

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX71/24 – Part 135, Subpart 121.Z and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2024

Purpose

The purpose of *CASA EX71/24 – Part 135, Subpart 121.Z and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2024* (the **instrument**) is to reissue *CASA EX85/21 – Part 135, Subpart 121.Z and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021* (the **previous instrument**). The instrument continues to exempt the operators and pilots in command of aeroplanes conducting operations under Parts 91, 121 and 135 of the *Civil Aviation Safety Regulations 1998 (CASR)* from compliance with certain provisions of the Parts. The exemptions are subject to stated conditions. Also, the instrument continues to issue directions to the operators and pilots in command.

The few changes that have been made to the previous instrument are to include separate commencement and repeal sections instead of a duration section, save the operation of certain approvals under the previous instrument, delete obsolete provisions and make a small number of minor amendments and corrections.

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. Relevantly, the Governor-General has made CASR.

Subpart 11.F of CASR deals with exemptions. Under subregulation 11.160(1) of CASR, and for subsection 98(5A), the Civil Aviation Safety Authority (**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 11.175(4) of CASR, in deciding whether to renew an exemption, on application by a person, 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 renew an exemption on its own initiative.

Under regulation 11.205 of CASR, CASA may impose conditions on an exemption if this is necessary in the interests of the safety of air navigation. Under regulation 11.210 of CASR, it is a strict liability offence for a person not to comply with an obligation imposed on the person by a condition of an exemption, which attracts a maximum penalty of 50 penalty units. Under regulation 11.225 of CASR, CASA must, as soon as practicable, publish on the internet details of an exemption, including any condition of the exemption.

Under subregulation 11.230(1) of CASR, 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 of CASR, an exemption is not transferable.

Legislation — directions

Under paragraph 11.245(1)(a) of CASR, for subsection 98(5A), 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 to do so in the interests of the safety of air navigation, only if the direction is not inconsistent with the Act and only for the purposes of CASA's functions.

Under regulation 11.250 of CASR, 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 regulation 11.255 of CASR, it is an offence of strict liability for a person to contravene a direction that is applicable to the person, which attracts a maximum penalty of 50 penalty units.

Legislation — 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), 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 states that, despite section 14, 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 135 applies to smaller aeroplanes used in Australian air transport operations. Parts 91, 121 and 135 provide a comprehensive code of operational safety rules for air transport operators using smaller aeroplanes.

Part 135 is a part of the suite of Flight Operations Regulations (the *FOR*). The FOR comprise Parts 91, 119, 121, 133, 135 and 138 of CASR, each of which commenced on 2 December 2021.

Post-implementation of the FOR, it was identified that there are a number of technical errors and omissions in Part 135 that give rise to unintended consequences. These will be rectified in the next set of amendments to the Part but, in the meantime, until those amendments are made, it is necessary to use exemptions to provide relief from having to comply with certain requirements, and directions to ensure safety compliance.

The exemptions and directions in the instrument variously require operator oversight of the actions of operator personnel and otherwise are intended to maintain previous regulatory requirements where the FOR failed to reflect the requirements. In other cases, exemptions are provided where relief from a requirement is considered appropriate, to facilitate implementation of certain FOR requirements, and to permit, for private operations, compliance with Part 135 requirements instead of Part 91 requirements.

The instrument will facilitate the operation of Part 135 and Subpart 121.Z of CASR in accordance with CASA's transition policies for the FOR. Aeroplane operations under Subpart 121.Z are subject to the requirements of Part 135.

Overview of instrument

The instrument ameliorates unintended consequences arising from errors or omissions in the drafting of Parts 91, 121 and 135, by either:

- (a) granting regulated entities exemption from compliance with certain requirements that were not intended to apply to them — either at all, or in the manner expressed in the legislation; or
- (b) requiring regulated entities to perform certain activities, which are necessary to ensure aviation safety, but not prescribed in the legislation.

Where an exemption is granted in the instrument, CASA is satisfied that the granting of the exemption will preserve a level of aviation safety which is at least acceptable. In imposing any conditions on an exemption, CASA is satisfied this is necessary in the interests of the safety of air navigation.

Where a direction is issued in the instrument, CASA is satisfied that the issuing of the direction is necessary in the interests of the safety of air navigation.

