to the pilot operating a foreign registered aircraft, provided that the requirements under which they were issued are equal to or above the minimum standards which may be established from time to time under the Convention.

Under regulation 131.275 of CASR, the pilot in command of a Part 131 aircraft must carry certain documents on the aircraft as prescribed by the MOS. Under subparagraph 5.01(1)(c)(ii) of the MOS, the pilot's Part 131 pilot authorisation is one such document and, as defined in the CASR Dictionary, such authorisations are Australian documents that foreign pilots would not hold. This unintended gap in the safety rules is addressed by directions within the exemption instrument.

Under subparagraph 5.01(1)(c)(i) of the MOS, the pilot's medical certificate is one such document and, as defined in the CASR Dictionary, such certificates are either Australian documents that foreign pilots would not hold, or are overseas medical certificates which are defined in Part 61 of CASR which is not relevant to Part 131 aircraft.

Under subregulation 131.565(1) and paragraph 131.565(2)(a), the operator and the pilot in command of Part 131 aircraft each commit an offence if when a flight begins the pilot is not holding a commercial pilot (balloon) licence (a **CP(B)L**), a CAR certificate of

validation, or an authorisation from a Part 131 self-administering aviation organisation (an ASAO). The latter are no longer available and all 3 are Australian documents that foreign pilots would not hold. As described previously, it was not intended that all pilots of foreign registered aircraft would need to hold an Australian pilot authorisation. The exemption instrument corrects this unintended effect and permits some pilots of foreign registered aircraft to hold a foreign pilot authorisation, as defined in the exemption instrument.

Under subregulation 131.565(2A) of CASR, relevant persons must be authorised under regulation 5.03 of CAR. In effect, this authorises trainees who do not hold a commercial pilot (balloon) licence or a CAR certificate of validation to operate a Part 131 aircraft for training or a CP(B)L flight test. The exemption has the effect of disapplying this authorisation for the operator, and the pilot in command of a foreign registered aircraft that is a Part 131 aircraft as they would not be conducting such activities in Australia.

Division 9 of Part 4A of CAR deals with maintenance releases whose rules are not intended to apply to the operator or the pilot in command of a Part 131 aircraft. This exemption was previously located in both *Civil Aviation Order 95.53 (Commercial Balloon Flying Training and Balloon Transport Operations) Instrument 2021* and *Civil Aviation Order 95.54 (Part 131 Recreational Activity and Specialised Balloon Operations) Instrument 2021*, which are repealed as the MOS commences on 12 November 2024.

All of the exemptions are subject to substitutional safety conditions as set out in Appendix 1.

### ***Legislation Act 2003 (the LA)***

Exemptions under Subpart 11.F of CASR are “for subsection 98(5A)” of the Act, that is, for regulations which empower the issue of certain instruments, like exemptions, in relation to “(a) matters affecting the safe navigation and operation, or the maintenance, of aircraft”, and “(b) the airworthiness of, or design standards for, aircraft”.

The exemption instrument is clearly one in relation to matters affecting the safe navigation and operation of aircraft. Under subsection 98(5AA) of the Act, an exemption issued under paragraph 98(5A)(a), for such matters, is a legislative instrument if expressed to apply in relation to a class of persons, a class of aircraft or a class of aeronautical products (as distinct from a particular person, aircraft or product).

The exemption instrument is generic in nature and applies to classes of persons. It is, therefore, a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under section 15G, and sections 38 and 42, of the LA.

### **Sunsetting**

As the exemption instrument relates to aviation safety and is made under CASR, that means that Part 4 of Chapter 3 of the LA (the sunset provisions) does not apply to the exemption instrument (as per item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

The exemption instrument deals with aviation safety matters that, once identified, require a risk response or treatment plan. Generally speaking, item 15, when invoked, is necessary in order to ensure that, in the interests of aviation safety, a relevant instrument

has enduring effect, certainty and clarity for aviation operators, both domestic and international.

The exemption instrument is repealed at the end of 11 November 2027 by virtue of the terms of section 2. Thus, in practice, no sunset avoidance issues arise and there is no impact on parliamentary oversight.

