

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX91/24 – Use of Certain External Load Equipment in SAR and Medical Transport Operations – Exemption Instrument 2024

Purpose

The purpose of *CASA EX91/24 – Use of Certain External Load Equipment in SAR and Medical Transport Operations – Exemption Instrument 2024* (the **exemption instrument**) is to exempt from airworthiness approval requirements certain equipment used for, or in relation to, the retrieval of injured persons in a medical transport operation (an **MTO**), or in an aerial work search and rescue operation (a **SAR operation**), under Part 133 or Part 138, respectively, of the *Civil Aviation Safety Regulations 1998 (CASR)*.

Relevant equipment, in a generic sense, is defined as any article, appliance, part, or material, however described, that:

- (a) is not part of the aircraft approved design; and
- (b) is used as part of a SAR operation or an MTO for the purposes of:
 - (i) carrying a person external to a rotorcraft; or
 - (ii) restraining a person inside a rotorcraft at an open door while they operate a winch or carry out similar duties; and
- (c) is not approved under Part 21 of CASR.

In practical terms, the types of equipment typically used in these operations, *include* harnesses, stretchers, litters, rescue baskets, and rescue vests. The relevant MTO and SAR operations are often referred to as human external cargo, or HEC.

Legislation — Part 133

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, namely CASR.

Part 133 of CASR relevantly deals with the carriage in rotorcraft of passengers who are patients and medical personnel in MTO.

Under section 5 of the exemption instrument, a relevant operator, and the relevant pilot in command of an MTO operation, are each exempted from compliance with: regulation 133.295, and subregulation 133.360(2), but only to the extent of the requirement under section 5.06 of the *Part 133 Manual of Standards* (the **Part 133 MOS**) that, for the use of relevant equipment in an MTO, the equipment must meet the requirements of, or be approved under, Part 21 of CASR.

Regulation 133.295 of CASR concerns compliance with requirements under the Part 133 MOS relating to external load operations involving winching a person.

Subregulation 133.360(2) of CASR concerns compliance with requirements under the Part 133 MOS relating to equipment.

Section 5.06 of the Part 133 MOS concerns compliance with, or approval under, Part 21 of CASR for external load equipment, fittings, lines, safety harnesses, restraint straps and rescue harnesses.

Part 21 of CASR relevantly concerns certification and airworthiness requirements for the equipment the instrument applies to.

Legislation — Part 138

Part 138 of CASR relevantly deals with aerial work operations in the form of SAR operations in rotorcraft.

Under section 6 of the instrument, the relevant operator and the pilot in command of a SAR operation are each exempted from compliance with regulation 138.375, subregulations 138.410(4), (5) and (6), and subregulations 138.465(3) and (4), but only to the extent of the requirements under subsection 14.02(3), paragraph 14.03(3)(b) and subsection 15.04(2) of the Part 138 MOS that, for the use of relevant equipment in a SAR operation, the equipment must meet the requirements of, or be approved under, Part 21 of CASR.

Regulation 138.375 concerns compliance with requirements under the Part 138 MOS relating to the wearing of seatbelts and other restraint devices in aerial work operations.

Subregulations 138.410(4), (5) and (6) concern compliance by aerial work operators and pilots in command of relevant rotorcraft with requirements under the Part 138 MOS relating to external load operations.

Subregulations 138.465(3) and (4) concern compliance with requirements under the Part 138 MOS relating to equipment.

Part 21 of CASR relevantly concerns certification and airworthiness requirements for the equipment the instrument applies to.

Legislation — exemptions

Subpart 11.F of CASR deals with exemptions. Under subregulation 11.160(1), and for subsection 98(5A) of the Act, CASA may, by instrument, grant an exemption from a provision of CASR in relation to a matter mentioned in subsection 98(5A).

Subsection 98(5A) matters are, in effect, those affecting the safety, airworthiness or design of aircraft.

