

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX73/24 – Flight Operations Regulations – SMS, HFP&NTS and T&C Systems – Supplementary Exemptions and Directions Instrument 2024

Purpose

The purpose of *CASA EX73/24 – Flight Operations Regulations – SMS, HFP&NTS and T&C Systems – Supplementary Exemptions and Directions Instrument 2024* (the ***exemptions instrument***) is to continue the operation of a number of exemptions from obligations under the *Civil Aviation Safety Regulations 1998 (CASR)*, and a number of related directions, that relate to the requirements for Australian air transport operators and certificated aerial work operators to have safety management systems, human factors principles and non-technical skill training programs, and training and checking systems.

That purpose is achieved by continuing the policy effect of *CASA EX87/21 – Flight Operations Regulations – SMS, HFP&NTS and T&C Systems – Supplementary Exemptions and Directions Instrument 2021* (the ***repealed instrument***) in which the Civil Aviation Safety Authority (***CASA***) granted a number of exemptions from compliance with provisions of Part 119 (Australian air transport operations), Part 121 (Australian air transport operations – larger aeroplanes), Part 133 (Australian air transport operations – rotorcraft), Part 135 (Australian air transport operations – smaller aeroplanes) and Part 138 (aerial work operations) of CASR to provide a transitional period for Australian air transport operators before full implementation of the flight operations regulations, which commenced on 2 December 2021. The repealed instrument is repealed at the end of 1 December 2024.

The exemptions and directions in the repealed instrument, which required operator oversight of the actions of operator personnel, were designed to correct technical errors and omissions in Parts 119, 121, 133, 135 and 138 of CASR 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 the requirements of the earlier regulations that the flight operations regulations replaced. A range of safety conditions were required to be complied with in order to obtain the benefit of the exemptions.

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, to provide relief from having to comply with certain requirements, and to give directions to ensure safety compliance. 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 in the repealed instrument to provide relief from having to comply with unnecessary requirements, subject to conditions designed to ensure safety compliance that must be complied with in order to obtain the benefit of any exemption.

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 the CASR and *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) of CASR provides that, for subsection 98(5A) of the Act, CASA may grant an exemption from compliance with a provision of the regulations.

Under subregulation 11.160(2) of CASR, 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) of CASR, an exemption may be granted on application by a person or on CASA's own initiative.

Under subregulation 11.170(3) of CASR, in deciding whether to grant an exemption, CASA must regard as paramount the preservation of at least an acceptable level of aviation safety. Under subregulation 11.175(4) of CASR, 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 penalty of 50 penalty units) not to comply with the obligations imposed by a condition.

Regulation 11.225 of CASR 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) of CASR, CASA may, by instrument, issue a direction about any matter affecting the safe navigation and operation of aircraft. Subregulation 11.245(2) of CASR 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) of CASR, 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 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 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

Parts 119, 121, 133, 135 and 138 of CASR are elements of the suite of CASA's flight operations regulations, each of which commenced on 2 December 2021. The Parts dealt with a wide range of aviation matters, but relevantly with safety management systems, human factors principles and non-technical skills training programs, training and checking systems, and rotorcraft performance classes.

It is important to note that, prior to 2 December 2021, air transport operations in larger aircraft, and regular public transport operations, were already required to comply with safety rules in relation to virtually all of these matters. One of the purposes of the flight operations regulations was to require all air transport operations, including in smaller aircraft, to use similar system-based safety controls.

In 2021, CASA granted a number of exemptions and directions by making the repealed instrument to facilitate the implementation of Parts 91, 133 and 138 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. In general terms, the exemptions were available to former regular public transport, charter and aerial work (air ambulance) operators who, immediately before 2 December 2021, were required to have a training and checking organisation under regulation 217 of CAR.

On further review of those Parts, after the repealed instrument commenced, and after having regard to feedback from Australian air transport operators and other stakeholders regarding the implementation of Parts 91, 133 and 138, 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 EX145/21 – Amendment of CASA EX87/21 – Instrument 2021 (No. 1)*
- *CASA EX12/23 – Amendment of CASA EX87/21 – Instrument 2023 (No. 1)*
- *CASA EX60/23 – Amendment of CASA EX87/21 (Extension of Time) Instrument 2023 (No. 1)*
- *CASA EX99/23 – Amendment of CASA EX87/21 – Instrument 2023 (No. 2).*

Overview of instrument

The exemptions instrument continues the operation, on an interim basis, of certain exemptions from obligations under Part 133, 138 and 91 of CASR, and a number of related directions, that were granted by CASA in the repealed instrument and later amendments.

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.

Aviation safety

In determining whether to issue the exemptions instrument, CASA 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 the documents incorporated by reference into the exemptions instrument, how they are incorporated, the person or organisation responsible for each document and how they may be obtained.

Exposition of an operator

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.

The following provisions incorporate elements of an operator's exposition by referring to them:

- paragraph 7(2)(d) requires the operator's key personnel to oversee the recording, and retention of identified safety risk and controls implemented to address them for the relevant period identified in the operator's exposition;
- subparagraph 37(2)(b)(ii) makes it a condition of the exemptions in section 36 that the relevant operator must ensure that each crew member of a rotorcraft for a flight that is a Part 133 operation has been assessed as competent, in accordance with the operator's exposition, to perform the duties assigned to the person for the flight;
- paragraph 37(2)(e) makes it a condition of the exemptions in section 36 that the training record is retained for the relevant period identified in the operator's exposition;

- subparagraph 42(2)(b)(ii) makes it a condition of the exemptions in section 41 that the relevant operator must ensure that each crew member of an aeroplane for a flight that is a Part 135 operation, or a Subpart 121.Z operation (as applicable) has been assessed as competent, in accordance with the operator's exposition, to perform the duties assigned to the person for the flight;
- paragraph 42(2)(e) makes it a condition of the exemptions in section 41 that the relevant operator must ensure that the training record is retained for the relevant period identified in the operator's exposition.

An exposition is incorporated as in force from time to time, as authorised by subsection 98(5D) of the Act, and in accordance with the definition of **exposition** in the CASR Dictionary. An "exposition" for an operator generally means the exposition as changed from time to time, in accordance with the definition.