### **Incorporations by reference**

Under subsection 98(5D) of the Act, the exemption instrument may apply, adopt or incorporate any matter contained in any instrument or other writing. A non-legislative instrument may be incorporated into a legislative instrument made under the Act, as that non-legislative instrument exists or is in force at a particular time or from time to time (including a non-legislative instrument that does not exist when the legislative instrument is made). Under paragraph 15J(2)(c) of the LA, the Explanatory Statement must contain a description of the incorporated documents and indicate how they may be obtained.

References to provisions of legislative instruments such as CASR or a Manual of Standards are taken to be as they are in force from time to time, by virtue of paragraph 13(1)(c) of the LA. CASR, CAR and the MOS are freely available online on the Federal Register of Legislation.

The following document, as in force from time to time, is already provided for under the MOS as being applied, adopted or incorporated for the purposes of the MOS as it is consequentially under the exemption instrument.

<b>Document</b>	<b>Description</b>	<b>Manner of incorporation</b>	<b>Source</b>
Exposition	A document, or suite of documents, that sets out the plans, processes, procedures, programs and systems implemented by the operator to comply with the civil aviation legislation.	This term is used in this instrument in the context of requirements for the exposition to contain relevant information and procedures, including about training and maintenance.	These are the proprietary intellectual and commercial property of specific operators and apply only to the operator and its personnel. Further, the operator is under obligations to make the exposition available to its personnel who have obligations under the document.

### **Consultation**

Under section 16 of the Act, in performing its functions and exercising its powers, CASA must consult government, industrial, commercial consumer and other relevant bodies and organisations as far as CASA considers such consultation to be appropriate.

Under section 17 of the LA, before a legislative instrument is made, CASA must be satisfied that it has undertaken any consultation it considers appropriate and practicable in order to draw on relevant expertise and involve persons likely to be affected by the proposals.

Exemptions from regulatory requirements are considered to be beneficial for those to whom they apply, who voluntarily elect to take advantage of them, and who comply with their conditions. It is, therefore, rarely necessary to engage in extensive public consultation on a proposed exemption. However, it is CASA's policy to consult, where possible, in an appropriate way with those parts of the aviation industry most likely to avail themselves of, or be affected by, an exemption so that they may have the opportunity to comment on the possible or likely terms, scope and appropriateness of the exemption.

Although no formal, public consultation has not been undertaken in relation to this exemption instrument, there has been informal consultation with various parts of the aviation industry in relation to providing the exemptions necessary to make Part 131 of CASR and the MOS work effectively on and after 12 November 2024.

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

An Impact Analysis (*IA*) is not required because the exemption instrument is covered by a standing agreement between CASA and the OIA under which an IA is not required for exemption or direction instrument (OIA23-06252).

### **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.

In terms of economic and cost impacts for subsection 9A(3) of the Act, the exemption instrument will relieve Part 131 aircraft operators from requirements that might otherwise have involved compliance costs for them.

### *Sector risks*

For aviation safety reasons, the exemption instrument is specific to Part 131 aircraft only and those operators and pilots who fall within its scope and who choose to take the benefit of the exemptions and comply with its conditions.

### **Environmental impact**

Under subsection 9A(2) of the Act, while regarding the safety of air navigation as the most important consideration, CASA must exercise its powers and perform its functions in a manner that ensures that, as far as practicable, the environment is protected from the effects and associated effects of the operation and use of aircraft.

It is not anticipated there will be any negative environmental impacts as a result of the exemption instrument, as compared to the baseline that existed on 1 December 2021, since the exemption instrument does not create any new environmental impacts arising from flight operations.

### **Statement of Compatibility with Human Rights**

The Statement in Appendix 2 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The exemption instrument is compatible with human rights: with its aviation safety focus in relation to training and the holding of appropriate pilot authorisations, it indirectly promotes the right to life and the right to safe and healthy working conditions for crew and ground staff, in a way that is reasonable, necessary and proportionate in the context of aviation safety.

### **Making and commencement**

The exemption instrument commences on 12 November 2024. The exemption instrument has been made by a delegate of CASA relying on the power of delegation under subregulation 11.260(1) of CASR.

**Details of:****CASA EX62/24 – CASR Part 131 – Exemptions and Directions Instrument 2024**

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**1 Name**

This section names the exemption instrument.

**2 Duration**

- (1) Under this section, the exemption instrument commences on 12 November 2024, and is repealed at the end of 11 November 2027.
- (2) To avoid doubt, each direction in the exemption instrument also ceases to be in force at the end of 11 November 2027.