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

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

Under regulation 11.205, CASA may impose conditions on an exemption if this is necessary in the interests of the safety of air navigation. Under regulation 11.210, it is a strict liability offence (with a current penalty of 50 penalty units) not to comply with the

obligations imposed by a condition (in this case the safety conditions as set out in sections 7, 8 and 9 of the instrument). Under regulation 11.225, CASA must, as soon as practicable, publish on the internet details of all exemptions under Subpart 11.F of CASR.

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

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

Legislation — directions

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

Under regulation 11.250, a direction ceases to be in force on a day specified in the instrument or, if no day is specified, 1 year after the instrument commences. Under subregulation 11.255(1), it is a strict liability offence (with a current penalty of 50 penalty units) to contravene a direction under regulation 11.245 that is applicable to the person (in this case the directions as set out in sections 10 and 11 of the instrument).

Background

The relevant equipment that is the subject of the exemption instrument is used in MTO and SAR operations for the carriage of persons external to the rotorcraft.

As mentioned, harnesses, stretchers, litters, rescue baskets, and rescue vests are all types of equipment typically used in these operations.

The relevant equipment might be described as legacy equipment which met, and generally continues to meet, the safety requirements in force before 2 December 2021. The post-2 December 2021 requirements under Parts 133 and 138 are essentially similar to those earlier standards except that specific airworthiness approval under Part 21 is now required.

For some of the relevant equipment, approval under Part 21, which deals with certification and airworthiness requirements for aircraft and parts, is possible and pending because it can, in due course, meet the relevant airworthiness standards prescribed under Part 21.

Other equipment cannot be approved under Part 21 as the equipment was not manufactured to a recognised engineering standard, and hence an airworthiness assessment cannot be made. However, that equipment might still be safe to use temporarily, subject to appropriate safety conditions.

CASA has issued various exemption instruments in the past 12 months for some specific equipment that is used in MTO and SAR operations. Further applications for

more exemptions are expected because of the essential nature of the relevant equipment and operators desire to be legally compliant as far as practicable.

CASA has decided, therefore, to issue an exemption instrument of general application to MTO and SAR operators to provide a period of transition that will allow these operators to become compliant with the applicable requirements of Part 133 and 138 by obtaining the necessary Part 21 airworthiness approvals for their equipment, or by obtaining approved replacement equipment.

A key safety element in the scheme of the exemption instrument is to permit the continued use of the relevant equipment, but only if the operator obtains express permission from CASA's National Manager, Airworthiness & Engineering, to use the equipment, subject to safety conditions, until it is either approved under Part 21, or replaced with Part 21 approved equipment. One or other of these outcomes must be achieved as soon as practicable, but in any case not later than the end of 30 June 2026.

With aviation safety the most important consideration, CASA will use its experience and familiarity with the relevant equipment to assess its critical safety aspects in relation to, and proportionate to, its deployment in the particular type of operation. CASA will assess whether, as the paramount consideration, an acceptable level of aviation safety would be preserved in deciding to give any particular operator the relevant use permission.

In other words, relevant operators are being given a compliance window of not more than about 18 months. However, it is expected that, unless there are extraordinary circumstances, the compliance goals will have been achieved well within that period. In any event, the exemption instrument will not be renewed.

The details of the exemption instrument, including the range of safety conditions, are set out in Appendix 1.

Legislation Act 2003 (the LA)

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

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

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

Sunsetting

As the instrument relates to aviation safety and is made under CASR, that means that Part 4 of Chapter 3 of the LA (the sunseting provisions) does not apply to the

instrument (as per item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

The instrument deals with aviation safety matters that, once identified, require a risk response or treatment plan. Generally speaking, item 15, when invoked, is necessary in order to ensure that, in the interests of aviation safety, a relevant instrument has enduring effect, certainty and clarity for aviation operators, both domestic and international.

The instrument is repealed at the end of 30 June 2026 by virtue of the terms of section 2. Thus, in practice, no sunset avoidance issues arise and there is no impact on parliamentary oversight.