Also, subsection 3(4) of the exemptions instrument provides that, to avoid doubt, any document incorporated into the instrument is so incorporated as it is in force from time to time.

An operator's exposition is not publicly or freely available as it 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.

Operations manual of an operator

An operations manual 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.

Some of the components of an operation's manual are defined separately:

- HFP&NTS program exposition content is defined as the content of a relevant Australian air transport operator's exposition about HFP&NTS program matters, for the operator's proposed compliance with the provisions mentioned in section 26;
- SMS exposition content is defined to mean the content of a relevant Australian air transport operator's exposition about SMS, for the operator's proposed compliance with the CASR provisions from which a relevant Part of the exemptions instrument has exempted the operator;
- T&C exposition content is defined to mean the content of an Australian air transport operator's exposition about training and checking matters for the operator's proposed compliance with the CASR provisions from which a relevant Part of the exemptions instrument has exempted the operator.

The following provisions incorporate elements of an operator's operations manual by referring to them:

- paragraph 17(2)(d) makes it a condition of the exemptions in section 16 that the relevant operator must ensure that the operator's key personnel oversee the recording, and

retention of identified safety risk and controls implemented to address them for the relevant period identified in the operator's operations manual

- paragraph 47(2)(a) makes it a condition of the exemptions in section 46 that the relevant operator must ensure that the operator's head of operations ensures that training and checking of the operator's operational safety critical personnel, conducted by or for the operator, is conducted in accordance with the operator's operations manual
- paragraph 47(2)(d) makes it a condition of the exemptions in section 46 that the relevant operator must ensure that the training record is retained for the relevant period identified in the operator's operations manual.

An operations manual is incorporated as in force from time to time, which is authorised by subsection 98(5D) of the Act. Subsection 3(4) of the exemptions instrument provides that, to avoid doubt, any document incorporated into the instrument is so incorporated as it is in force from time to time.

An operations manual is not publicly or freely available as it is the proprietary intellectual and commercial property of the specific operator.

The incorporated requirements in an operations manual 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.

Contents of instrument

Part 1 — Preliminary, Definitions and Application

Section 1 sets out the name of the exemptions instrument.

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

Section 3 provides definitions for the instrument.

Section 4 provides that the exemptions instrument applies according to its terms.

Part 2 Safety management systems – Australian air transport operators – excluding certain Part 142 activities – exemptions

Section 5 provides that Part 2, which is about safety management systems, applies to an Australian air transport operator (called a **relevant operator** in the Part) who, immediately before 2 December 2021 held an AOC, or was an “early applicant” for an AOC or an AOC variation that authorised charter operations, or aerial work (air ambulance) operations **and did not** authorise regular public transport operations and did not authorise Part 142 activities in an aircraft (that is, flight training), and was not the subject of a direction under regulation 11.245 (CASA's power to give safety directions) to have an SMS.

An **early applicant** for an AOC or AOC variation is defined in section 3 as an applicant who applied for an AOC or AOC variation under the civil aviation legislation then in force at least

90 days before the commencement date of the repealed instrument (2 December 2021) but whose application was still under consideration by CASA on the commencement date.

The reference in the section to an aerial work (air ambulance) operation is necessary because such operations are Australian air transport operations under CASR.

Operators who conducted regular public transport operations or Part 142 activities in an aircraft immediately before 2 December 2021 do not benefit from the exemptions under Part 2 because they were, and continue to be, required to have an SMS for those operations.

Section 6 lists the provisions of Part 119, dealing with safety management systems, that impose requirements, from which a relevant operator is exempted. They are as follows:

- regulation 119.035, which requires an Australian transport operator to have a safety manager
- subparagraphs 119.130(1)(b)(iii) and (v), which make the chief executive officer of an Australian air transport operator responsible for ensuring that the operator implements and manages the operator's safety management system and has an organisational structure that ensures that the safety manager is independent and not subject to undue influence
- paragraph 119.130(1)(c), which makes the chief executive officer of an Australian air transport operator responsible for establishing and regularly reviewing the operator's safety performance indicators and targets
- regulation 119.155, which requires a safety manager for an Australian air transport operator to have sufficient relevant safety management experience to capably lead, manage and set standards to enable the operator to safely implement the operator's safety management system in accordance with its exposition, a satisfactory record in the conduct of management of the operations and sufficient safety and regulatory knowledge to conduct the operators operations safely and in accordance with the operator's exposition and the civil aviation legislation
- regulation 119.160, which requires the safety manager for an Australian air transport operator to manage the operator's safety management system including managing corrective, remedial and preventative action in relation to the system, regularly reporting to the chief executive on the effectiveness of the system and managing the continuous improvement of safety management systems and fatigue risk management systems if any
- regulation 119.190, which requires an Australian air transport operator to have a safety management system that is appropriate for the size, nature and complexity of the operator's Australian transport operations and specifies the contents of such a system;
- paragraph 119.205(1)(e), which requires an Australian air transport operator to include in its exposition information about the qualifications and experience of key personnel.

Section 7 makes the exemption in section 6 subject to several conditions, including that the operator must not commence scheduled air transport operations until the operator has complied with the directions in section 8 and that the operator must ensure that operational safety-critical personnel actively seek to identify any safety risks arising from the operator's operations, bring identified safety risks to the attention of the operator's key personnel as soon as practicable, review the identified safety risks and if ongoing aviation safety requires the risks to be addressed as soon as practicable through changes to the operator's exposition, oversee the recording, and retention for the relevant period identified in the operator's

exposition, of the identified safety risks and the corrective safety controls implemented to address those risks and procedures.

Section 8 directs a relevant operator who has taken the benefit of the SMS exemptions in section 6 to give CASA its safety management system implementation plan and supporting documents not later than the end of a date specified in writing by CASA and to not commence using its proposed SMS exposition content until the day it receives CASA's written advice that it may do so. Two notes make it clear that CASA will give at least 3 months' notice of the specified date and that any date specified in writing under section 8 of the repealed instrument continues to be specified for the purposes of the exemptions instrument.

