

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX68/24 – Part 119 of CASR – Supplementary Exemptions and Directions Instrument 2024

Purpose

The purpose of *CASA EX68/24 – Part 119 of CASR – Supplementary Exemptions and Directions Instrument 2024* (the **exemptions instrument**) is to continue the operation of certain exemptions from obligations under Part 119 of the *Civil Aviation Safety Regulations 1998 (CASR)*, and related directions, that were granted to operators of Australian air transport operations and pilots in command of certain aircraft by the Civil Aviation Safety Authority (*CASA*) in earlier instruments.

That purpose is achieved by continuing the policy effect of *CASA EX82/21 – Part 119 of CASR – Supplementary Exemptions and Directions Instrument 2021* (the **repealed instrument**) which was made to facilitate the implementation of Part 119 in accordance with *CASA*'s transition policies for the flight operations regulations and which is repealed at the end of 1 December 2024.

The exemptions and directions in the repealed instrument, which required operator oversight of the actions of operator personnel, were designed to correct technical errors and omissions in Part 119 which gave rise to unintended obligations. They were also designed to maintain pre-existing regulatory requirements where the flight operations regulations inappropriately failed to reflect requirements of the earlier regulations that the flight operations regulations replaced.

As those exemptions and directions are still required to ensure short-term certainty of regulatory requirements for the aviation industry, the exemptions instrument continues their operation on an interim basis, from 2 December 2024 to the end of 1 December 2027. It is expected that, before the exemptions and directions cease to apply, the errors and omissions concerned will be rectified by making appropriate substantive amendments to *CASR* to achieve the same policy objectives. Until those amendments are made, it is considered necessary to renew the exemptions and directions to provide relief from having to comply with unnecessary requirements and to ensure safety compliance.

By continuing the operation of the exemptions and directions, the exemptions instrument permits the continuation of operations, and the continued employment of certain key personnel, that might otherwise have ended through failure to comply with the relevant provisions of the flight operations regulations. The conditions and directions in the exemptions instrument are designed to allow for a further period of transition while ensuring that an acceptable level of safety is preserved.

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 (CAR)*.

Exemptions

Subpart 11.F of CASR provides for the granting of exemptions from particular provisions of the regulations. Subregulation 11.160(1) 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), in deciding whether to grant an exemption, CASA must regard as paramount the preservation of at least an acceptable level of aviation safety. Under subregulation 11.175(4), in deciding whether to reissue 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 (with a maximum penalty of 50 penalty units) not to comply with the obligations imposed by a condition.

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

Directions

Subpart 11.G of CASR provides for CASA to issue directions in relation to matters affecting the safety of air navigation. Under paragraph 11.245(1)(a), CASA may, by instrument, issue a direction about any matter affecting the safe navigation and operation of aircraft.

Subregulation 11.245(2) provides that CASA may issue such a direction if CASA is satisfied that it is necessary to do so in the interests of the safety of air navigation if the direction is not inconsistent with the Act, and for the purposes of CASA's functions.

Under paragraph 11.250(a), a direction under regulation 11.245 ceases to be in force on the day specified in the direction. Under regulation 11.255, it is an offence of strict liability (with maximum a penalty of 50 penalty units) to contravene a direction under regulation 11.245.

Documents incorporated by reference

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. A legislative instrument may also make provision in relation to matters by applying, adopting or incorporating any matter contained in any other instrument or writing as in force at, or before, the time the legislative 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, despite section 14 of the LA, 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.

Background

Part 119 was a part of the suite of CASA's flight operations regulations, which included Parts 91, 119, 121, 133, 135 and 138 of CASR, each of which commenced on 2 December 2021.

In 2021, CASA granted a number of exemptions and directions by making the repealed instrument to facilitate the implementation of Part 119 in accordance with CASA's transition policies for the flight operations regulations, including to provide relief from having to comply with unintended obligations or to maintain pre-existing regulatory requirements.

On further review of Part 119, after the repealed instrument commenced, and after having regard to feedback from Australian air transport operators and other stakeholders regarding the implementation of Part 119, CASA identified further unintended consequences arising from the commencement of the flight operations regulations. CASA dealt with those consequences by making a series of amendments to the repealed instrument that added to or amended the original exemptions and directions.

The background to, and ongoing impact of, each exemption and direction contained in the repealed instrument, and being renewed in the new instrument, was discussed in detail in the Explanatory Statements for each of the following instruments:

- *CASA EX147/21 – Amendment of CASA EX82/21 – Instrument 2021*
- *CASA EX41/22 – Amendment of CASA EX82/21 – Instrument (No. 1) 2022*
- *CASA EX108/22 – Amendment of CASA EX82/21 – Instrument (No. 2) 2022*
- *CASA EX14/23 – Amendment of CASA EX82/21 – Instrument 2023 (No. 1)*
- *CASA EX94/23 – Amendment of CASA EX82/21 – Instrument 2023 (No. 2)*
- *CASA EX46/24 – Amendment of CASA EX82/21 – Instrument 2024 (No. 1).*

Overview of instrument

Part 119 of CASR applies to operators of Australian air transport operations. Part 119 works with Parts 91, 121, 133 and 135 of CASR to provide a comprehensive code of safety rules for Australian air transport operators.

The exemptions instrument continues the operation, on an interim basis, of certain exemptions from obligations under Part 119 granted to operators and pilots in command of certain aircraft by the repealed instrument, as amended several times, and related directions, to deal with minor unintended consequences of amendments to CASR as they arose, or to deal with anomalies or oversights as they were identified.

The exemptions and directions are in substantially the same terms as those in the repealed instrument, with changes only relating to the commencement and repeal of the exemptions instrument. The exemptions instrument retains the same numbering to the extent possible to assist industry stakeholders so they need not update related documentation solely due to changes to numbering. CASA would also not have to update its related guidance material for the same reason.

In determining whether to renew the exemptions in the repealed instrument, CASA has had regard to the safety of air navigation as the most important consideration. CASA is satisfied that, given the nature of the exemptions involved, and the necessary conditions imposed by the exemptions instrument, an acceptable level of aviation safety will be preserved, and the safety of air navigation thereby maintained for the extended periods during which the relevant exemptions and directions will be in force.

Documents incorporated by reference

Certain documents have been incorporated by reference in the exemptions instrument because aviation safety requires the use of the information and data in the documents by aircraft operators and pilots and because there are no freely available documents serving the relevant purpose.

In accordance with paragraph 15J(2)(c) of the LA, the following is a description of how each document is incorporated, the organisation responsible for each document and how it may be obtained.

Document	Description	Manner of incorporation	Source
Operator expositions	An exposition is a document, or suite of documents, that specifies the scope of the operations and activities conducted by the operator, and sets out the plans, processes, procedures, programs and systems implemented by the operator to comply with the civil aviation legislation.	An exposition is incorporated as in force from time to time by virtue of subsection 98(5D) of the Act, and in accordance with the definition of <i>exposition</i> in the CASR Dictionary. An “exposition” for an operator generally means the exposition as changed from time to time, in accordance with the definition.	An exposition is not publicly or freely available. An operator’s exposition is the proprietary intellectual and commercial property of the specific operator. The incorporated requirements in an exposition are at the operator-specific level and apply only to the operator and its personnel. The operator is under an obligation to make the exposition available to its personnel who have obligations under the document.
Operator safety information	The term <i>safety information</i> is defined in subsection 19(1) of the exemptions instrument.	Operator safety information is incorporated as in force from time to time by virtue of subsection 98(5D) of the Act.	Operator safety information is the proprietary intellectual property of individual operators.