Incorporations by reference

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

References to provisions of legislative instruments such as CASR or a Manual of Standards are taken to be as they are in force from time to time, by virtue of paragraph 13(1)(c) of the LA. CASR, the Part 133 MOS, and Civil Aviation Orders are freely available online on the Federal Register of Legislation.

Aircraft flight manual

Under subsection 9(3) of the exemption instrument, it is a safety condition that the relevant helicopter flight manual requirements for carriage of a person as an external load must be met.

An aircraft flight manual (*AFM*) contains information required to safely operate a specific aircraft, as in force from time to time.

An aircraft AFM is publicly available but not for free. The AFM instructions for an aircraft are the proprietary property of the owner of the aircraft design (usually the manufacturer). The incorporated requirements of the AFM instructions are at the aircraft-specific level, and instructions are required to be provided to owners or registered operators of aircraft. Where available, and by prior arrangement, CASA will, on request, make aircraft flight manual instructions available for inspection at any CASA office.

Manufacturers' documents

Various manufacturers' documents are applied, adopted or incorporated in the exemption instrument, as in force from time to time.

- Under definitions, *working load limit*, for relevant equipment, means the maximum load, as applicable, that the manufacturer recommends must not be exceeded.
- Under subsection 9(11), before a flight in which the relevant equipment will, or may, be used for the first time, any applicable Place-In-Service inspection must

be carried out in accordance with the manufacturer's Owner's Manual for the equipment, as in force from time to time.

- Under subsection 9(14), without affecting any other inspection requirement, the relevant equipment must be inspected and maintained, at the intervals, and in accordance with the manufacturer's Instructions for Continuing Airworthiness (*ICA*) as contained in Owner's Manual, as in force from time to time.
- Under subsection 9(16), operator procedures must be documented to ensure that there are records of when any safety alerts, or revised ICA, are issued by the equipment manufacturer.

These various documents contain information required to safely operate specific equipment, as in force from time to time.

Some of these manufacturers' documents may be publicly available, while others may only be available to purchasers of the equipment. These are generally not free because they are the proprietary property of the manufacturer of the equipment. The incorporated requirements of the manufacturers' documents are at the equipment-specific level and are generally essential for purchasers and users of the equipment to deploy it safely. Subject to the manufacturers' consent, and by prior arrangement, CASA will, on request, endeavour to make relevant manufacturers' documents available for inspection at any CASA office.

Exposition or operations manual

Under section 10 of the exemption instrument, the- relevant operator must ensure that the operator's exposition or operations manual (as applicable) contains a copy of the instrument, a copy of the relevant permission, and procedures to ensure compliance with the conditions in this instrument.

An exposition (for an MTO operator) and an operations manual (for a SAR operator) are the fundamental internal working documents of an operator, describing in detail how its relevant operations will be safely conducted. These documents are the proprietary intellectual property of the operators in question and are not freely available to the public. Subject to an operator's consent, and by prior arrangement, CASA will, on request, endeavour to make a relevant exposition or operations manual available for inspection at any CASA office.

Consultation

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

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

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

or be affected by, an exemption so that they may have the opportunity to comment on the possible or likely terms, scope and appropriateness of the exemption.

Although a formal, public consultation has not been undertaken in relation to this exemption instrument, there has been informal consultation with various MTO and SAR operators in relation to ensuring that they may achieve an acceptable level of safety, and regulatory compliance with legacy equipment, pending obtaining relevant approvals or replacement equipment.

Office of Impact Analysis (OIA)

An Impact Analysis (*IA*) is not required because the instrument is covered by a standing agreement between CASA and OIA under which an IA is not required for exemption or direction instruments (OIA id: 14507).

Sector risk, economic and cost impact

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

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

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

In terms of economic and cost impacts for subsection 9A(3) of the Act, the exemption instrument will relieve operators from the expense, both administrative and regulatory, of seeking individual operator, pilot in command, and equipment item, exemptions.

Sector risks

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

Environmental impact

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

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

Statement of Compatibility with Human Rights

The Statement in Appendix 2 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The exemption instrument is compatible with human rights: with its aviation safety focus, it promotes the right to life, the right to work, and the right to safe and healthy working conditions, and it does so in a way that is reasonable, necessary and proportionate in the context of aviation safety.