Subsection 8(3) provides that paragraph 8(1)(b) does not apply to an operator's use of its proposed SMS exposition content for purposes other than compliance with civil aviation legislation. A note provides an example, that paragraph (1)(b) does not prevent an operator using its proposed SMS exposition content for the purpose of meeting a customer's contractual requirement for the operator to have and use a safety management system.

Section 9 provides that the exemptions under section 6 expire at the end of a date specified in writing by CASA. Two notes make it clear that CASA will give at least 3 months' notice of the specified date and that any date specified in writing under section 9 of the repealed instrument continues to be specified for the purposes of the exemptions instrument.

Part 4 Safety management systems – aerial work operations – excluding certain Part 142 activities – exemptions

Section 15 defines terms and deals with the application of Part 4

Subsection 15(1) defines ***relevant aerial work operation*** to mean an aerial work operation for which the aerial work operator is required to have an SMS under subregulation 138.140(1) of CASR and is not relieved of that requirement by subregulation 138.140(2).

Subsection 15(2) provides that Part 4 applies to an aerial work operator who immediately before 2 December 2021 held an AOC or was an early applicant for an AOC or AOC variation that authorised an aerial work operation (other than an air ambulance operation), did not authorise regular public transport operations or Part 142 activities in an aircraft, and was not subject to a direction under regulation 11.245 to have an SMS.

An ***early applicant*** for an AOC or AOC variation is defined in section 3 as an applicant who applied for an AOC or AOC variation under the civil aviation legislation then in force at least 90 days before the commencement date (2 December 2021) but whose application was still under consideration by CASA on 2 December 2021.

The reference in the section to an aerial work (air ambulance) operation is necessary because such operations are Australian air transport operations under CASR.

Operators who conducted regular public transport operations or Part 142 activities in an aircraft immediately before 2 December 2021 do not benefit from the exemptions under Part 4 because they were, and continue to be, required to have an SMS for those operations.

Section 16 lists the provisions of Part 138, dealing with safety management systems, from which a relevant operator is exempted. The provisions are:

- paragraphs 138.085(1)(c) and (d), which provides that the chief executive officer of an aerial work operator's operation where the operator is required to have a safety management system is responsible for ensuring that the operator implements and manages the operator's safety management system and has an organisational structure that ensures that the safety manager is independent and not subject to undue influence and is responsible for establishing and regularly reviewing the operator's safety performance indicators and targets
- regulation 138.110, which requires the safety manager of an aerial work operator that is required to have a safety management system to have sufficient relevant experience in carrying out, or managing others in carrying out air operations, sufficient relevant safety management experience to capably lead, manage and set standards to enable the operator to safely implement its safety management system in accordance with its operations manual, a satisfactory record in the conduct or management of air operations and sufficient safety and regulator knowledge to enable the operator to conduct the operator's aerial work operations safely and in accordance with its operations manual and the civil aviation legislation
- regulation 138.115, which requires the safety manager of an aerial work operator that is required to have a safety management system to manage the operator's safety management system including managing the operation of the safety management system, managing corrective, remedial and preventative action in relation to the system, regularly reporting to the chief executive officer on the effectiveness of the system and managing the maintenance and continuous improvement of the system;
- regulation 138.140, which requires an aerial work operator who conducts one or more of the listed operations to have a safety management system if they conduct aerial work operations transporting marine pilots, operations in certain multi-engine transport category rotorcraft, certain multi-engine aeroplanes and certain turbine-engine aeroplanes or operations prescribed by the Part 138 Manual of Standards for the purposes of the provision
- regulation 138.145, which lists the minimum matters that a safety management system must include
- paragraph 138.155(1)(e), which requires the operations manual for an aerial work operator to include listed information for each of its key personnel, but only to the extent that it applies to the safety manager.

Section 17 makes the operation of the exemptions in section 16 subject to two conditions.

Under subsection 17(1), the operator must not commence an aerial work operation that requires a safety management system and is of a kind that the operator was not authorised to conduct immediately before 2 December 2021 until the relevant operator has complied with the directions in section 18.

Subsection 17(2) sets out other safety conditions to which the exemption is subject, for example, the safety roles of operational safety-critical personnel and key personnel, and requires the operator's exposition must provide for the identification of safety risks and the implementation of safety controls to address those risks.

Section 18 provides further conditions for the operation of the exemptions in section 16 in relation to preparation for the exemptions to end.

Paragraph 18(1)(a) directs a relevant operator who has taken the benefit of any exemption under section 16 to give CASA the proposed SMS manual content, along with any supporting documents that are specified in writing by CASA not later than the end of a date specified in writing by CASA. Two notes make it clear that CASA will give at least 3 months' notice of any appropriate specified dates for submitting the proposed SMS manual content. Subsection 18(2) provides that documents submitted to CASA must be accompanied by the relevant approved Form (if any).

Paragraph 18(1)(b) directs such a relevant operator not to commence using its proposed SMS manual content until the day it receives CASA's written advice that it may do so. Two notes make it clear that receiving the written advice would permit a relevant operator to use the proposed SMS manual content immediately. In any event, it must be used as soon as the exemption expires on the specified date mentioned in section 19 and that any advice given under paragraph 18(1)(b) of the repealed instrument continues in force as if given under the exemptions instrument.

Subsection 18(3) provides that paragraph 18(1)(b) does not apply to an operator's use of its proposed SMS manual content for purposes other than compliance with civil aviation legislation. A note gives an example.

Part 6 — Human factors principles and non-technical skills – Australian air transport operators – exemptions

Section 25 provides that Part 6 applies to a relevant operator who immediately before 2 December 2021 held, or was an early applicant for, an AOC or AOC variation that authorised charter operations or aerial work (air ambulance) operations, and did not authorise regular public transport operations, and was not subject to a direction under regulation 11.245 to have a human factors principles and non-technical skills training program.

An *early applicant* for an AOC or AOC variation is defined in section 3 as an applicant who applied for an AOC or AOC variation under the civil aviation legislation then in force at least 90 days before the commencement date (2 December 2021) but whose application was still under consideration by CASA on 2 December 2021.