Content of instrument

Part 1 — Preliminary, Definitions and Application

Section 1 sets out the name of the exemptions instrument: *CASA EX68/24 – Part 119 of CASR – Supplementary Exemptions and Directions Instrument 2024*.

Section 1A provides that the exemptions instrument commences on 2 December 2024.

Section 2 provides that the exemptions instrument is repealed at the end of 1 December 2027. Some provisions of the instrument provide that they may cease to have effect at a specified time before they would otherwise be repealed by section 2 (see subsections 8(5), 10(5) and 14(4)).

Section 3 defines terms used in the exemptions instrument, including:

- (a) **exposition content**, for a safety system, which is defined to mean the exposition content required for the safety system under Part 119 of CASR, and under any applicable related requirements under Part 121, Part 133 and Part 135 of CASR; and
- (b) **safety system**, which is defined to mean a safety system that is an SMS (safety management system), including its exposition content, an HFP&NTS (an operator's program for training and assessing operational safety-critical personnel in human factors principles and non-technical skills program), including its exposition content or a T&C (training and checking) system, including its exposition content.

Section 3A provides that any Table of Contents inserted in the exemptions instrument, for example when it is compiled to include amendments, is for guidance and does not form part of the exemptions instrument.

Section 4 provides that the exemptions instrument applies, according to its terms, to the operator, and the pilot in command, of an aircraft to which Part 119 of CASR applies.

Part 2 — Directions

Section 5 is a direction requiring an Australian air transport operator to have CASA approval for its first use of an electronic flight bag (**EFB**) in an operation.

Subsection 5(2) directs an Australian air transport operator to not use an EFB in an operation for the first time unless CASA has approved the use of the EFB by the operator and the aircraft's flight crew. (Subsection 21(1) of the exemptions instrument saves the operation of an approval given by CASA under subsection 5(2) of the repealed instrument that was current or in force immediately before the commencement of the exemptions instrument.)

Subsection 5(3) is a direction requiring that the exposition of an Australian air transport operator must include information, procedures and instructions in relation to the use of the EFB by the operator's flight crew members, the management of the EFB, including access to it, and the security and updating of it, and how the operator will obtain CASA approval of any changes to the use of the EFB as described in the exposition.

Subsection 5(4) provides that the direction in subsection 5(2), preventing an Australian air transport operator from using an EFB in an operation for the first time without the approval of CASA, does not apply to an operator who immediately before 2 December 2021 had a charter, regular public transport or aerial work (air ambulance) Air Operator's Certificate (**AOC**) and was in compliance with the requirements of paragraph 11.1 and Appendix 9 of *Civil Aviation Order 82.0* (concerning requirements to be met under that Civil Aviation Order for the use of an EFB).

Section 6 contains directions relating to the operation of foreign registered aircraft.

Subsections 6(1) and (2) prohibit an Australian air transport operator from operating a foreign registered aircraft in an Australian air transport operation for the first time or changing the operation of a foreign registered aircraft (other than permanently ceasing its operation) unless CASA approves the operation of the aircraft or the changed operation.

Subsection 6(3) requires the operator's application for the change to be accompanied by the information described in paragraphs 28A(1)(c) to (h) of the Act (concerning a range of details about the aircraft).

Subsection 6(4) provides that, if the foreign aircraft was being operated by the operator immediately before 2 December 2021 and was the subject of an agreement mentioned in paragraph 28A(1)(a) or (b) of the Act that indicated the period of time that the aircraft may be operated by the operator, the operator must not operate the aircraft outside that time period.

However, subsection 6(5) provides that section 6 does not apply to an Australian air transport operator, in relation to the operation of an aircraft registered in New Zealand and operated under an Australian AOC with Australia New Zealand Aviation privileges, or to an aircraft for the operation of which the operator holds a permission under section 27A of the Act (Permission for operation of foreign registered aircraft without AOC).

Section 6A imposes a direction relating to the first use of NVIS in an NVIS operation under Part 133 and applies to an Australian air transport operator for a Part 133 operation which includes medical transport operations.

Subsection 6A(2) provides that, before conducting an NVIS operation for the first time in a Part 133 operation, an Australian air transport operator for a Part 133 operation which includes medical transport operations must apply for, and obtain, the written approval of CASA as if the operation were a significant change of operations requiring CASA approval and regulations 119.090, 119.095 and 119.100 of CASR applied to the first conduct of the NVIS operation as if it were such a significant change. CASA approval for NVIS operations was a requirement under the previous, now repealed, rules in *Civil Aviation Order 82.6*, but its inclusion in Part 133 was inadvertently overlooked in the preparation of Part 133. (Subsection 21(1) of the exemptions instrument saves the operation of an approval given by CASA under subsection 6A(2) of the repealed instrument that was current or in force immediately before the commencement of the exemptions instrument.)

Subsection 6A(3) provides that, if CASA gives the operator its approval for a particular NVIS operation, no subsequent approval is required before the operator may conduct a different NVIS operation for the first time in a Part 133 operation.

Section 6B imposes a direction requiring the retention of certain historical flight crew member (*FCM*) records by the Australian air transport operators to which it applies.

Subsection 6B(1) provides that the section applies to an Australian air transport operator if, immediately before 2 December 2021, the operator was an AOC holder authorised to conduct charter operations, or regular public transport operations, or aerial work (air ambulance) operations.

Subsection 6B(2) directs such an operator to retain each of the records held by the operator on 1 December 2021 that were required to be held under Civil Aviation Orders 82.1, 82.3 and 82.5 in safe custody, for prescribed periods. These records relate to flight crew qualifications, training, flight and duty time, and rosters. An express requirement that relevant operators must retain their existing records was inadvertently overlooked in the preparation of Part 119.

Subsection 6B(3) requires these records from before 2 December 2021 to be retained for the same periods of time as the equivalent records are to be retained on and after 2 December 2021. That is, the period for retention of the records is at least the period, commencing on 2 December 2021, that the similar or analogous record is to be retained under Subpart 119.J of CASR.

Part 3 — Exemptions and directions

Section 7AA exempts 3 kinds of transport operation involving an aircraft from compliance with the Australian air transport operations rules in Part 119 of CASR and the basic aeroplane performance requirements in Subpart 91.F if the operator instead complies with the relevant rules under Part 121 of CASR. Section 7AA was included in the repealed instrument to clarify whether an AOC is required for certain aircraft operations that, previously, were considered to be private operations. The exemption is, in effect, a temporary transitional measure and only applies to operators who immediately before 2 December 2021 were already engaged in conducting the relevant operations. With the benefit of the exemption, as private operators engaged in private operations with non-paying passengers on board the aircraft, the relevant operators will only be obliged to comply with the requirements of Part 91 of CASR. The instrument permits the continuation of operations that, before 2 December 2021, were considered to be safe but that may otherwise have been prevented, or whose continuation would have involved increased overhead costs. Reduced costs may have an effect on preserving operations and employment.