Making and commencement

The instrument commences on the day after it is registered. The instrument has been made by a delegate of CASA relying on the power of delegation under subregulation 11.260(1) of CASR.

Details of CASA EX91/24 – Use of Certain External Load Equipment in SAR and Medical Transport Operations – Exemption Instrument 2024

1 Name

This section names the instrument.

2 Duration

Under this section, the instrument commences on the day after it is registered and is repealed at the end of 30 June 2026.

3 Definitions

- (1) Under this subsection, key words and phrases are defined, including:

attachment items means items that are used to attach relevant equipment to a relevant helicopter's winch, hoist system or hook (as applicable), including ropes, carabineers, shackles, and similar items.

relevant equipment means any article, appliance, part, or material, however described, that:

- (a) is not part of the aircraft approved design; and
- (b) is used as part of a SAR operation or an MTO for the purposes of:
 - (i) carrying a person external to a rotorcraft; or
 - (ii) restraining a person inside a rotorcraft at an open door while they operate a winch or carry out similar duties; and
- (c) is not approved under Part 21 of CASR.

relevant operation means one of the following operations in which the pilot in command of a helicopter carries and uses, or reasonably expects to use, relevant equipment for:

- (a) a SAR operation;
- (b) an MTO.

relevant permission means a written permission, with or without conditions, issued on behalf of CASA by the person occupying, or for the time being holding the position of National Manager, Airworthiness & Engineering, CASA.

- (2) Under this subsection, unless the contrary intention appears, other words and phrases have the same meaning as in the Part 133 MOS or the Part 138 MOS, as applicable to the relevant operation.
- (3) Under this subsection, all documents mentioned in, or applied, adopted or incorporated in, this instrument are such documents as are in force from time to time, as applicable.

4 Application

Under this section, the instrument applies, according to its terms, to the use by a relevant operator, or the relevant operator's pilot in command, of relevant equipment, by a relevant helicopter in a relevant operation.

5 Exemption – CASR Part 133 – medical transport operations

This section provides for the MTO equipment exemptions.

- (1) Under this subsection, the relevant operator and the relevant pilot in command of a relevant operation are each exempted from compliance with the following provisions of CASR that would otherwise apply to each of them:

- (a) regulation 133.295;
- (b) subregulation 133.360(2);

BUT only to the extent of the requirement under section 5.06 of the Part 133 MOS that, for the use of relevant equipment in an MTO, the equipment must meet the requirements of, or be approved under, Part 21 of CASR.

A Note explains what the mentioned regulations and sections provide for.

- (2) Under this subsection, the exemption is subject to the conditions mentioned in section 7.

A Note explains that the specific exemptions mentioned in this section (in effect from certain Part 21 of CASR compliance requirements) do not exempt from any other provisions in CASR, including other requirements to wear a seatbelt, harness or restraint.

6 Exemption – CASR Part 138 – SAR operations

This section provides for the SAR operations equipment exemptions.

- (1) Under this subsection, the relevant operator and the pilot in command of a relevant operation are each exempted from compliance with the following provisions of CASR that would otherwise apply to each of them:

- (a) regulation 138.375;
- (b) subregulations 138.410(4), (5) and (6);
- (c) subregulations 138.465(3) and (4);

BUT only to the extent of the requirements under subsection 14.02(3), paragraph 14.03(3)(b) and subsection 15.04(2) of the Part 138 MOS that, for the use of relevant equipment in a SAR operation, the equipment must meet the requirements of, or be approved under, Part 21 of CASR.

A Note explains what the mentioned regulations and sections provide for.

- (2) Under this section, the exemption is subject to the conditions mentioned in section 7.

A Note explains that the specific exemptions mentioned in this section (in effect from certain Part 21 of CASR compliance requirements) do not exempt from any other provisions in CASR, including other requirements to wear a seatbelt, harness or restraint.