Documents incorporated by reference

In accordance with paragraph 15J(2)(c) of the LA and subsection 98(5D) of the Act, the instrument applies, adopts or incorporates matters contained in the following documents:

- (a) the aircraft flight manual instructions for an aeroplane;
- (b) an operator's exposition;
- (c) the AOC operations specifications of an Australian air transport operator;
- (d) an aircraft's relevant approved data;
- (e) the law of a foreign country that applies to a Part 135 operation, or Subpart 121.Z operation, with an aeroplane in the country;
- (f) the law of the State of registry for a foreign-registered aeroplane;
- (g) the law of the State of a foreign-registered aeroplane's operator.

Each incorporated document is described below, including details of the manner of incorporation and how it may be obtained.

Document	Description	Manner of incorporation	Source
Aircraft flight manual instructions for an aeroplane	The term <i>aircraft flight manual instructions</i> , for an aircraft, is defined in the CASR Dictionary to comprise the aircraft's flight manual; checklists of normal, abnormal and emergency procedures for the aircraft; and any operating limitation, instructions, markings and placards relating to the aircraft. The instructions comprise information required to safely operate the specific aircraft.	The instructions are incorporated as in force from time to time.	These documents are publicly available but not for free. The aircraft flight manual instructions for an aircraft are proprietary to the owner of the aircraft design (usually, the manufacturer). The incorporated requirements are at the aircraft-specific level, and instructions are required to be provided to owners of aircraft. Where available, and by prior arrangement, CASA will make aircraft flight manual instructions available for inspection at a CASA office.
Operator's exposition	A document, or suite of documents, which 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 operator's exposition is incorporated as in force from time to time, in accordance with the definition of the term <i>exposition</i> in the CASR Dictionary.	The document is the proprietary, intellectual and commercial property of an operator and applies only to the operator and its personnel. Also, the operator is under an obligation to make the document available to its personnel, who have obligations under the document.

Document	Description	Manner of incorporation	Source
AOC operations specifications for an aeroplane	The term <i>operations specifications</i> is defined in the CASR Dictionary as having the same meaning as in Chapter 1 of Part 1 of Annex 6, <i>Operation of Aircraft</i> , to the Chicago Convention (which term is defined in section 3 of the Act). The term is defined in the Chicago Convention as “The authorizations including specific approvals, conditions and limitations associated with the air operator certificate and subject to the conditions in the operations manual.” As suggested by the name of the document, CASA treats the operations specifications for an aircraft as being a part of the air operator certificate (the <i>AOC</i>) issued by CASA to the aircraft’s operator in relation to the aircraft.	An AOC (which includes the AOC operations specifications for the relevant aeroplane) is incorporated as in force from time to time.	An AOC, issued in relation to an aeroplane, is the proprietary, intellectual and commercial property of the holder of the AOC for the aeroplane and applies only to the holder and its personnel.
Aircraft’s relevant approved data (in the context of the securing of a safety harness and restraint strap to a hard point of the aircraft, mentioned in paragraph 17(9)(c) of the instrument)	The data deals with the design, and use, of a hard point of an aircraft for the relevant purpose, as approved under Part 21 of CASR by the issue of a supplemental type certificate or approval under Subpart 21.M of CASR, or as part of the type design of the aircraft.	An aircraft’s relevant approved data is incorporated as in force from time to time.	The data is the proprietary, intellectual and commercial property of the aircraft’s operator and applies only to the operator and its personnel.

Document	Description	Manner of incorporation	Source
The law of a foreign country that applies to a Part 135 operation, or Subpart 121.Z operation, with an aeroplane in the country	The description of the document in column 1 is self-explanatory.	The law is incorporated as in force from time to time.	If an aeroplane's operator intends to conduct a Part 135 operation, or Subpart 121.Z operation, with the aeroplane in a foreign country, how to access the law of the country that applies to the operation should be within the operator's knowledge.
The law of the State of registry for a foreign-registered aeroplane	Under the CASR Dictionary, <i>State of registry</i> , for a foreign registered aircraft, means the foreign country on whose register the aircraft is entered. The description of the document in column 1 is self-explanatory.	The law is incorporated as in force from time to time.	If the operator of a foreign-registered aeroplane wishes to rely on the exemption under subsection 9(2) of the instrument, it must ensure at least 1 flight crew member for the flight is authorised to pilot the aeroplane under the IFR under the law of the State of registry for the aeroplane (for the purposes of subparagraph 9(2)(b)(i)). How to access the law of the State of registry should be within the operator's knowledge.