The exemption was designed to relieve certain aircraft operators who, immediately before 2 December 2021, did **not** hold an AOC authorising passenger carriage, but who had reasonably considered that they were conducting private operations carrying non-paying passengers on board the aircraft, from the obligation under Part 119 of CASR to obtain an AOC, and from the duty to otherwise comply with the other requirements of the provisions in Part 119. The drafting of Part 119, and the definitions associated with Australian air transport operations, were not intended to require many of the affected operators to hold an Australian air transport AOC. CASA received considerable feedback from relevant industry about this anomaly and granted an exemption in the form of section 7AA of the repealed instrument: see *CASA EX41/22 – Amendment of CASA EX82/21 – Instrument (No. 1) 2022*, which was later amended. Section 7AA of the exemptions instrument is in substantially the same terms as the amended section.

The exemption is subject to safety conditions. Thus, if, immediately before 2 December 2021, aeroplane weight and performance requirements under *Civil Aviation Order 20.7.1B* applied to the aircraft, or if the aircraft was one described in *Civil Aviation Order 20.7.4*, the aircraft must comply with the most restrictive combination of the requirements imposed by the relevantly applicable respective Civil Aviation Orders (as if they applied and continued to apply) and the performance requirements under Subpart 91.F of CASR (Australian aircraft performance requirements).

Under subsection 7AA(1), ***exempted transport operations*** are non-revenue business facilitation operations, government organisation operations, and non-revenue owner transportation operations. In effect, not being air transport operations, these operations are exempted from Part 119 of CASR (regulating air transport operations for an aeroplane and a rotorcraft) and Subpart 91.F of CASR (regulating performance for an aeroplane).

Paragraph 7AA(2)(a) provides that the operator of an aeroplane in an exempted transport operation is exempted from compliance with Part 119 and Subpart 91.F of CASR.

Paragraph 7AA(2)(b) provides that the operator of a rotorcraft in an exempted transport operation is exempted from compliance with Part 119 of CASR.

Subsection 7AA(3) makes the exemption in paragraph 7AA(2)(a) subject to specified air transport aeroplane performance requirements under relevant regulations in Part 121 of CASR and its Manual of Standards. (Part 121 of CASR deals with the safety of air transport operations in larger aeroplanes.) These are conditions in the interests of aviation safety. The relevant Part 121 provisions relate to compliance with the aeroplane's aircraft flight manual instructions (regulation 121.390) and the Part 121 Manual of Standards rules in relation to take-off performance (under regulation 121.395) and landing performance (under regulation 121.420). A note states that the applicable requirements in the Part 121 Manual of Standards as made under regulation 121.395 of CASR are in Chapter 9, Division 1A and the applicable requirements as made under regulation 121.420 are in Chapter 9, Division 2.

Subsection 7AA(4) makes provision for the requirements under subsection 7AA(3) to be so read and applied that they achieve the intent of the exemptions instrument. This is required so that the Part 121 provisions, expressed for a different context, can apply to the context of the exempted transport operations with correspondingly necessary adjustments made to fit the different context.

Section 7AB grants an exemption to certain air transport operations involving "cross-hire" arrangements. "Cross-hiring" is a colloquial term to describe some common circumstances in which the relevant aircraft operator is not also the registered operator.

The exemption was designed to relieve Australian air transport operators, who hold AOCs for medical transport operations and non-scheduled transport operations, from the obligation to also be the registered operator of the aircraft if the operation is an Australian air transport operation in an aircraft for which the relevant operator is not also the registered operator, or the holder of an approval under regulation 119.025 of CASR for subparagraph 119.080(1)(h)(ii) of CASR and the relevant aircraft does not conduct scheduled air transport operations. (Under subparagraph 119.080(1)(h)(ii), a CASA approval may relieve a relevant operator from the obligation to also be the registered operator of the relevant aircraft.)

Under paragraph 28BA(1)(b) of the Act, an AOC has effect subject to any conditions specified in the regulations. On and from 2 December 2021, under paragraph 119.080(1)(h) of CASR, for the purposes of paragraph 28BA(1)(b), it is a condition on an Australian air transport AOC that, for each registered aircraft operated by the operator under the AOC, the operator must be the registered operator of the aircraft or hold an approval under regulation 119.025 for the intended operation of the aircraft.

This requirement inadvertently affects existing cross-hire arrangements that were lawful before 2 December 2021 because there was no equivalent of paragraph 119.080(1)(h) but would now require specific CASA approvals.

No material question of aviation safety arises because the operations in question were, up to 2 December 2021, regarded as involving a level of aviation safety that was at least acceptable

(within the meaning of regulation 11.160 of CASR). The operations of new operators are similarly considered as likely to involve a level of aviation safety that is at least acceptable by virtue of the impact of the conditions mentioned above and regulations relating to exposition content, responsibilities of key personnel and maintenance requirements.

Subsection 7AB(1) provides that the section applies to an Australian air transport operator (the **relevant operator**) who conducts a medical transport operation or a non-scheduled air transport operation but only if the operation is an Australian air transport operation (**relevant operations**) in an aircraft (the **relevant aircraft**) for which the relevant operator is not also the registered operator or the holder of an approval under regulation 119.025 for subparagraph 119.080(1)(h)(ii) of CASR and the relevant aircraft does not conduct scheduled air transport operations.

Subsection 7AB(2) exempts an Australian air transport operator who is a relevant operator from paragraph 119.080(1)(h) of CASR (which imposes an AOC condition that Australian air transport operators must be the registered operators of the relevant aircraft) and from regulation 119.060 (the offence provision).

Subsection 7AB(3) makes it a condition of the exemption in subsection 7AB(2) that the relevant operator's exposition must contain procedures to ensure that the requirements expressed in subsection (4) are complied with, that is, that the exposition of the operator, who is not the registered operator, must contain procedures to ensure that if the use of the relevant aircraft does *not* constitute a significant change for the operator (if it did, CASA approval of the change would be required under regulation 119.090) then the aircraft must be safely integrated by the operator into its operations in terms of differences, training and competency and that airworthiness, maintenance and safety requirements are met for the operator's operations.

Section 7 exempts an Australian air transport operator from the obligation to comply with subregulations 119.090(1) and (4) in relation to a significant change mentioned in subparagraph 119.020(a)(viii) which relates to change to types and models of aircraft used in the operator's Australian air transport operations. The exemption is subject to the condition that specified changes of the use of aircraft are treated as if they were a significant change requiring CASA pre-approval.

Subsection 7(2) exempts an Australian air transport operator from compliance with subregulations 119.090(1) and (4), but only to the extent that the significant change is one described in subparagraph (a)(viii) of the definition of **significant change** in regulation 119.020.