The reference in section 25 to an aerial work (air ambulance) operation is necessary because such operations are Australian air transport operations under CASR.

Section 26 lists the provisions of Part 119, dealing with the human factors principles and non-technical skill training program requirements, from which a relevant operator is exempted. These are as follows:

- paragraph 119.130(1)(e), which provides that the chief executive officer of an Australian air transport operator is responsible for ensuring that training and checking of the operator's safety-critical personnel (other than flight crew) conducted by or for the operator is conducted in accordance with the operator's exposition, but only to the extent that it applies to training and checking of operational safety-critical personnel (other than flight crew) in a human factors principles and non-technical skill program

- regulation 119.175, which requires an Australian air transport operator to have a program for training and assessing operational safety-critical personnel in human factors principles and non-technical skills
- regulation 119.180, which provides that an Australian air transport operator contravenes the subregulation if a person who is a member of the operator's personnel listed in the provision, does not carry out a duty of the person's position if they have not met the training requirements in the operator's exposition
- regulation 119.185 which provides that an Australian air transport operator contravenes the subregulation if a member of the operator's operational safety-critical personnel other than personnel mentioned in subregulation 119.180(2) fails to meet the requirements in the operator's exposition about training in human factors principles and non-technical skills within 3 months after being appointed to the person's position or performs a duty of the person's position described in the operator's exposition as a duty that may be performed only by a person who meets the requirements in the exposition about training in human factors principles and non-technical skills and the person does not meet the requirements in the exposition about training in human factors principles and non-technical skills.

Section 27 provides safety conditions for the operation of the exemptions in section 26. The section provides that it is a condition of the exemptions that the operator must not commence scheduled air transport operations until CASA approves the operator's human factors principles and non-technical skill program exposition content for the operations.

Section 28 issues directions relating to the exemptions in section 26 in relation to preparation for the exemptions to end.

Paragraph 28(1)(a) directs that a relevant operator who has taken the benefit of any exemption under section 26 must give CASA the proposed human factors principles and non-technical skill program exposition content, along with any supporting documents that are specified in writing by CASA not later than the end of a date specified in writing by CASA. Two notes make it clear that CASA will give at least 3 months' notice of the specified date and that documents submitted under paragraph 28(1)(a) of the repealed instrument will be taken to be submitted for the purposes of the exemptions instrument.

Paragraph 28(1)(b) directs that a relevant operator who has taken the benefit of any exemption under section 26 must not commence using its proposed human factors principles and non-technical skill program exposition content until the day it receives CASA's written advice that it may do so. This is subject to subsection 28(3) which provides that paragraph (1)(b) does not apply to an operator's use of its proposed human factors principles and non-technical skill program exposition content for purposes other than compliance with civil aviation legislation. Notes make it clear that receiving the written advice would permit a relevant operator to use the proposed human factors principles and non-technical skill program exposition content immediately, that, in any event, it must be used as soon as the exemption expires on the specified date mentioned in section 29 and that any advice given under paragraph 28(1)(b) of the repealed instrument continues in force as if given under the exemptions instrument.

Section 29 provides that the exemptions under section 26 expire for a relevant operator at the end of a date specified in writing by CASA. Two notes make it clear that CASA will give at least 3 months' notice of the specified date and that any date specified in writing under

section 29 of the repealed instrument continues to be specified for the purposes of the exemptions instrument.

Part 8 Training and checking systems – Australian air transport operators – Part 133 operations – rotorcraft – exemptions

Section 35 provides that Part 8 applies to a relevant operator for the conduct of a Part 133 operation if, immediately before 2 December 2021, the operator held an AOC or was an early applicant for an AOC or AOC variation that authorised charter operations or aerial work (air ambulance) operations and was not subject to a requirement under regulation 217 of CAR to provide a training and checking organisation or the operations of a rotorcraft used in the operations.

An *early applicant* for an AOC or AOC variation is defined in section 3 as an applicant who applied for an AOC or AOC variation under the civil aviation legislation then in force at least 90 days before the commencement date (2 December 2021) but whose application was still under consideration by CASA on 2 December 2021.

The reference in the section to an aerial work (air ambulance) operation is necessary because such operations are Australian air transport operations under CASR.

Section 36 lists the provisions of Part 119 and Part 133, dealing with training and checking system requirements, from which a relevant operator is exempted. A relevant operator is exempted from compliance with the following provisions:

- regulation 119.036, which requires an Australian air transport operator to have a position that is the head of the training and checking for the organisation
- regulation 119.145, which requires the head of training and checking of an Australian air transport operator to have the qualifications and experience set out in the regulation
- regulation 119.150, which requires the head of training and checking of an Australian air transport operator to safely manage the training and checking activities of the operator for the operator's flight crew, including some responsibilities listed in the regulation
- regulation 119.170, which requires an Australian air transport operator to have a training and checking system and lists what the system must include
- paragraph 119.205(1)(e), which requires the exposition for an Australian air transport operator to include certain information about the qualifications and experience of each of the operator's key personnel, but only to the extent that it applies to the head of training and checking
- paragraph 133.370(2)(g), which makes the operator of a rotorcraft for a flight liable if, when the flight begins, each flight crew member does not meet the training and checking requirements for the flight crew member and the flight (A note to the section makes it clear that, for paragraph (f), exemption from paragraph 133.370(2)(g) has the implied consequential effect of exempting from subregulation 133.370(4) and Chapter 12 of the Part 133 Manual of Standards)
- regulation 133.375, which makes the operator of a rotorcraft for a flight guilty of an offence if the operator assigns a person to duty as a flight crew member for the flight and the person has not been assessed by the operator, in accordance with the operator's training and checking system, as competent to perform the duties assigned to the person for the flight