Document	Description	Manner of incorporation	Source
The law of the State of a foreign-registered aeroplane's operator	Under the CASR Dictionary, <i>State</i> , of an operator, means the country in which the operator's principal place of business is located or, if the operator does not have a principal place of business, the country in which the operator's permanent residence is located. The description of the document in column 1 is self-explanatory.	The law is incorporated as in force from time to time.	If the operator of a foreign-registered aeroplane wishes to rely on the exemption under subsection 9(2) of the instrument, it must ensure at least 1 flight crew member for the flight is authorised to pilot the aeroplane under the IFR under the law of the State of the operator (for the purposes of subparagraph 9(2)(b)(ii)). How to access the law of the State should be within the operator's knowledge.

Content of instrument

Part 1 — Preliminary, Definitions and Application

Section 1 — Name

This section states the name of the instrument.

Section 1A — Commencement

This section states the commencement date of the instrument.

Section 2 — Repeal

This section states the repeal date of the instrument, including specifying the repeal date of the directions in the instrument.

Section 3 — Definitions

This section provides definitions for the instrument. Also, it provides interpretation aids for various words and expressions used in the instrument. Also, it states that any document incorporated into the instrument is incorporated as in force from time to time.

Section 3A — Table of Contents

This section states that the Table of Contents for the instrument is not part of the instrument, is for guidance only and may be edited or updated by CASA in any published version of the instrument.

Section 4 — Application

This section states that the instrument applies according to its terms.

Part 2 — Exemptions from Part 135

Section 5 — Application of Part 135 – Australian air transport operations in foreign countries – exemption

This section applies to the operator, and pilot in command, of an aeroplane for a flight that is a Part 135 operation, or Subpart 121.Z operation, conducted in a foreign country.

The section exempts the operator and pilot in command from compliance with a provision of Part 135 but only to the extent that the provision is inconsistent with a provision of the law of the foreign country.

The exemption is subject to the condition that the operator or pilot in command must comply with each applicable provision of Part 135, except that if a law of the foreign country applies to the operation of the aeroplane in that country, that law prevails to the extent of any inconsistency. The section states there is no inconsistency, however, between a provision of Part 135 for a flight and a provision of a law of a foreign country for the flight to the extent that the provisions are capable of operating concurrently.

Section 7 — Journey log – recording time flight begins – exemption

This section applies to the operator, and pilot in command, of an aeroplane for a flight that is a Part 135 operation or Subpart 121.Z operation.

The section exempts the operator and pilot in command from compliance with the requirement in subregulation 135.085(2) of CASR, to record in the journey log for the flight, at the time the flight begins, the time the flight begins, as required under subparagraph 135.085(3)(d)(ii). The exemption is subject to the condition that the time the flight began must be recorded in the journey log, or another document kept by the operator or that is readily available to the operator from another source, not later than as soon as reasonably practicable after the flight ends.

Section 8 — Journey log – recording flight information – exemption

This section applies to the operator, and pilot in command, of an aeroplane for a flight that is a Part 135 operation or Subpart 121.Z operation.

The section exempts the operator and pilot in command from compliance with the requirement in subregulation 135.085(4), to record in the journey log for the flight, as soon as practicable after the flight ends, the place of arrival and incidents and observations (if any) relevant to the flight as required under paragraphs 135.085(5)(a) and (e). The exemption is subject to the condition that the information must be recorded in the journey log, or another document kept by the operator or that is readily available to the operator from another source, not later than as soon as reasonably practicable after the flight ends.

Section 9 — VFR flights at night – instrument rating – exemption

This section applies to a Part 135 operation that is either a passenger transport operation (as defined in clause 75 of Part 2 of the CASR Dictionary) or medical transport operation (as defined in clause 70 of Part 2 of the CASR Dictionary), which is conducted as a VFR flight (as defined in the CASR Dictionary) at night.

The section exempts the operator from compliance with subregulation 135.235(1) in relation to paragraph 135.235(2)(c), and subregulation 135.380(1) in relation to paragraph 135.380(2)(d), which require at least one of the flight crew members for the flight to hold an instrument rating (within the meaning of that term in Subpart 61.M of CASR). The exemption is subject to the condition that at least one flight crew member for the flight must be authorised to pilot the aeroplane under the IFR (as defined in the CASR Dictionary) under Part 61 of CASR or a relevant foreign law.