Subsection 7(3) makes it a condition of that exemption that the operator must obtain the approval of CASA for certain relevant changes set out in subsections 7(4) and (5), namely:

- (a) any change to the operator's use of a multi-crew aircraft for which a legislative instrument has prescribed type ratings that may be granted for a multi-crew operation (on 2 December 2024, the latest edition of the relevant instrument is *Part 61 Flight Crew Licensing (Prescribed Aircraft and Type Ratings) (Edition 9) Instrument 2023*); and
- (b) any change to the operator's use of a type of aircraft for which single-pilot type ratings are required under paragraph 61.060(1)(a) of CASR, for which a legislative instrument has prescribed the type ratings that may be granted for a single-pilot operation (when the

exemptions instrument commenced, the latest edition of the instrument referred to in paragraph (b) is *Part 61 Flight Crew Licensing (Prescribed Aircraft and Type Ratings) (Edition 9) Instrument 2023*; and

- (c) the operator's first use of any of certain specified aircraft in an Australian air transport operation.

Section 8 exempts a transitional cohort of heads of flight operations (**HOF**O) of operators of single-pilot type certificated aircraft who, before 2 December 2021, were in charter or air ambulance operations, but not regular passenger transport operations, from the requirement under Part 119 of CASR to hold an air transport pilot licence (**ATPL**), provided they continued to meet the previous Civil Aviation Order standards for a chief pilot.

Subsection 8(1) defines **operator** to mean an Australian air transport operator who, immediately before 2 December 2021, held an AOC, or was an early applicant for an AOC or an AOC variation, that authorised the use of single-pilot type certificated aircraft for charter operations or aerial work (air ambulance) operations and did not authorise regular public transport operations.

Subsection 8(2) provides that section 8 applies to the **relevant HOF**O, which is defined as a person who: on 2 December 2021 was the HOF

O or the nominated HOF

O (as the case requires) of an operator; and immediately before 2 December 2021 was the operator's Chief Pilot or nominated Chief Pilot; and did not hold an ATPL.

Subsection 8(3) exempts a relevant HOF

O from the requirements of:

- (a) paragraph 119.135(1)(a); and
- (b) subregulation 119.135(2).

Subsection 8(4) provides that it is a condition of the exemption that the HOF

O meets the requirements in subclause 4.3 in Appendix 1 of *Civil Aviation Order 82.0* (which prescribed the chief pilot requirements, namely, holding a licence with the appropriate endorsements and ratings to be the pilot in command of any operation under the AOC), as in force immediately before 2 December 2021.

Subsection 8(5) provides that section 8 ceases to have effect on the earliest of: the day on which the operator commences scheduled air transport operations; and the day the HOF

O ceases to be the operator's HOF

O; and the end of a day to be specified in writing by CASA. Through its website, and in communications to relevant operators, CASA will give at least 3 months' notice of any appropriate specified date.

Section 9 imposes a direction that relates to the exemption in section 8. It provides that the operator must not commence scheduled air transport operations, whether with an incumbent HOF

O, or with a new HOF

O, until CASA approves the operator's exposition content in relation to the HOF

O's compliance with the relevant licensing requirements.

Subsection 9(2) provides that an operator mentioned in section 8 must ensure that the HOF

O complies with the requirements under subsection 8(4).

Subsection 9(3) imposes a direction requiring an operator who intends that when the exemptions under section 8 cease to have effect, the HOF

O to whom they applied will continue to be the operator's HOF

O, then, before that ceasing to have effect, the operator

must give CASA the operator's exposition content in relation to the HOFO's compliance with the requirements of paragraph 119.135(1)(a) and subregulation 119.135(2).

Subsection 9(4) provides that, if the operator intends to nominate a new person to be the HOFO for the period after the exemptions under section 8 cease to have effect, then, before that ceasing to have effect, CASA must approve the nomination of the person and the operator's exposition content in relation to the person's compliance with the requirements of paragraph 119.135(1)(a) and subregulation 119.135(2).

Subsection 9(5) imposes a direction that an operator must not commence scheduled air transport operations unless CASA has approved the operator's exposition content in relation to the HOFO's compliance with the relevant requirements. (Subsection 21(1) of the exemptions instrument saves the operation of an approval given by CASA under subsection 9(4) or (5) of the repealed instrument that was current or in force immediately before the commencement of the exemptions instrument.)

Section 10 exempts a transitional cohort of heads of training and checking of Australian air transport operators of single-pilot type certificated aircraft who were in lower capacity charter or air ambulance operations, or regular passenger transport operations and not required to have 2 pilots, from the requirement under Part 119 of CASR to hold an ATPL provided they continued to meet the previous Civil Aviation Order standards for a chief pilot.

Section 10 applies to an Australian air transport operator who immediately before 2 December 2021 held an AOC or was an early applicant for an AOC or AOC variation that authorised the use of single-pilot certificated aircraft for regular public transport operations, charter operations or aerial work (air ambulance) operations in other than high capacity aircraft.

Under subsection 10(3), where the operator's head of training and checking (**HOTC**) on 2 December 2021 was the operator's chief pilot immediately before 2 December 2021 but did not hold an ATPL, the HOTC is exempted from the licence requirements of regulation 119.145 of CASR provided they held the licence required of them by the operator before 2 December 2021. In particular, the exemptions under subsection (3) are subject to the condition in subsection (4) that the HOTC must meet the requirements set out in subclause 4.3 in Appendix 1 of *Civil Aviation Order 82.0* (which prescribed the chief pilot requirements, namely holding a licence with the appropriate endorsements and ratings to be the pilot in command of any operation under the AOC), as in force immediately before 2 December 2021, as if subclause 4.3 continued to apply, the HOTC was the Chief Pilot and the operator was the AOC holder.

Subsection 10(5) provides that section 10 ceases to apply at the earlier of: the day the operator commences scheduled air transport operations in a high capacity aircraft or an aircraft, other than a high capacity aircraft, that would have triggered a requirement for 2 pilots under subsection 8 of *Civil Aviation Order 82.3*, as in force immediately before 2 December 2021, as if it were in force; and the day the relevant HOTC ceases to be the operator's HOTC; and the end of a day to be specified in writing by CASA. Through its website, and in communications to relevant operators, CASA will give at least 3 months' notice of any appropriate specified date.

Section 11 imposes a direction that relates to the exemption in section 10. It provides that, whether with an incumbent HOTC, or with a new HOTC that is replacing the incumbent HOTC, the operator must not commence scheduled air transport operations in a high capacity aircraft, or another aircraft that would have required 2 pilots under subsection 8 of *Civil Aviation Order 82.3*, until CASA approves the nomination of the person and operator's exposition content in relation to the HOTC's compliance with the relevant requirements. The operator must ensure that the HOTC complies with the requirements under subsection 10(4).

Subsection 11(3) directs an operator who intends that, when the exemptions under section 10 cease to have effect, the HOTC to whom they applied will continue to be the operator's HOTC, to give CASA the operator's exposition content in relation to the HOTC's compliance with the requirements of paragraph 119.145(1)(a) and subregulation 119.145(2). The exposition must be given to CASA before that exemption ceases to have effect.

Subsection 11(4) directs an operator, who intends to nominate a new person to be the HOTC for the period after the exemptions under section 10 cease to have effect, to obtain CASA's approval of the nomination of the person and the operator's exposition content in relation to the person's compliance with the requirements of paragraph 119.145(1)(a) and subregulation 119.145(2). That approval must be obtained before that exemption ceases to have effect.