- paragraph 133.385(1)(c), which provides that a pilot for a flight that is a multi-crew operation is only qualified as pilot in command for the flight if the pilot has successfully completed command training that complies with the requirements prescribed by the Part 133 Manual of Standards
- regulation 133.395, which provides that the operator of a rotorcraft for a flight contravenes the subregulation if the operator requires the pilot in command of the rotorcraft for the flight to operate the rotorcraft as pilot in command, carry out the duties of co-pilot or carry out training or examining duties, and the pilot in command does not hold a valid proficiency check, in accordance with the requirements prescribed by the Part 133 Manual of Standards, for the operator and the rotorcraft for a pilot who will be required to operate the rotorcraft in the non-command pilot seat (A note to the section provides that, for paragraph (j), exemption from paragraph 133.425(3)(b) has the implied consequential effect of exempting from subregulation 133.425(4) and section 13.02 of the Part 133 Manual of Standards)
- paragraph 133.425(3)(b), which requires each cabin crew member of a rotorcraft for a flight to meet the training and checking requirements for the cabin crew member and the flight prescribed by the Part 133 Manual of Standards relating to training and checking
- regulation 133.455, which provides that the operator of a rotorcraft for a flight contravenes the regulation if an air crew member is carried on the flight and the air crew member does not meet the training and checking requirements for the air crew member and the flight prescribed in the Part 133 Manual of Standard relating to training and checking
- regulation 133.465, which provides that the operator of a rotorcraft for a flight contravenes the subregulation if the operator assigns a person to duty as an air crew member for the flight and the person does not meet the requirement in the ICA level 4, 5 or 6 aviation English language proficiency standards mentioned in the Part 61 Manual of Standards
- regulation 133.470, which provides that the operator of a rotorcraft for a flight contravenes the subregulation if a medical transport specialist is carried on the flight and the medical transport specialist does not meet the training and checking requirements for the medical transport specialist and the flight prescribed by the Part 133 Manual of Standards.

Section 37 makes the exemptions in section 36 subject to several conditions.

Under subsection 37(1), the relevant operator must not commence scheduled air transport operations, or the use of a rotorcraft for an air transport operation, that would have required a training and checking organisation under regulation 217 of CAR, until CASA approves the operator's training and checking system exposition content for the operations or rotorcraft.

Subsection 37(2) makes the exemptions in section 36 subject to further safety conditions, including that the operator's head of flying operations must assume the responsibilities of the head of training and checking, and that a comprehensive training record must be maintained for each crew member for a flight that is a Part 133 operation.

Section 38 issues directions relating to the operation of the exemptions in section 36 in relation to preparation for the exemptions to end.

Paragraph 38(1)(a) directs a relevant operator who has taken the benefit of any exemption under section 36 to give CASA the proposed training and checking system exposition content, along with any supporting documents that are specified in writing by CASA, not later than the end of a date specified in writing by CASA. Two notes make it clear that CASA will give at least 3 months' notice of the specified date and that any date specified in writing under paragraph 38(1)(a) of the repealed instrument continues to be specified for the purposes of the exemptions instrument.

Paragraph 38(1)(b) directs a relevant operator who has taken the benefit of any exemption under section 36 to not commence using its proposed training and checking system exposition content until the day it receives CASA's written advice that it may do so. This is subject to subsection 38(3), which provides that paragraph (1)(b) does not apply to an operator's use of its proposed training and checking system exposition content for purposes other than compliance with civil aviation legislation.

Subsection 38(2) provides that, for subsection 38(1), documents submitted to CASA must be accompanied by the relevant approved Form (if any).

Section 39 provides that the exemptions under section 36 expire for a relevant operator at the end of a date specified in writing by CASA. Two notes make it clear that CASA will give at least 3 months' notice of the specified date and that any date specified in writing under section 39 of the repealed instrument continues to be specified for the purposes of the exemptions instrument.

Part 9 Training and checking systems – Australian air transport operators – Part 135 operations and Subpart 121.Z operations – aeroplanes – exemptions

Section 40 provides that Part 9 applies to a relevant operator for the conduct of a Part 135 operation if, immediately before 2 December 2021, the operator held an AOC or was an early applicant for an AOC or AOC variation that authorised charter operations or aerial work (air ambulance) operations and was not subject to a requirement under regulation 217 of CAR to provide a training and checking organisation for the operations or an aeroplane used in the operations.

An *early applicant* for an AOC or AOC variation is defined in section 3 as an applicant who applied for an AOC or AOC variation under the civil aviation legislation then in force at least 90 days before the commencement date (2 December 2021) but whose application was still under consideration by CASA on that date.

The reference in the section to an aerial work (air ambulance) operation is necessary because such operations are Australian air transport operations under CASR.

Section 41 lists the provisions of Part 119 and Part 135, dealing with training and checking system requirements, from which a relevant operator is exempted. A relevant operator is exempted from compliance with the following provisions:

- regulation 119.036, which requires an Australian air transport operator to have a position that is the head of training and checking for the organisation
- regulation 119.145, which requires the head of training and checking of an Australian air transport operator to have the qualifications and experience set out in the regulation