Section 9A — Ground support personnel

This section exempts the operator of an aeroplane for a flight that is a Part 135 operation, or Subpart 121.Z operation, from compliance with the requirement in subregulations 135.125(1) and (3) of CASR for ground support personnel (other than persons employed by the operator under a contract of service) to have successfully completed training and been assessed as competent before carrying out a ground support duty for the flight. The exemption is subject to the condition that:

- (a) the operator is satisfied that the relevant member of the operator's personnel is capable of carrying out, and willing to carry out, the duty in a manner that maintains aviation safety; or
- (b) the relevant member is supervised by a direct employee of the operator who meets the requirements in subregulation 135.125(2).

Section 9B — Ground support personnel – direct employees

This section exempts the operator of an aeroplane for a flight that is a Part 135 or Subpart 121.Z operation from the requirement in subregulations 135.125(1) and (3) for ground support personnel, being persons employed by the operator under a contract of service, to have successfully completed training and been assessed as competent before carrying out a ground support duty for the flight. The exemption is subject to the condition that:

- (a) the relevant employee is:
 - (i) under training for the duty; and
 - (ii) being supervised by a person, or a kind of person, identified in the operator's exposition as competent to conduct the training; and
- (b) the training is being carried out in accordance with the requirements specified in the exposition for that training.

Section 9C — Recent experience requirements – exemption

This section exempts the operator of an aeroplane for a flight that is a Part 135 or Subpart 121.Z operation, and a pilot assigned to duty by the operator for the operation, from compliance with the recent experience requirements in subregulation 135.435(1) or 135.435(2) of CASR, respectively. The recent experience requirements are inappropriate, in that the experience must have been obtained in a "kind" of aeroplane, which requires pilots to obtain unnecessary multiple episodes of recent experience for

different “kinds” of aircraft. CASA’s intent is that the recent experience be obtained from the broader designation of an *aeroplane of a relevant type or class* (as defined in subsection 3(1) of the instrument), namely:

- (a) an aeroplane of a particular class, within the meaning of *class*, of aircraft, in regulation 61.020 of CASR, other than an aeroplane mentioned in paragraph (b) or (c); or
- (b) a multi-crew aircraft for which a legislative instrument, in accordance with paragraph 61.055(1)(a) of CASR, has prescribed type ratings that may be granted for a multi-crew operation; or
- (c) 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, in accordance with subparagraph 61.060(1)(b)(i), has prescribed the type ratings that may be granted for a single-pilot operation.

The exemption granted to the operator is subject to the condition that the operator must not assign a pilot to duty as pilot in command, or co-pilot of, the aeroplane for the flight unless the requirements in subsection (6) or (7), as applicable, are complied with. Also, the exemption granted to the pilot is subject to the condition that the pilot must not operate the aeroplane for the flight, as pilot in command or co-pilot, unless the requirements in subsection (6) or (7), as applicable, are complied with. The requirements in subsection (6) or (7), in effect, require the pilot to meet the same recent experience requirements stated in subregulation 135.435(1) or (2), as applicable, but in an aeroplane that is an aeroplane of a relevant type or class or in an approved flight simulator (as defined in the CASR Dictionary) for the aeroplane.

Section 9D — Flight crew training or checking – foreign conductors of – exemption

This section exempts the operator of an aeroplane for a flight that is a Part 135 operation, or Subpart 121.Z operation, from compliance with regulation 135.387 of CASR in relation to who may conduct training, or a check, which is required under Part 135. The purpose of the exemption is to permit the operator to use a foreign training provider to conduct the training or check. The exemption is subject to 2 conditions.

Under the first condition, the training or check must be conducted by a person who is:

- (a) employed by a training provider authorised by the national aviation authority (as defined in the CASR Dictionary) of a recognised foreign State to conduct training, or a check, equivalent to the training or check required by Part 135, which the operator has contracted the training provider to conduct; and
- (b) authorised by the national aviation authority to conduct the equivalent training or check.

Under the second condition, the operator must ensure that:

- (a) each person who conducts the training, or check, for the foreign training provider is appropriately authorised to conduct the training or check; and
- (b) the foreign training provider is notified, in writing, of any change in the operator’s exposition relating to the training, or a check, which the foreign training provider conducts under the contract.

Part 3 — Exemptions from Part 91 and related directions

Section 10 — Use of Part 135 flight-related documents instead of Part 91 flight-related documents – exemption and direction

This section applies if an Australian air transport operator conducts a private operation using an aeroplane mentioned in regulation 135.005, or subregulation 121.005(2), of CASR and included in the operator's AOC operations specifications (as defined in the CASR Dictionary). The section exempts the operator and pilot in command, as applicable, of the aeroplane from compliance with Division 91.C.3 of CASR for the operation. The exemption only applies if the operator and pilot in command, as applicable, each comply with the stated directions.