Subsection 11(5) provides that the operator must not commence scheduled air transport operations of the kind mentioned in paragraph 10(5)(a) until CASA, in writing, approves the operator's exposition content in relation to the HOTC's compliance with the relevant requirements. (Subsection 21(1) of the exemptions instrument saves the operation of an approval given by CASA under subsection 11(4) or (5) of the repealed instrument that was current or in force immediately before the commencement of the exemptions instrument.)

Section 14 exempts an Australian air transport operator of larger aircraft or in medical transport operations, who must have a T&C (training and checking) system, from certain system requirements in relation to operational safety-critical personnel, other than flight crew and cabin crew personnel, if they are already competent.

Subsection 14(1) provides that the section applies to an Australian air transport operator who is required under subregulation 119.170(4) of CASR to extend its training and checking system to operational safety-critical personnel who are **not** flight crew or cabin crew.

Subsection 14(2) exempts such an operator from complying with subregulation 119.170(4) but only in respect of operational safety-critical personnel who are not flight crew, cabin crew, *or other crew members with duties for the flying or safety of the aircraft*.

Subsection 14(3) makes that exemption subject to the condition that the operator's training and checking system must include a description of how the operator will satisfy itself that each relevant person is competent to perform the assigned duties and, in carrying out the duties, is not likely to have an adverse effect on aviation safety and that immediate action will be taken in the interests of aviation safety if a relevant person loses competence or is likely to have an adverse effect on aviation safety.

Subsection 14(4) provides that section 14 ceases to have effect at the end of a date to be specified in writing by CASA. Through its website, and in communications to relevant operators, CASA will give at least 3 months' notice of any appropriate specified dates.

Section 15 contains a direction that relates to the exemption in section 14.

Subsection 15(3) requires the relevant Australian air transport operator to include in its exposition information on how its training and checking system applies to operational safety-critical personnel who are not flight crew, cabin crew or other crew members with duties on board aircraft for the flying or safety of the aircraft when the operator ceases to take advantage of the exemption from subregulation 119.117(4) of CASR in section 14 or when the exemption ceases to have effect. The operator must include in its exposition information, procedures and instructions on how its training and checking system will comply with subregulation 119.170(4) in relation to each of its operational safety-critical personnel who is not an FCM, a cabin crew member or another crew member who has duties on board an aircraft for the flying or safety of the aircraft.

Subsection 15(2) requires that direction to be complied with no later than the earlier of: the day on and from which the operator ceases to take advantage of the exemption under section 14; and the end of a date to be specified in writing by CASA. Through its website, and in communications to relevant operators, CASA will give at least 3 months' notice of any appropriate specified dates.

Section 16 exempts Australian air transport operators from complying with subparagraph 119.205(1)(e)(iv) of CASR (which is about naming each person authorised to fulfill the responsibilities of a key person when that person is absent or cannot carry out the responsibilities). The operator is exempt unless the operator chooses to name in the exposition a person who is authorised to fulfill the responsibilities of a key person when the position holder is absent from the position or cannot carry out the responsibilities of the position. This is to acknowledge that an operator may choose not to name such an authorised person in their exposition.

Section 18 grants an exemption to Australian air transport operators of larger aircraft to whom regulation 119.195 of CASR applies and who are required by that regulation to have a flight data analysis program (*FDAP*) from a requirement concerning FDAPs and substitutes a revised requirement based on the more contemporary provisions under *Civil Aviation Order 82.5*, as in force immediately before 2 December 2021.

Subsection 18(1) provides that the section applies to an Australian air transport operator to whom, on and after 2 December 2021, regulation 119.195 (concerning FDAP requirements) otherwise applies. A note makes it clear that, for operators who have the benefit of exemption from regulation 119.195 under Part 11 of *CASA EX73/24 – Flight Operations Regulations – SMS, HFP&NTS and T&C Systems – Supplementary Exemptions and Directions Instrument 2024 (CASA EX73/24)*, section 18 would not apply until that exemption expires.

Subsection 18(2) exempts such an operator from complying with paragraph 119.195(3)(d) (avoidance of negative action arising from FDAP data). These operators are exempted from paragraph 119.195(3)(d) which requires that no punitive action may be taken against an identified person in relation to data. This is designed to encourage safety data reporting without fear of recriminations and thus enable remedial, rather than punitive, safety action to

be taken, as necessary. Section 18 applies the more detailed protective provisions that were in place under *Civil Aviation Order 82.5* from 14 December 2020 until immediately before 2 December 2021. These provisions implemented changes to the International Civil Aviation Organization's standards and recommended practices that occurred after the registration of Part 119 of CASR. It is intended that, at the next appropriate opportunity, congruent amendments will also be made to regulation 119.195. A note explains that for operators who have the benefit of exemption from regulation 119.195 under Part 11 of CASA EX73/24, the narrower section 18 exemption would not apply until that exemption expires.

Subsection 18(3) makes it a condition of the exemption in subsection 18(2) that the operator must comply with specified protective provisions of *Civil Aviation Order 82.5* in relation to the FDAP, as in force immediately before 2 December 2021, as if they applied to the operator as they relate to operational flight data for FDAP purposes. The provisions of the Civil Aviation Order relate to the use and disclosure of safety information and control uses of the information that may be considered disciplinary or punitive.

Section 19 is a direction to an Australian air transport operator who is required to have a safety management system (**SMS**) or an FDAP and who is not otherwise exempted by another CASA instrument from obligations in relation to the SMS and FDAP. This direction is complementary to the exemption in section 18 and its associated safety conditions.

The relevant operators are directed to comply with the former provisions of *Civil Aviation Order 82.5*, as in force immediately before 2 December 2021, that require the operator to have a documented process for ensuring that safety information (as defined) is properly used and analysed and that persons who report safety information are protected from punitive action and their identity is protected. This does not prevent an operator from using safety information for the purposes of taking preventive, corrective or remedial action that is necessary to maintain or improve safety.

Subsection (1) provides a more expansive definition of what constitutes safety information by including data or information that has been approved, whether directly or indirectly, by CASA as fulfilling the relevant SMS or FDAP obligations of the operator under the civil aviation legislation. **Safety information** is defined to mean any safety data or information in any form that is generated within, or captured, collected or held by and within, an operator's approved SMS or FDAP and has been approved, whether directly or indirectly, by CASA as fulfilling the relevant SMS or FDAP obligations of the operator under the civil aviation legislation. Safety information may include personal information relating to individuals. A note makes it clear that safety information may have been approved by CASA in an indirect way, for example: by virtue of the issue of an initial AOC to an operator who is required by the civil aviation legislation to have an SMS or FDAP for that purpose; or by virtue of an operator taking the benefit of an exemption under CASA EX73/24 relating to SMS or FDAP under which requirements to introduce an SMS or FDAP are taken to have been complied with.

Subsection 19(2) provides that the section applies to an Australian air transport operator who is not taking the benefit of certain exemptions from the requirements to have an SMS or FDAP. The exemptions are contained in CASA EX73/24.