- regulation 119.150, which requires the head of training and checking of an Australian air transport operator to safely manage the training and checking activities of the operator for the operator's flight crew, including some responsibilities listed in the regulation
- regulation 119.170, which requires an Australian air transport operator to have a training and checking system and lists what the system must include
- paragraph 119.205(1)(e), which requires the exposition for an Australian air transport operator to include certain information about the qualifications and experience of each of the operator's key personnel, but only to the extent that it applies to the head of training and checking
- paragraph 135.380(2)(f), which provides that the operator of an aeroplane for a flight contravenes subregulation 135.380(1) if any flight crew member does not meet the training and checking requirements for the flight crew member and the flight mentioned in the Part 135 Manual of Standards (A note to the section makes it clear that for paragraph (f), exemption from paragraph 135.380(2)(f) has the implied consequential effect of exempting from subregulation 135.380(4) and Chapter 12 of the Part 135 Manual of Standards)
- regulation 135.385, which provides that the operator of an aeroplane for a flight contravenes the regulation if the operator assigns a person to duty as a flight crew member for the flight and the person has not been assessed by the operator, in accordance with the operator's training and checking system, as competent to perform the duties assigned to the person for the flight
- paragraph 135.395(1)(c), which provides that a pilot is qualified as pilot in command for a flight of an aeroplane if the pilot has successfully completed command training that complies with the requirements prescribed by the Part 135 Manual of Standards
- regulation 135.405, which provides (in subsection (1)) that the operator of an aeroplane for a flight contravenes subregulation 135.405(1) if the operator requires the pilot in command of the aeroplane for the flight to operate the aeroplane as pilot in command, carry out the duties of co-pilot or carry out training or examining duties in the non-command pilot's seat and the pilot in command does not hold a valid proficiency check in accordance with the requirements prescribed by the Part 135 Manual of Standards. For the operator and the flight for a pilot who will be required to operate the aeroplane in the non-command pilot's seat. Subregulation 135.405(2) provides that the pilot in command of an aeroplane for a flight contravenes the subregulation if the pilot in command operates the aeroplane in the non-command pilot's seat and does not hold a valid proficiency check for the operator and the flight for a pilot who will be required to operate the aeroplane in the non-command pilot's seat
- regulation 135.430, which provides (in subsection (1)) that an operator contravenes the subregulation, if the operator assigns a pilot to duty as a pilot in command for flights on different types of turbine-engine aeroplanes and the pilot does not hold a valid proficiency check, in accordance with the requirements prescribed by the Part 135 Manual of Standards and (in subregulation 135.430(2)) that an operator contravenes the subregulation if the operator assigns a pilot to duty as pilot in command for flights on different types of piston-engine aeroplanes and the pilot does not meet requirements about holding a valid proficiency check
- regulation 135.445, which provides that the operator of an aeroplane for a flight contravenes the regulation if an air crew member is carried on the flight and the air crew member does not meet the training and checking requirements for the air crew member and the flight prescribed in the Part 135 Manual of Standards relating to training and checking that must be completed by an air crew member for a flight of an aeroplane

- regulation 135.455, which provides that the operator of an aeroplane for a flight contravenes the subregulation if the operator assigns a person to duty as an air crew member for the flight and the person does not meet the requirements prescribed by the ICAO level 4, 5 or 6 aviation English language proficiency standards mentioned in the Part 61 Manual of Standards
- regulation 135.460, which provides that the operator of a rotorcraft for a flight contravenes the regulation if an air crew member is carried on the flight and the air crew member does not meet the training and checking requirements for the air crew member and the flight prescribed in the Part 133 Manual of Standard relating to training and checking.

Section 42 provides safety conditions for the operation of the exemptions in section 41.

Subsection 42(1) makes it a condition of the exemptions in section 41 that the relevant operator must not commence scheduled air transport operations, or the use of an aeroplane for an air transport operation, that would have required a training and checking organisation under regulation 217 of CAR, until the relevant operator has complied with the directions in section 43 for the relevant operations or the relevant aircraft (that is, CASA has approved the operator's training and checking system exposition content for the operations or aeroplane).

Subsection 42(2) provides other safety conditions for the exemptions, including that the operator's head of flying operations must assume the responsibilities of the head of training and checking, and that a comprehensive training record must be maintained for each crew member.

Section 43 directs that a relevant operator who has taken the benefit of any exemption under section 41 in relation to preparation for the exemptions to end.

Paragraph 43(1)(a) directs the relevant operator who has taken the benefit of an exemption under section 41 to give CASA the proposed training and checking system exposition content along with any supporting documents specified by CASA no later than the end of a date specified in writing by CASA.

Paragraph 43(1)(b) directs a relevant operator who has taken the benefit of any exemption under section 41 to not commence using its proposed training and checking system exposition content until the day it receives CASA's written advice that it may do so.

Subsection 43(3) provides that paragraph (1)(b) does not apply to an operator's use of its proposed training and checking system exposition content for purposes other than compliance with civil aviation legislation. A note makes it clear that, for example, paragraph (1)(b) does not prevent an operator using its proposed training and checking system exposition content for the purpose of meeting a customer's contractual requirement for the operator to have and use an enhanced system of conducting training and checking activities (as compared to section 42 safety conditions).

Section 44 provides that the exemptions in section 41 expire for a relevant operator at the end of a date specified in writing by CASA of which there will be at least 3 months' notice. Notes to the section make it clear that CASA will give at least 3 months' notice of the specified date and that any date specified in writing under section 44 of the repealed instrument continues to be specified for the purposes of the exemptions instrument.

Part 10 Training and checking systems – aerial work operators – exemptions

Section 45 defines terms and sets out the application of Part 10.

Subsection 45(1) provides that a relevant aerial work operation for Part 10 means an aerial work operation that is required to have a training and checking system under subregulation 138.125(1) and is not relieved of that requirement under subregulation 138.125(2).

Subsection 45(2) provides that Part 10 applies to an aerial work operator who immediately before 2 December 2021 held an AOC or was an early applicant for an AOC or AOC variation that authorised aerial work operations (other than aerial work (air ambulance) operations), and was not subject to a requirement under regulation 217 of CAR to provide a training and checking organisation for the operations or for an aircraft used in the operations.

An *early applicant* for an AOC or AOC variation is defined in section 3 as an applicant who applied for an AOC or AOC variation under the civil aviation legislation then in force at least 90 days before the commencement date (2 December 2021) but whose application was still under consideration by CASA on 2 December 2021.

The reference in the section to an aerial work (air ambulance) operation is necessary because such operations are Australian air transport operations under CASR.

Section 46 lists the provisions of Part 138, dealing with training and checking system requirements, from which a relevant operator is exempted. A relevant operator is exempted from compliance with the following provisions:

- regulation 138.100, which requires the head of training and checking of an aerial work operator that is required to have a training and checking system to have the listed qualifications and experience
- regulation 138.105, which requires the head of training and checking of an aerial work operator that is required to have a training and checking system to safely manage the training and checking system of the operator and specifies some of their responsibilities
- regulation 138.125, which specifies the aerial work operators who are required to have a training and checking system and the requirements that the training and checking system must meet
- regulation 138.130, which specifies the matters that must be included in an aerial work operator's training and checking for flight crew, including recurrent training and line checking
- paragraph 138.475(2)(f), which provides that the operator of an aircraft for a flight involving an aerial work operation contravenes subregulation 138.475(1) if, when the flight begins, any flight crew member does not meet the training and checking requirements for the flight crew member prescribed by the Part 138 Manual of Standards relating to training and checking that must be completed by a flight crew member for a flight
- paragraph 138.540(2)(b), which provides that the operator of an aircraft for a flight involving an aerial work operation contravenes subregulation 138.540(2) if, when the flight begins, any air crew member does not meet the training and checking requirements for the flight crew member and the flight mentioned in the Part 138 Manual of Standards that must be completed by an air crew member for a flight.