Under the directions, the operator must ensure that, for the operation:

- (a) the flight-related document requirements under Division 135.C.3 of CASR are complied with (subject to the exemptions in sections 7 and 8); and
- (b) the operator's exposition provides for compliance with the requirements.

Also, under the directions, the pilot in command must comply with the requirements under Division 135.C.3, and in the exposition, which are applicable to the pilot in command.

Section 11 — Application of Part 135 fuel requirements instead of Part 91 fuel requirements – exemption and direction

This section applies if an Australian air transport operator conducts a private operation using an aeroplane mentioned in regulation 135.005 or subregulation 121.005(2), and included in the operator's AOC operations specifications. The section exempts the aeroplane's pilot in command from compliance with regulation 91.455 of CASR. The exemption only applies if the operator and pilot in command, as applicable, each comply with the stated directions.

Under the directions, the operator must ensure that, for the operation:

- (a) the fuel requirements under regulation 135.215 of CASR are complied with; and
- (b) the operator's exposition provides for compliance with the requirements.

Also, under the directions, the pilot in command must comply with the requirements under regulation 135.215, and in the exposition, which are applicable to the pilot in command.

Section 12 — Application of Part 135 fuelling requirements instead of Part 91 fuelling requirements – exemption and direction

This section applies if an Australian air transport operator conducts a private operation using an aeroplane mentioned in regulation 135.005 or subregulation 121.005(2), and included in the operator's AOC operations specifications. The section exempts the aeroplane's pilot in command from compliance with regulation 91.510 of CASR. The exemption only applies if the operator and pilot in command, as applicable, each comply with the stated directions.

Under the directions, the operator must ensure that, for the operation:

- (a) the fuelling requirements under regulation 135.220 of CASR are complied with; and
- (b) the operator's exposition provides for compliance with the requirements.

Also, under the directions, the pilot in command must comply with the requirements under regulation 135.220, and in the exposition, which are applicable to the pilot in command.

Section 13 — Application of Part 135 passenger safety briefings, instructions and demonstrations requirements instead of Part 91 safety briefings and instructions requirements – exemption and direction

This section applies if an Australian air transport operator conducts a private operation using an aeroplane mentioned in regulation 135.005 or subregulation 121.005(2), and included in the operator's AOC operations specifications. The section exempts the aeroplane's pilot in command from compliance with regulation 91.565 of CASR. The exemption only applies if the operator and pilot in command, as applicable, each comply with the stated directions.

Under the directions, the operator must ensure that, for the operation:

- (a) the safety briefings, instructions and demonstrations requirements under regulation 135.280 of CASR are complied with; and
- (b) the operator's exposition provides for compliance with the requirements.

Also, under the directions, the pilot in command must comply with the requirements under regulation 135.280, and in the exposition, which are applicable to the pilot in command.

Section 14 — Application of Part 135 performance requirements instead of Part 91 performance requirements – exemption and direction

This section applies if an Australian air transport operator conducts a private operation using an aeroplane mentioned in regulation 135.005 or subregulation 121.005(2), and included in the operator's AOC operations specifications. The section exempts the operator and pilot in command, as applicable, of the aeroplane from compliance with Subpart 91.F of CASR. The exemption only applies if the operator and pilot in command, as applicable, each comply with the stated directions.

Under the directions, the operator must ensure that, for the operation:

- (a) the performance requirements under Subpart 135.F of CASR are complied with; and
- (b) the operator's exposition provides for compliance with the requirements.

Also, under the directions, the pilot in command must comply with the requirements under Subpart 135.F, and in the exposition, which are applicable to the pilot in command.

Section 15 — Application of Part 135 weight and balance requirements instead of Part 91 weight and balance requirements – exemption and direction

This section applies if an Australian air transport operator conducts a private operation using an aeroplane mentioned in regulation 135.005 or subregulation 121.005(2), and

included in the operator's AOC operations specifications. The section exempts the aeroplane's pilot in command from compliance with Subpart 91.J of CASR. The exemption only applies if the operator and pilot in command, as applicable, each comply with the stated directions.

Under the directions, the operator must ensure that, for the operation:

- (a) the weight and balance requirements under Subpart 135.J of CASR are complied with; and
- (b) the operator's exposition provides for compliance with the requirements.