Subsection 19(3) requires the operator to comply with the requirements of specified protective provisions of *Civil Aviation Order 82.5*, as in force immediately before

2 December 2021, as they relate to any safety information and as if they continued to apply to the operator. The specified provisions relate to the use and disclosure of the safety information and control uses of the information that may be considered disciplinary or punitive.

Section 20 grants exemptions from obligations relating to flight crew licence and medical certificates, which are conditional on operators maintaining up-to-date records showing the currency of their FCMs' relevant licences, ratings, endorsements, and medical certificates.

Under subsection 20(2), the operator of an Australian air transport operation, whether operating a registered aircraft or a foreign registered aircraft, is exempted from the requirements of:

- (a) regulation 119.235 of CASR (which provides that an Australian air transport operator commits a strict liability offence if an FCM of the operator's personnel exercises a privilege of the person's flight crew licence for the operator and the operator does not have a copy of the person's flight crew licence and a copy of the person's medical certificate); and
- (b) item 6 of the table in regulation 119.240, which provides that an Australian air transport operator commits an offence if the operator is required, under Part 119, 121, 133 or 135, to make or have a record of a kind mentioned in column 1 of an item of the table to the section about a person who is a member of the operator's personnel and the operator does not keep the record for at least the period mentioned in column 2 of the item.

The requirement to have physical copies of an FCM's flight crew licence and medical certificate is onerous and unnecessary. The same level of safety assurance is obtained by requiring relevant operators to maintain an up-to-date record showing the currency of each of the qualifications and medical certificates actually required under the civil aviation legislation for the FCM to operate the operator's particular aircraft, including any foreign registered aircraft.

Before the exemption in section 20 of the repealed instrument was granted, there was no current requirement that the relevant operators keep copies of the licences, medical certificates, and related documentation of the flight crew of foreign registered aircraft. It is, however, common practice that copies of these documents are held by the operators.

Subsection 20(4) makes that exemption subject to the condition that, for each FCM operating a registered aircraft, the operator must maintain an up-to-date record showing the currency of the FCM's medical certificate, flight crew licence, flight crew ratings and flight crew endorsements, required under the civil aviation legislation for the FCM to operate the aircraft. A Note explains that a reference to a flight crew licence includes a certificate of validation of an overseas flight crew licence. A reference to a medical certificate includes an overseas medical certificate of the holder of such a certificate of validation.

Subsection 20(5) makes the exemption in subsection 20(2) subject to the condition that, for each FCM operating a foreign registered aircraft, the operator must maintain an up-to-date record showing the currency of the FCM's medical certificate, flight crew licence, flight crew ratings, flight crew endorsements and certificate of validation and related overseas medical certificate, as applicable, that is required under the civil aviation legislation for the FCM to operate the aircraft.

Subsection 20(6) makes the exemption in subsection 20(2) subject to the condition that the operator must keep each FCM record mentioned in subsections (4) and (5), as applicable, for the period during which the FCM exercises the privileges of their flight crew licence for the operator. A Note explains that the expressions *foreign registered aircraft* and *civil aviation legislation* are each defined in section 3 of the Act. Various other expressions used in the section are defined in Part 1, and in item 36 in Part 2, of the CASR Dictionary.

Section 21 is a savings and transitional provision. Subsection 21(1) saves the operation of approvals given by CASA under the repealed instrument, specified in subsection (3). An approval that was current or in force under the repealed instrument immediately before the commencement of the exemptions instrument continues as if it were made under the exemptions instrument.

Subsection 21(2) saves the operation of an application for an approval under the repealed instrument that had not been finalised before the commencement of the exemptions instrument and requires it to be dealt with as if it were made under the exemptions instrument.

Provision that enables the collection and use of personal information

Provisions that enable the collection and use of personal information and the type of information that may be collected

Under sections 18 and 19 of the instrument, an Australian air transport operator collects safety information, generated by the SMS or FDAP, about the operator's operations and the performance of operational safety-critical personnel during operations. Under *Civil Aviation Order 82.5*, this information must not be used for disciplinary or punitive purposes or made available for use outside the operator's organisation (other than as required by law).

Within these constraints, the use of safety information for the purpose of maintaining or improving aviation safety, is not regarded as being for disciplinary or punitive purposes.

However, collected information may be used for safety enforcement purposes if it determined that there are facts and circumstances that reasonably indicate that the event concerning which the safety information has been collected is likely to have been caused by *gross negligence, recklessness, or wilful and deliberate misconduct*, or is part of a *pattern of repetitive conduct*, reflected in acts or omissions involving the same or substantially similar conduct by the same person over a relevant period of time.

In the context of air transport operations which present obvious aviation risks and dangers, these requirements reflect a balance between the interests of aviation safety and protection of the privacy and collected information about operational safety-critical personnel. They are, therefore, reasonable, necessary and proportionate in the interests of aviation safety.

Section 20 of the instrument exempts relevant operators from the existing obligation to keep "copies" of their FCMs' flight crew licences and medical certificates, and replaces it with an exemption condition to maintain up-to-date "records" showing the currency of such of their FCMs' licences and medical certificates, including their related ratings and endorsements, as are required under the civil aviation legislation to authorise and permit their FCMs to carry out the operators' operations.

That the operators should know, and be obliged to know and record, that their FCMs are lawfully authorised to conduct operations is essential for aviation safety, and thereby to protect the right to life of all concerned, the right to safe and healthy working conditions for passengers and other flight crew, and the right to work of those FCMs who have conscientiously invested in obtaining and retaining current relevant qualifications and certificates underpinning aviation safety.

The need to maintain records of the currency of personnel engaged in highly skilled and potentially dangerous work is not exclusive to aviation and is considered best practice in many areas of professional and commercial endeavour.

The requirement to have physical copies of an FCM's flight crew licence and medical certificate is onerous and unnecessary. The same level of safety assurance is obtained by requiring relevant operators to maintain an up-to-date record showing the currency of each of the qualifications and medical certificates actually required under the civil aviation legislation for the FCM to operate the operator's particular aircraft, including any foreign registered aircraft.

Why the provisions that enable the collection and use of personal information are considered necessary and appropriate

The collection of information relating to an applicant under the instrument is necessary for CASA to perform its function (conferred by section 9 of the Act) of conducting the safety regulation of civil air operations in Australian territory and the operation of Australian aircraft outside Australian territory. The information is collected by CASA to achieve the legitimate objective of ensuring that pilots meet certain medical and other standards in order to protect aviation safety.

Collection and recording of the information to be held by the relevant operators in the relevant records is a necessary safety element in Australian air transport operations. It falls under principle 3 of the Australian Privacy Principles, being solicited personal information reasonably necessary for the organisation's functions or activities.

It is not necessary for a relevant operator to collect or record sensitive information as defined in the *Privacy Act 1998* (the **Privacy Act**). Relevant medical certificates certify that a particular standard of medical clearance exists, commensurate with the requirements of the FCM's operational obligations. They do not disclose actual medical details.

The safeguards in place to protect the personal information

CASA has safeguards in place to protect the confidentiality of the information collected under the provisions of the instrument that engage the right to protection of privacy (namely, section 18, 19 and 20).