**3 Definitions**

Under this section, key words and expressions are defined, for example: *relevant permit* has the same meaning as in *Civil Aviation Order 95.54 (Part 131 Recreational Activity and Specialised Balloon Operations) Instrument 2024*.

**4 Table of Contents**

Under this section, a Table of Contents may be added to the front of the compilation of the exemption instrument for reader guidance only.

**5 Application**

Under this section, each section of the exemption instrument applies, according to its terms, to each person who is mentioned in the section.

**6 Exemption — conditions of balloon transport AOCs**

Under this section, which applies to the holder of a balloon transport AOC (the *operator*), the operator is exempted from compliance with regulation 131.070 but only to the extent of the condition under paragraph 131.090(f) of CASR.

The exemption is subject to the condition that the operator's exposition must contain procedures to ensure that safety requirements are met.

Thus, where no significant change approval is needed from CASA, the balloon transport operator must:

- assess differences between the Part 131 aircraft and their other Part 131 aircraft
- determine if additional training or competency assessment is required for operational safety-critical personnel
- ensure that, before the aircraft is used in a balloon transport operation, the training or assessment is completed in accordance with relevant procedures in the exposition.

The operator must also ensure that the exposition contains current and appropriate operating information, procedures and instructions for the operation of the aircraft.



Before the Part 131 aircraft is used in a balloon transport operation, the operator must:

- be fully aware of the continuing airworthiness and maintenance status of the aircraft insofar as this status is relevant to the operator's safe use of the aircraft
- ensure that the aircraft otherwise complies with the safety requirements of the civil aviation legislation for the operation.

The operator must also ensure that:

- arrangements exist between the operator and the registered operator for managing the continuing airworthiness of the aircraft during the operator's use of the aircraft
- the arrangements are recorded in the exposition.

## 7 **Exemption — authorised persons acting in the absence of key personnel**

Under this section, a balloon transport operator is exempted from compliance with subparagraph 131.195(1)(e)(iv). A Note explains that the operator may choose not to take the benefit of this particular exemption and may, therefore, choose to name in the exposition a person who is authorised to carry out the responsibilities of a key person when the position holder is absent from the position, or cannot carry out the responsibilities of the position.

## 8 **Exemption — foreign registered aircraft pilot authorisations**

Under this section, the operator and the pilot in command of a foreign registered aircraft that is a Part 131 aircraft are exempted from the following provisions if the pilot in command does not hold an authorisation mentioned in paragraph (a), (b) or (c) of the definition of **Part 131 pilot authorisation** in the CASR Dictionary, or a relevant permit:

- subregulation 131.245(2)
- regulation 131.275, but only to the extent of subparagraph 5.01(1)(c)(ii) of the MOS
- subregulation 131.565(1) — but only to the extent of the requirements under paragraph 131.565(2)(a) and subregulation 131.565(2A).

The operator, and the pilot in command of a foreign registered aircraft that is a Part 131 aircraft (and any second pilot) are also each exempted from compliance with:

- regulation 131.275 of CASR, but only to the extent of subparagraph 5.01(1)(c)(i) of the MOS
- regulation 5.40 of CAR.

Each exemption under subsections (2) and (3) is subject to the condition that, for a flight of the aircraft:

- the flight is conducted by a pilot in command who is authorised to pilot the aircraft, for the flight, by the aircraft's State of registry
- if the flight is conducted by the pilot in command with a second pilot (the second pilot) — the second pilot is also authorised to pilot the aircraft, for the flight, by the aircraft's State of registry
- if the flight is conducted by the second pilot as pilot acting in command under supervision — the second pilot is authorised to pilot the aircraft in such a capacity, for the flight, by the aircraft's State of registry.

## 9 Exemption — aircraft maintenance

Under this section, relevant persons are exempted from the requirements of Division 9 of Part 4A of CAR concerning the issue of maintenance releases in relation to the maintenance of a Part 131 aircraft. However, the exemption is subject to the condition that the relevant person must ensure that any information about the Part 131 aircraft that, under Division 9 of Part 4A of CAR must *otherwise be entered on a maintenance release* before its issue, is instead entered *on the logbook* for the aircraft before a pilot conducts an operation in the aircraft.

## 10 Directions

Under this section CASA gives certain directions in relation to foreign pilots.