Also, under the directions, the pilot in command must comply with the requirements under Subpart 135.J, and in the exposition, which are applicable to the pilot in command.

Section 16 — Application of Part 135 equipment requirements instead of Part 91 equipment requirements – exemptions and directions

This section applies if an Australian air transport operator conducts a private operation using an aeroplane mentioned in regulation 135.005 or subregulation 121.005(2), and included in the operator's AOC operations specifications. The section exempts the operator, pilot in command and any crew member, as applicable, of the aeroplane from compliance with Subpart 91.K of CASR. The exemption only applies if the operator, pilot in command and crew member, as applicable, each comply with the stated directions.

Under the directions, the operator must ensure that, for the operation:

- (a) the equipment requirements under Subpart 135.K of CASR are complied with; and
- (b) the operator's exposition provides for compliance with the requirements.

Also, under the directions, the pilot in command and crew member must each comply with the requirements under Subpart 135.K, and in the exposition, which are applicable to the pilot in command or crew member.

Section 17 — Seating for crew members other than flight crew members – exemption and direction

This section applies to a crew member (the *crew member*), other than a flight crew member, for the operation of an aeroplane that is both:

- (a) a Part 135 operation or Subpart 121.Z operation; and
- (b) a medical transport operation.

The section exempts the crew member from compliance with regulation 91.555 of CASR.

The exemption is subject to the condition that the stated requirements are complied with by the crew member or aeroplane's operator. The requirements include a requirement that the crew member wear a safety harness and restraint strap, instead of a seatbelt, in stated circumstances for a flight of the aeroplane.

The section also issues a direction that the operator ensure that the crew member complies with the abovementioned requirements that apply to the crew member.

Part 4 — Directions to Part 135 operators and Subpart 121.Z operators

Section 18 — Compliance before and after flight with flight manual instructions – direction

This section applies to the operator of an aeroplane for a Part 135 operation or Subpart 121.Z operation. The operator must ensure that any activity, in relation to the flight, which occurs whether before or after the flight and that is required under the aircraft flight manual instructions (the *AFMI*) for the aeroplane to be carried out before or after the flight is carried out in compliance with any relevant requirement, or limitation, set out in the AFMI.

Section 19 — Taking off from and landing on narrow runways – direction

This section applies to a Part 135 operation or Subpart 121.Z operation. The section issues a direction, in relation to the operation, to the operator and pilot in command of the aeroplane used for the operation that they comply with the requirements, as applicable, under subregulations 121.220(1) to (4) of CASR, as if:

- (a) the aeroplane were an aeroplane mentioned in subregulation 121.220(1); and
- (b) the requirements applied to them for the operation.

Also, the section includes a Note that the abovementioned requirements apply only in relation to an aeroplane with a maximum certificated take-off weight of more than 5 700 kg.

Section 20 — Fuelling safety procedures – direction

This section applies to the operator of an aeroplane for a Part 135 operation or Subpart 121.Z operation.

The section issues a direction requiring the operator to ensure that its exposition includes procedures to be followed by a crew member, other than a cabin crew member or flight crew member on duty in the aeroplane's cockpit, for a flight of the aeroplane in relation to the safety of passengers who are embarking or disembarking, or are on board, the aeroplane during fuelling.

Section 20A — Training and checking – direction

This section applies to an Australian air transport operator that, immediately before 2 December 2021:

- (a) conducted charter operations, or aerial work (air ambulance) operations, in an aeroplane; and
- (b) did not hold an approval under repealed subregulation 217(3) of the *Civil Aviation Regulations 1988*, as in force immediately before 2 December 2021, in relation to a training and checking organisation for the operations.

The section issues a direction that the operator must not use an individual to conduct stated training, or a stated check, for a flight crew member of the operator's personnel, which is required under Part 135, unless a stated requirement is met. If the aeroplane used for the training, or check, is a registered aircraft (as defined in the CASR Dictionary), the requirement is that:

- (a) the individual must hold any of the stated qualifications, or the stated approval, under Part 61 of CASR; or

- (b) the operator must hold CASA's approval that its training and checking system, as applied to the individual, produces a safety outcome equivalent to that under paragraph (a).

The requirement is in addition to the requirement under paragraph 135.387(2)(a) that the operator must ensure that the individual meets the requirements prescribed by the *Part 135 Manual of Standards* (the **Part 135 MOS**). The requirements are prescribed under section 12.11 of the Part 135 MOS.