As a Commonwealth government agency, CASA must comply with the Privacy Act, which establishes a privacy protection framework that protects the information collected from persons seeking the benefit of the exemption and limits its use and disclosure. CASA must also comply with the *Privacy (Australian Government Agencies — Governance) APP Code 2017* (the **Privacy Code**).

The obligations under the Privacy Act include obligations to comply with the Australian Privacy Principles set out in Schedule 1 to the Privacy Act. In particular, Australian Privacy

Principle 3 prohibits CASA from collecting sensitive information about an individual unless the individual consents to the collection of the information and either the information is reasonably necessary for, or directly related to, one or more of CASA's functions or activities or the collection of the information is required or authorised by or under an Australian law. The instrument satisfies those preconditions.

There are also safeguards set out in policy. CASA's *Privacy Policy - Directive*, effective from October 2023 to October 2026, deals with CASA's collection, holding, use and disclosure of personal information, including sensitive information and requires CASA officers to ensure compliance with applicable privacy laws, including the Privacy Act, with the CASA privacy policy available on CASA's website, which outlines CASA's personal information handling practices and complaint handling process, and with the Privacy Code. Under CASA's privacy policy, CASA will take reasonable steps to ensure that any personal information it collects and uses is up-to-date, complete, and secure.

The requirements are necessary in order to ensure proper administration and enforcement of Australia's aviation safety system. Any potential limitation on the right to privacy is necessary, reasonable, and proportionate in promoting the objective of preserving an acceptable level of aviation safety while lowering the medical documentation requirements for the affected kinds of aircraft operations.

To the extent that the right to privacy may be engaged by the legislative instrument, the engagement is essential for aviation safety and is considered to be limited, reasonable, necessary and proportionate in the interests of aviation safety.

Legislation Act 2003

Paragraph 98(5A)(a) of the Act provides that the regulations may empower CASA to 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 instrument exempts operators of a relevant aeroplane and the pilot in command of an operator of a relevant aeroplane. The exemptions 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

Part 4 of Chapter 3 of the LA (the ***sunsetting provisions***) does not apply to the exemptions instrument because the exemptions instrument relates to aviation safety and is made under CASR (item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

However, the exemptions instrument will be repealed at the end of 1 December 2027, which will occur before the sunsetting provisions would have repealed the exemptions instrument if they had applied. Any renewal of the exemptions 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 exemptions instrument.

Consultation

Under section 16 of the Act, in performing its functions and exercising its powers, CASA must consult government, commercial, industrial, 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.

Before granting the exemptions in the repealed instrument, CASA consulted the aviation community in June 2020 when it published, and sought comments on, its policy proposals that ultimately resulted in the making of the repealed instrument. From 16 July to 6 August 2021, CASA consulted the aviation community by providing descriptions of the exemptions and directions to the Implementation Technical Working Group (*TWG*) of the Aviation Safety Advisory Panel (*ASAP*) for comment. The ASAP is the primary advisory body through which CASA directs its engagement with industry and seeks input on current and future regulatory and associated policy approaches. TWG members provided a variety of comments on the exemptions and directions, mostly for clarification of intent and rationale. CASA considered all TWG input in finalising the exemptions instrument and advised the TWG of its responses and comments regarding all input from the TWG.

CASA engaged in further consultation before making subsequent amendments to the repealed instrument, as follows

- (a) *CASA EX147/21 – Amendment of CASA EX82/21 – Instrument 2021*: CASA realised matters dealt with by the repealed instrument had been overlooked and considered all TWG input and additional input provided directly by operators before advising the TWG of its responses and comments regarding all input from the TWG and considered that no further consultation was necessary or appropriate before making the instrument;
- (b) *CASA EX41/22 – Amendment of CASA EX82/21 – Instrument (No. 1) 2022*: CASA consulted the aviation community in June 2020 when it published, and sought comments on, its policy proposals that ultimately gave rise to the amending instrument;
- (c) *CASA EX108/22 – Amendment of CASA EX82/21 – Instrument (No. 2) 2022*: CASA did not engage in further formal public consultation on the instrument because it arose from significant informal feedback, either directly from individuals or from representative aviation sector associations, that the repealed instrument had an unforeseen impact and had not achieved its ultimately intended effects;
- (d) *CASA EX46/24 – Amendment of CASA EX82/21 – Instrument 2024 (No. 1)*: Although a formal, public consultation was not undertaken in relation to the instrument, CASA had engaged in informal consultation with the aviation industry in the form of industry feedback to CASA about the need for appropriate exemptions to address the relevant issues.

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.

The exemptions instrument is a remake of the repealed instrument with only minor or machinery changes and effects. Although a formal, public consultation has not been undertaken in relation to the exemptions instrument, there has nevertheless been informal consultation with the aviation industry in the form of industry feedback to CASA about the logistical and resource issues complicating their ability to meet the conditions and directions in the exemptions instrument.

CASA is satisfied that no further 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 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.

As the instrument replaces an expiring instrument with the same (or largely the same) provisions and conditions, there will be no change of economic or cost impact on individuals, businesses or the community.

Impact on categories of operations

This instrument impacts on the conduct of Australian air transport operations. Its provisions ensure that an appropriate level of aviation safety is assured for these operations.

Impact on regional and remote communities

There are no identified rural and regional impacts that differ in any material way from the general economic and cost impacts, or sector risks described 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: OIA23-06252).

Statement of Compatibility with Human Rights

The Statement in Appendix 1 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Making and commencement

The exemptions instrument has been made by a delegate of CASA relying on the power of delegation under subregulation 11.260(1) of CASR.

The exemptions instrument commences on 2 December 2024 and is repealed at the end of 1 December 2027.

Statement of Compatibility with Human Rights

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

CASA EX68/24 – Part 119 of CASR – Supplementary 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 this legislative instrument

The purpose of this legislative instrument is to continue the operation of certain exemptions from obligations under Part 119 of the *Civil Aviation Safety Regulations 1998 (CASR)*, and related directions, that were granted to operators of Australian air transport operations and pilots in command of certain aircraft by the Civil Aviation Safety Authority (**CASA**) in earlier instruments.

That purpose is achieved by continuing the policy effect of *CASA EX82/21 – Part 119 of CASR – Supplementary Exemptions and Directions Instrument 2021* (the **repealed instrument**) which was made to facilitate the implementation of Part 119 in accordance with CASA's transition policies for the flight operations regulations and which is repealed at the end of 1 December 2024.

The exemptions and directions in the repealed instrument, which required operator oversight of the actions of operator personnel, were designed to correct technical errors and omissions in Part 119 which gave rise to unintended obligations. They were also designed to maintain pre-existing regulatory requirements, where the flight operations regulations inappropriately failed to reflect requirements of the earlier regulations that the flight operations regulations replaced.

As those exemptions and directions are still required to ensure short-term certainty of regulatory requirements for the aviation industry, this legislative instrument continues their operation on an interim basis, from 2 December 2024 to the end of 1 December 2027. It is expected that, before the exemptions and directions cease to apply, the errors and omissions concerned will be rectified by making appropriate substantive amendments to CASR to achieve the same policy objectives. Until those amendments are made, it is considered necessary to renew the exemptions and directions to provide relief from having to comply with unnecessary requirements and to ensure safety compliance.