Subsection 46(2) provides that the exemptions under paragraphs 46(1)(e) and (f) do not extend to exempt an operator from compliance with paragraph 23.03(2)(e) of the Part 138 Manual of Standards, which requires a flight crew member to complete conversion training that includes training specific to the kind of aerial work operation being conducted during the flight before a person acts as a flight crew member for a flight without the direct supervision of a person who meets the requirements of paragraph 138.505(2)(a) or (b).

Subsection 46(3) contains a direction that a relevant operator must ensure that any training required under paragraph 23.03(2)(e) of the Manual of Standards (which is about training in the conduct of passenger safety briefings and demonstrations) is conducted as if the requirements of that Manual of Standards applied to the operator for the training.

Section 47 provides safety conditions for the operation of the exemptions in section 46. Subsection 47(1) provides that, until CASA approves the operator's training and checking system manual content for the operations or aircraft, the relevant operator must not:

- (a) commence aerial work operations (that require a training and checking system) that are of a kind that the operator was not authorised to conduct immediately before 2 December 2021; or
- (b) commence aerial work operations or the use of an aircraft (that require a training and checking system) that would have required a training and checking organisation under regulation 217 of CAR.

Subsection 47(2) provides other safety conditions for the exemptions, including that the operator's head of operations must assume the responsibilities of the head of training and checking and that a comprehensive training record must be maintained for each crew member.

Section 48 issues directions relating to exemptions for an aerial work operator required to have a training and checking system prescribed under subregulation 138.125(1), from obligations in relation to training and checking system manual content under Part 138 of CASR.

Paragraph 48(1)(a) directs that a relevant operator who has taken the benefit of any exemption under section 46 must, give CASA the proposed training and checking system manual content, with an application for its approval not later than the end of a date specified in writing by CASA, along with any supporting documents that are specified in writing by CASA.

Paragraph 48(1)(b) directs that a relevant operator who has taken the benefit of any exemption under section 46 not commence using its proposed training and checking system manual content until the day it receives CASA's written advice that it may do so. Subsection 48(3) provides that paragraph (1)(b) does not apply to an operator's use of its proposed training and checking system manual content for purposes other than compliance with civil aviation legislation.

Section 49 provides that the exemptions under section 46 expire for a relevant operator at the end of a date specified in writing by CASA. Two notes make it clear that CASA will give at least 3 months' notice of the specified date and that any date specified in writing under

section 49 of the repealed instrument continues to be specified for the purposes of the exemptions instrument.

Part 11 Flight data analysis programs – Australian air transport operators – exemption

Section 50 provides that Part 11 applies to an Australian air transport operator, called the relevant operator in the Part, who, immediately before 2 December 2021, held an AOC or was an early applicant for an AOC or AOC variation that authorised regular public transport operations, charter operations or aerial work (air ambulance) operations, and was not subject to a requirement under CAO 82.3 or 82.5 then in force, or to a direction under regulation 11.245, to have a flight data analysis program for the operation of the aircraft in those operations.

An *early applicant* for an AOC or AOC variation is defined in section 3 as an applicant who applied for an AOC or AOC variation under the civil aviation legislation then in force at least 90 days before the commencement date (2 December 2021) but whose application was still under consideration by CASA on 2 December 2021.

The reference in the section to an aerial work (air ambulance) operation is necessary because such operations are Australian air transport operations under CASR.

Section 51 provides that the operator is exempted from compliance with regulation 119.195 (this requires the operator to have a flight data analysis program for certain aircraft).

Section 52 makes it a condition of the exemption in section 51 that the operator must not commence a scheduled air transport operation in an aircraft that required, or would have required, a flight data analysis program under CAO 82.3 or 82.5, as in force immediately before 2 December 2021, until the relevant operator has complied with the directions in section 53.

Section 53 issues directions to relevant operators about exposition content.

Paragraph 53(1)(a) requires a relevant operator who has taken the benefit of any exemption under section 51 to give CASA the proposed exposition content that meets the requirements of regulation 119.195 along with any supporting documents that are specified in writing by CASA not later than the end of a date specified in writing by CASA. Two notes make it clear that CASA will give at least 3 months' notice of the specified date and that any date specified in writing under paragraph 53(1)(a) of the repealed instrument continues to be specified for the purposes of the exemptions instrument.

Paragraph 53(1)(b) directs a relevant operator who has taken the benefit of any exemption under section 51 to not commence using its proposed exposition content until the day it receives CASA's written advice that it may do so. Notes make it clear that receiving the written advice would permit a relevant operator to use the proposed exposition content immediately and, in any event, it must be used as soon as the exemption expires on the specified date mentioned in section 54 and that advice given under paragraph 53(1)(b) of the repealed instrument continues in force as if given under the exemptions instrument.

Subsection 53(2) provides that document submitted to CASA under the section must be accompanied by the relevant approved Form (if any).

Subsection 53(3) provides that the subsection does not apply to an operator's use of its proposed training and checking system exposition content for purposes other than compliance with civil aviation legislation.

Section 54 provides that the exemptions under section 51 expire for a relevant operator at the end of a date specified in writing by CASA. Two notes make it clear that CASA will give at least 3 months' notice of any appropriate specified dates and that subsection 55(2) saves any date specified in writing under the equivalent of section 54 of the repealed instrument.

Part 12 Transitional provisions

Section 55 is a transitional provision that saves any approval or advice given by CASA under the repealed instrument that was in force immediately before the commencement of the exemptions instrument. Such an approval or advice continues on and from that commencement as if it were an equivalent approval or advice given by CASA under the exemptions instrument and subject to the same terms and conditions.