If the aeroplane is a foreign registered aircraft (as defined in section 3 of the Act), the requirement is that:

- (a) the individual must hold an overseas authorisation (however described) that is at least equivalent to any of the abovementioned Part 61 qualifications or the abovementioned approval; or
- (b) the operator must hold CASA's approval that its training and checking system, as applied to the individual, produces a safety outcome equivalent to that under paragraph (a).

The requirement is in addition to the requirement under paragraph 135.387(2)(a) that the operator must ensure that the individual meets the requirements prescribed by the Part 135 MOS. The requirements are prescribed under section 12.11 of the Part 135 MOS.

Also, the section includes a savings provision under which an approval, in relation to the operator's training and checking system given to the operator under a provision of the previous instrument, as in force immediately before the repeal of the previous instrument, is taken to be an approval of the system for the corresponding provision of this section.

Part 5 – Exemptions from Subpart 121.Z

Section 24 – TAWS – Subpart 121.Z operations – exemption

This section applies to the operator of an aeroplane for a flight that is a Subpart 121.Z operation, but only if the aeroplane:

- (a) has a maximum operational passenger seat configuration of 13 or less; and
- (b) is a turbine-engine aeroplane; and
- (c) has a maximum take-off weight (as defined in the CASR Dictionary) of 5 700 kg or less.

For the flight, the section exempts the operator from compliance with subregulation 121.775(1) of CASR, and subregulation 121.775(3) to the extent that it applies to subregulation 121.775(1).

The exemption is subject to the condition that, before the flight, the aeroplane must be fitted with a TAWS-Class B+ or TAWS-Class A. The TAWS must be operative at the beginning of the flight, unless stated circumstances apply.

Strict liability offences — breach of condition or direction

Regulations 11.205 and 11.255 were inserted into CASR by the *Civil Aviation Amendment Regulations 2004 (No. 4) 2004*.

At the time regulation 11.205 was inserted into CASR, CASA was of the view that making a breach of a condition of an exemption a strict liability offence was necessary and appropriate. CASA remains of this view.

The instrument contains various provisions that impose conditions on exemptions granted to persons under the instrument. CASA believes that the imposition of the conditions, and consequently that a breach by a relevant person of any of the conditions be treated as a strict liability offence, is necessary in the interests of the safety of air navigation.

At the time regulation 11.255 was inserted into CASR, CASA was of the view that making a breach of a direction a strict liability offence was necessary and appropriate. CASA remains of this view.

The instrument contains various provisions that issue directions to persons. Some of the exemptions granted to persons are granted subject to the condition that the relevant person comply with stated directions. CASA believes that the issue of the directions, and consequently that a breach of any of the directions be treated as a strict liability offence, is necessary in the interests of the safety of air navigation.

The maximum penalty for the commission of each offence is 50 penalty units.

Legislation Act 2003

Paragraph 98(5AA)(a) of the Act states 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 and directions in the instrument apply to classes of persons, namely the operators, and pilots in command, of aeroplanes conducting operations under Parts 91, 121 and 135. Accordingly, the instrument is a legislative instrument and is subject to tabling and disallowance in the Parliament, under sections 38 and 42 of the LA.

Sunsetting

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

The instrument is repealed at the end of 1 December 2027, which will occur before the sunseting provisions would have repealed the instrument, if they had applied. Any remaking of the instrument will be subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA. Therefore, the exemption from sunseting does not affect parliamentary oversight of the instrument.

Consultation

Under section 16 of the Act, in performing its functions and exercising its powers, CASA must, where appropriate, consult government, commercial, industrial, consumer and other relevant bodies and organisations.

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 any conditions imposed on the exemptions. 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, with persons operating in the aviation industry most likely to take advantage of, or be affected by, a proposed exemption, so that they may have the opportunity to comment on the terms, scope and appropriateness of the exemption.

The exemptions and directions in the instrument were in force under the previous instrument. Prior to the making of the previous instrument, from 16 July 2021 to 6 August 2021, CASA consulted the aviation community by providing descriptions of the exemptions and directions to the Implementation Technical Working Group (the *TWG*) of the Aviation Safety Advisory Panel (the *ASAP*) for comment. The ASAP is the primary advisory body through which CASA directs its engagement with the aviation industry and seeks input on current and future regulatory and associated policy approaches. CASA considered the TWG's input in finalising the previous instrument, and responded to the TWG accordingly. Additional exemptions and directions were added to the previous instrument throughout its period in force, based on industry feedback.