By continuing the operation of the exemptions and directions, this legislative instrument permits the continuation of operations, and the continued employment of certain key personnel, that might otherwise have ended through failure to comply with the relevant provisions of the flight operations regulations. The conditions and directions in this legislative instrument are designed to allow for a further period of transition while ensuring that an acceptable level of safety is preserved.

The exemptions and directions in the instrument are in substantially the same terms as those in the repealed instrument, with changes only relating to the commencement and repeal of the exemptions instrument. The exemptions instrument retains the same numbering to the extent possible to assist industry stakeholders so they need not update related documentation solely due to changes to numbering. CASA would also not have to update its related guidance material for the same reason.

Human rights implications

The legislative instrument 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*)
- the right to work under Article 6 of the ICESCR
- the right to privacy under Article 17 of the ICCPR.

The legislative instrument continues the operation of existing exemptions and directions. As such, it does not directly give rise to any human rights issues but rather allows existing exemptions to continue for a longer period.

Right to work under the ICESCR

CASA granted the exemptions in the repealed instrument in 2021 because without those exemptions aircraft operations that were being safely conducted before 2 December 2021 would be precluded from continuing after that date. The immediacy in the impact of this rule change, and the volume of operators affected, were an unintended consequence of provisions in Part 119 of CASR and were inadvertent effects not previously recognised. Through exemptive provisions, the instrument permits the continuation of operations and certain key personnel employment that might otherwise cease through failure to comply with the relevant provisions of the flight operations regulations.

To the extent that the exemption relieves some operators of immediate overhead additional costs, this legislative instrument may improve the viability of the operator and, in doing so, promote the right to work. Reduced costs in not having to meet the obligations as stated in CASR may have an effect on preserving operations and employment. These changes produce not immaterial cost savings that may contribute to the preservation of employment.

By granting the exemptions in the repealed instrument, this legislative instrument permits the continuation of operations that, before 2 December 2021, were considered to be safe but that may otherwise have been prevented, or whose continuation would have involved increased overhead costs.

Right to life under the ICCPR

Right to safe and healthy working conditions under the ICESCR

The instrument's conditions and directions are designed to allow for a further period of transition while ensuring that an acceptable level of safety is preserved. The instrument's conditions are designed to ensure an acceptable level of safety is preserved.

Although this legislative instrument contains exemptions from obligations under Part 119 CASR, it does so in the context of substitute, and acceptable, conditions in the interests of aviation safety. To the extent that the conditions are expected to play a critical part in the avoidance of accidents and incidents, this legislative instrument may reasonably be said to support the right to life, and to contribute to safe and healthy working conditions on board the relevant aeroplanes.

Right to privacy under the ICCPR

This legislative instrument engages with the right to privacy.

That right, contained in Article 17 of the *International Covenant on Civil and Political Rights*, provides that no-one shall be subjected to arbitrary or unlawful interference with their privacy. The right created by Article 17 includes the right to protection against unlawful or arbitrary interferences with an individual's privacy and also requires respect for private and confidential information, including the storing, use and sharing of such information, and the right to control the dissemination of private information.

The right in Article 17 may be subject to permissible limitations, where these limitations are authorised by law and are not arbitrary. In order for limitations not to be arbitrary, they must seek to achieve a legitimate objective and be reasonable, necessary and proportionate to this purpose.

The right to privacy is engaged by sections 18, 19 and 20 of the instrument.

Under sections 18 and 19 of the instrument, an Australian air transport operator collects safety information, generated by the safety management system or flight data analysis program, about the operator's operations and the performance of operational safety-critical personnel during operations. Under *Civil Aviation Order 82.5*, this information must not be used for disciplinary or punitive purposes or made available for use outside the operator's organisation (other than as required by law).

Within these constraints, the use of safety information for the purpose of maintaining or improving aviation safety is not regarded as being for disciplinary or punitive purposes.

However, collected information may be used for safety enforcement purposes if it determined that there are facts and circumstances that reasonably indicate that the event concerning which the safety information has been collected is likely to have been caused by *gross negligence, recklessness, or wilful and deliberate misconduct*, or is part of a *pattern of repetitive conduct*, reflected in acts or omissions involving the same or substantially similar conduct by the same person over a relevant period of time.

In the context of air transport operations which present obvious aviation risks and dangers, these requirements reflect a balance between the interests of aviation safety and protection of the privacy and collected information about operational safety-critical personnel. They are, therefore, reasonable, necessary and proportionate in the interests of aviation safety.

Section 20 of the instrument exempts relevant operators from the existing obligation to keep "copies" of their flight crew members' flight crew licences and medical certificates and replaces it with an exemption condition to maintain up-to-date "records" showing the currency of such of their flight crew members' licences and medical certificates, including

their related ratings and endorsements, as are required under the civil aviation legislation to authorise and permit their flight crew members to carry out the operators' operations.

That the operators should know, and be obliged to know and record, that their flight crew members are lawfully authorised to conduct operations is essential for aviation safety, and thereby to protect the right to life of all concerned, the right to safe and healthy working conditions for passengers and other flight crew, and the right to work of those flight crew members who have conscientiously invested in obtaining and retaining current relevant qualifications and certificates underpinning aviation safety.

The need to maintain records of the currency of personnel engaged in highly skilled and potentially dangerous work is not exclusive to aviation and is considered best practice in many areas of professional and commercial endeavour.

Collection and recording of the information to be held by the relevant operators in the relevant records is a necessary safety element in Australian air transport operations and for aerial work operators in aerial work operations. It falls under principle 3 of the Australian Privacy Principles, being solicited personal information reasonably necessary for the organisation's functions or activities.

It is not necessary for a relevant operator to collect or record sensitive information as defined in the *Privacy Act 1998*. Relevant medical certificates certify that a particular standard of medical clearance exists, commensurate with the requirements of the flight crew member's operational obligations. They do not disclose actual medical details.

CASA has processes in place to protect the confidentiality of the information collected under the relevant provisions of the instrument.

The protections afforded by the *Privacy Act 1988* continue to apply.

The requirements are necessary in order to ensure proper administration and enforcement of Australia's aviation safety system. Any potential limitation on the right to privacy is necessary, reasonable, and proportionate in promoting the objective of preserving an acceptable level of aviation safety.

Conclusions

The exemptions and directions in the legislative instrument are compatible with human rights and, to the extent that the legislative instrument may engage certain rights it does so in a way that promotes the right to life and the right to work, and promotes safe and healthy working conditions for crew on board relevant aircraft and for ground staff. By reducing some short-term costs, it may support the right to work.

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 flight operations. It is, therefore, a threshold requirement for all CASA legislative instruments that they preserve, promote and enhance aviation safety.

To the extent that this legislative instrument engages human rights, the instrument achieves these likely outcomes in a way that is reasonable and necessary in the interests of aviation

safety. They are also considered proportionate, in the sense that any additional training and costs incurred are likely to be offset by additional work opportunities arising from being trained, and the improved safety outcomes.

To the extent that the right to privacy may be engaged by the legislative instrument, the engagement is essential for aviation safety and is considered to be limited, reasonable, necessary and proportionate in the interests of aviation safety.

Civil Aviation Safety Authority