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 certain 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 sunseting 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 sunseting 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 received feedback from Australian air transport operators, aerial work operators and other stakeholders, and engaged in further informal consultation with a range of operators as well as broader communications with the relevant aviation industry, before making subsequent amendments to the repealed instrument, discussed in detail in the Explanatory Statements for each of the following instruments:

- *CASA EX145/21 – Amendment of CASA EX87/21 – Instrument 2021 (No. 1)*
- *CASA EX12/23 – Amendment of CASA EX87/21 – Instrument 2023 (No. 1)*
- *CASA EX60/23 – Amendment of CASA EX87/21 (Extension of Time) Instrument 2023 (No. 1)*
- *CASA EX99/23 – Amendment of CASA EX87/21 – Instrument 2023 (No. 2).*

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 exemptions 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.

In the circumstances, CASA is satisfied that it has undertaken such consultation as it considers appropriate and reasonably practicable.

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.

Compliance with these pre-existing obligations under the flight operations regulations will have cost impacts for operators. However, the exemptions instrument has the effect of delaying the time at which those costs will arise. Compliance with the flight operations regulations will be achieved by complying with the extended timeframes for the directions and conditions in the exemptions instrument.

The economic and cost impact of the instrument has been determined by:

- (a) the identification of individuals and businesses affected by the instrument; and
- (b) consideration of how the requirements to be imposed on individuals and businesses under the instrument will be different compared to existing requirements; and
- (c) a valuation of the impact, in terms of direct costs on individuals and businesses affected by the instrument to comply with the different requirements. This valuation is consistent with the principles of best practice regulation of the Australian Government; and
- (d) a valuation of the impact the different requirements would have on the production, distribution and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly; and
- (e) consideration of community impacts, beyond those direct impacts on individuals and businesses affected by the instrument, that are relevant if the instrument were to result in flow-on effects to other aviation businesses, or local non-aviation businesses that experience a change in their activity due to the instrument.

There will be a particular impact on air transport operators, medical transport operators and aerial work operators.

Impact on categories of operations

The exemptions 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. However, smaller operators, more likely to be located in rural and regional areas, will benefit from further time to transition to the flight operations regulations.

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 reference number: OIA23-06252).

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights at Attachment 1 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The exemptions instrument is compatible with human rights: with its aviation safety focus, it promotes both the right to life, and the right to safe and healthy working conditions and, to the extent that it engages the right to work it does so in a way that promotes and protects that rights through ensuring the continuing safety of relevant operations and is reasonable, necessary and proportionate in the context of aviation safety, but only insofar as the conditions and directions are complied with.

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 EX73/24 – Flight Operations Regulations – SMS, HFP&NTS and T&C Systems – 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 the legislative instrument

The purpose of *CASA EX73/24 – Flight Operations Regulations – SMS, HFP&NTS and T&C Systems – Supplementary Exemptions and Directions Instrument 2024* (the **exemptions instrument**) is to continue the operation of a number of exemptions from obligations under the *Civil Aviation Safety Regulations 1998 (CASR)*, and a number of related directions, that relate to the requirements for Australian air transport operators and certificated aerial work operators to have safety management systems, human factors principles and non-technical skill training programs, and training and checking systems.

That purpose is achieved by continuing the policy effect of *CASA EX87/21 – Flight Operations Regulations – SMS, HFP&NTS and T&C Systems – Supplementary Exemptions and Directions Instrument 2021* (the **repealed instrument**) in which the Civil Aviation Safety Authority (**CASA**) granted a number of exemptions from compliance with provisions of Part 119 (air transport operations), Part 121 (Australian air transport operations), Part 133 (medical transport rotorcraft operations), Part 135 (smaller Australian air transport operations) and Part 138 (aerial work operations) of CASR to provide a transitional period for Australian air transport operators before full implementation of the flight operations regulations, which commenced on 2 December 2021. The repealed instrument 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 Parts 119, 121, 133, 135 and 138 of CASR 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 the requirements of the earlier regulations that the flight operations regulations replaced. A range of safety conditions were to be complied with in order to obtain the benefit of the exemptions.

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, to provide relief from having to comply with certain requirements, and to give directions to ensure safety compliance. 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 in the repealed instrument to provide relief from having to comply with unnecessary requirements, subject to conditions designed to ensure safety compliance that must be complied with in order to obtain the benefit of any exemption.

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 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 effect of the instrument is to defer implementation dates of certain regulatory requirements over specified periods of time. For operators who voluntarily elect to take advantage of the exemption, various regulatory provisions that would otherwise apply under the flight operations regulations will not apply for the deferred period. An operator who chooses not to take the benefit of the exemptions instrument is obliged to comply with the terms of the relevant flight operations regulations.

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.

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 regranting 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.

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. Although this legislative instrument contains exemptions from obligations under Parts 138 and 91 of 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.

The instrument requires certain key managers of an aerial work certificate holder to have specified qualifications and experience. CASA prescribes the responsibilities of key managers and minimum qualifications and experience requirements for these managers. This

is necessary to ensure that the operations are conducted safely and that managers are able to provide appropriate oversight of the activities of their personnel. For aerial work operations that are large and complex, experience above the minimum standards may be required. In all cases, the qualifications and experience required are necessary in the interests of safety, reasonable and proportionate. In some circumstances, this may affect the employability of key managers, as additional training may be required. However, the increased skill resulting from the increased training will improve the safety of aviation operations, thereby contributing to safe and healthy working conditions and, ultimately, to the right to life.

Conclusion

The exemptions and directions in this legislative instrument are 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*.

This legislative instrument continues the operation of existing substantive exemptions which themselves have indirect effects on the right to life and the right to work and promote the right to safe and healthy working conditions on board relevant aircraft and for ground staff, but only insofar as the conditions and directions promote and protect those rights through ensuring the continuing safety of relevant operations on board relevant aircraft and for ground staff.

The requirements in the instrument are considered 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. The latter contribute to the avoidance of accidents and incidents and, thereby, promote the right to life and the right to safe and healthy working conditions.

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

Civil Aviation Safety Authority