Regulated entities affected by the instrument are, therefore, familiar with the exemptions and directions in the instrument.

Sector risk, economic and cost impact

Subsection 9A(1) of the Act states that, in exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration. Subsection 9A(3) states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9(1)(c) of the Act, CASA must:

- (a) consider the economic and cost impact on individuals, businesses and the community of the standards; and
- (b) take into account the differing risks associated with different industry sectors.

The cost impact of a standard refers to the direct cost (in the sense of price or expense) which a standard would cause individuals, businesses and the community to incur. The economic impact of a standard refers to the impact a standard would have on the production, distribution and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly. The economic impact of a standard could also include the general financial impact of that standard on different industry sectors.

As the instrument replaces the expiring previous instrument with substantially the same provisions, there will be no change to the economic or cost impact on individuals, businesses or the community.

Impact on categories of operations

The instrument is likely to have a beneficial impact on operators conducting operations under Parts 91, 121 and 135 by clarifying the intended operation and effect of the regulatory provisions to which the exemptions and directions relate. This will generate operational efficiencies by ensuring that operators have a clear understanding of their regulatory obligations.

Impact on regional and remote communities

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

Office of Impact Analysis (OIA)

An Impact Analysis (an *IA*) is not required in this case, as the instrument is covered by a standing agreement between CASA and OIA, under which an IA is not required for exemption and direction instruments (OIA reference number: OIA23-06252).

Statement of Compatibility with Human Rights

The Statement at Attachment 1 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The instrument is compatible with human rights. With its aviation safety focus, the instrument promotes the right to life and the right to safe and healthy working conditions, and does so in a way that is reasonable, necessary and proportionate in the interests of aviation safety.

Commencement and making

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

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

Statement of Compatibility with Human Rights

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

CASA EX71/24 – Part 135, Subpart 121.Z and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2024

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

Overview of the legislative instrument

Part 135 of the *Civil Aviation Safety Regulations 1998 (CASR)* applies to smaller aeroplanes used in Australian air transport operations. Parts 91, 121 and 135 of CASR provide a comprehensive code of operational safety rules for air transport operators using smaller aeroplanes.

Part 135 is a part of the suite of Flight Operations Regulations (the **FOR**). The FOR comprise Parts 91, 119, 121, 133, 135 and 138 of CASR, each of which commenced on 2 December 2021.

There are some technical errors and omissions in Part 135 which give rise to unintended obligations. These will be rectified in the next set of amendments to the Part but, in the meantime, until those amendments are made, it is necessary to use exemptions to provide relief from having to comply with certain requirements and directions to ensure safety compliance.

The exemptions and directions in the instrument require operator oversight of the actions of operator personnel and otherwise are intended to maintain previous regulatory requirements (prior to commencement of the FOR) where the FOR inappropriately failed to reflect those requirements. In other cases, exemptions are provided where relief from a requirement is considered appropriate, to facilitate implementation of the FOR requirements, and to permit, for private operations, compliance with Part 135 requirements instead of Part 91 requirements.

The main purpose of the instrument is to reissue *CASA EX85/21 – Part 135, Subpart 121.Z and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021* (the **previous instrument**). The instrument continues to exempt the operators, and pilots in command, of aeroplanes conducting operations under Parts 91, 121 and 135 from compliance with certain provisions of the Parts. The exemptions are subject to stated conditions. Also, the instrument continues to issue directions to the operators and pilots in command.

The few changes that have been made to the previous instrument are to include separate commencement and repeal sections instead of a duration section, save the operation of

certain approvals under the previous instrument, delete obsolete provisions and make a small number of minor amendments and corrections.

Human rights' implications

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

- (a) the right to life under Article 6 of the International Covenant on Civil and Political Rights (the *ICCPR*);
- (b) 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

Although the instrument contains exemptions from compliance with various provisions in Parts 91, 121 and 135, it does so subject to conditions imposed, and directions issued, in the interests of aviation safety. To the extent that the conditions and directions are expected to play a critical part in the avoidance of aviation accidents or incidents, the instrument may reasonably be said to support the right to life, and to contribute to safe and healthy working conditions in the operation of Part 135 aircraft.

Conclusion

The instrument is compatible with human rights, and to the extent that it may engage certain rights, it does so in a way that is reasonable, necessary and proportionate, in the interests of aviation safety.

Civil Aviation Safety Authority