The pilot in command of a foreign registered aircraft that is a Part 131 aircraft (and any second pilot) must, during a flight of the aircraft, carry the pilot's foreign medical certificate and foreign authorisation.

The respective foreign pilots must also produce the foreign documents on request by an identified CASA officer, either immediately if they are in the pilot's possession or as soon as possible otherwise.

The operator must ensure that:

- (a) each relevant foreign pilot complies with the requirements to have and produce the pilot's foreign medical certificate and foreign authorisation, as well as the conditions under subsections 8(3) and 8(4); and
- (b) each relevant person under section 9 complies with the condition under subsection 9(3).

For the purposes of this section:

***foreign authorisation*** means the authorisation that is required by the aircraft's State of registry for the pilot to be authorised to pilot the aircraft for the flight; and

***foreign medical certificate*** means the medical certificate (if any) that is required by the aircraft's State of registry for the pilot to be authorised to pilot the aircraft for the flight, and includes a self-declared medical to the extent that such a declaration is permitted by the aircraft's State of registry.

A Note explains that to avoid doubt, the expressions ***overseas flight crew licence*** and ***overseas medical certificate*** are not used in this section because they are defined terms under, and for, Part 61 of CASR only, and require equivalence to their Part 61 and Part 67 of CASR counterparts, which is not the intention in this instrument.

## Statement of Compatibility with Human Rights

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

### CASA EX62/24 – CASR Part 131 – Exemptions and Directions Instrument 2024

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 *CASA EX62/24 – CASR Part 131 – Exemptions and Directions Instrument 2024* (the **exemption instrument**) is to exempt certain operators of Part 131 aircraft (essentially balloons) from certain provisions of Part 131 of the *Civil Aviation Safety Regulations 1998 (CASR)*, Part 5 of the *Civil Aviation Regulations 1988* and the *Part 131 (Balloons and Hot Air Airships) Manual of Standards 2024* (the **MOS**).

The exemption instrument also contains directions to ensure that pilots comply with exemption conditions and carry applicable pilot authorisations and medical certificates with them during flight.

#### Background

The exemption instrument is required to make Part 131 of CASR and the MOS operate effectively together on and from 12 November 2024 when the MOS commences and *Civil Aviation Order 95.53 (Commercial Balloon Flying Training and Balloon Transport Operations) Instrument 2021* and *Civil Aviation Order 95.54 (Part 131 Recreational Activity and Specialised Balloon Operations) Instrument 2021* are repealed. The exemption instrument corrects misdescribed requirements for acting key personnel, facilitates the full activation of the air operator certificate provisions, and operating rules, under Part 131 of CASR, corrects the omission of details concerning the pilot authorisations and medical certificates of foreign operators, carries a relocated exemption about requirements concerning the issue of relevant maintenance releases, and removes unnecessary requirements to be a registered operator for some circumstances.

#### Human rights

The legislative instrument indirectly engages with the following human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*:

- the right to life under Article 6 of the International Covenant on Civil and Political Rights (the **ICCPR**)
- the right to safe and healthy working conditions under Article 7 of the International Covenant on Economic, Social and Cultural Rights (the **ICESCR**).

#### *Right to life under the ICCPR*

#### *Right to safe and healthy working conditions under the ICESCR*

This engagement is in the context of CASA's statutory purpose. The aim of CASA and its regulatory framework is to uphold aviation safety by prescribing the conduct of

individuals and organisations involved in civil aviation operations, including the commercial and other operations of Part 131 aircraft.

It is, therefore, a threshold requirement for all CASA legislative instruments that they preserve, promote and enhance aviation safety and, thereby, contribute to safe and healthy working conditions for crew and ground staff.

With its aviation safety focus in relation to training and the holding of appropriate pilot authorisations, the exemption instrument indirectly promotes the right to life and the right to safe and healthy working conditions for crew and ground staff in the context of aviation safety.

### **Human rights implications**

This legislative instrument is compatible with human rights and to the extent that it may engage certain rights it does so in a way that promotes the right to life, and the right to safe and healthy working conditions on board Part 131 aircraft. These measures are considered to be reasonable, necessary and proportionate in the interests of aviation safety.

### **Conclusion**

This legislative instrument is compatible with human rights.

**Civil Aviation Safety Authority**