7 Conditions — Compliance

Under this section, the relevant operator must ensure that each requirement under sections 8 and 9 are complied with.

8 Conditions — CASA pre-use approval

This section sets out the requirements for relevant equipment pre-use approval. The exemptions under the instrument are not available for a relevant operator unless and until they first have CASA's permission under this section to use the equipment.

- (1) Under this subsection, the relevant operator must ensure that relevant equipment is not used unless and until the operator's head of flying operations has applied for, and received, a relevant permission under this section.
A Note explains that applications should be made to CASA by email to <airworthiness@casa.gov.au>.
- (2) Under this subsection, an application must be signed and dated, and must:
- (a) clearly, precisely and in detail, identify and describe the relevant equipment, including its source, its date first placed in service, its purpose, and its manufacturer's applicable working load limit which must not be exceeded; and
 - (b) identify the kinds of operations the relevant equipment will be used for, and explain why it is necessary and appropriate for the operation; and
 - (c) insofar as the relevant equipment is not properly approved under Part 21 of CASR — indicate if and when, as soon as practicable, but not later than 30 June 2026, it is reasonably expected:
 - (i) to be approved under Part 21 of CASR; or
 - (ii) replaced by Part 21 of CASR approved equipment; and
 - (d) state whether, when, and by whom, the relevant equipment has been subjected to a safety assessment for the structural capability and personnel safety features that are essential for external occupant safety; and
 - (e) state whether, and based on what persuasive evidence, the relevant equipment has proven safety reliability through previous use in relevant Australian operations; and
 - (f) state whether the relevant equipment has been maintained in accordance with the manufacturer's instructions, including the dates of the most recent inspection and maintenance, and who carried out these requirements.
- (3) Under this section, CASA may grant a permission, with or without conditions, for the purposes of this provision, and conditions may or may not relate to attachment items.

Various Notes under the section explain that:

CASA's decision of an application for a permission would be a reviewable decision for the Administrative Review Tribunal;

Relevant equipment must be approved under Part 21 of CASR, or replaced, by not later than the end of 30 June 2026, or earlier if a condition of the CASA permission so requires; and

A condition of a permission may require a relevant operator to report to CASA the steps the operator has taken, and the timetable, for acquisition of a Part 21 of CASR approval or replacement equipment.

9 Conditions — post-CASA approval use

- (1) Under this subsection, without affecting the scope of subsection 8(3), the relevant operator must ensure that each of the requirements mentioned in this section are complied with in relation to the use of relevant equipment.

Compatibility

- (2) Under this subsection, the relevant equipment must be compatible with all other equipment fitted to, carried on, or used by the relevant helicopter, including other external load equipment and equipment associated with that other external load equipment.

- (3) Under this subsection, the helicopter flight manual requirements for carriage of a person as an external load must be met.
- (4) Under this subsection, any relevant equipment that uses, or is dependent on, the relevant helicopter hoist hook must be compatible with the hoist hook to which it will be attached and, in particular, must not be prone to causing hook reversal or dynamic rollout.
- (5) Under this subsection, the attachment items for any relevant equipment that uses, or is dependent on, such attachment items must be compatible with all relevant attachment points and, in particular, must not be prone to causing dynamic roll out.

No modifications

- (6) Under this subsection, after CASA grants a relevant permission, relevant equipment must not be modified in any way from the version of the equipment that was the subject of the permission.
- (7) Under this subsection, after CASA grants a relevant permission, the configuration of relevant equipment must not be changed in any way from the version of the equipment that was the subject of the permission.

Authorised repairs

- (8) Under this subsection, relevant equipment must not be repaired by any person other than the manufacturer unless the person has the manufacturer's specific authorisation to carry out the repair.

Working load limit

- (9) Under this subsection, in a relevant operation, the applicable manufacturer's working load limit of relevant equipment must not be exceeded.

Crew training

- (10) Under this subsection, each member of the crew for a relevant operation must be trained in, and be thoroughly familiar with, how to:
 - (a) inspect the relevant equipment before it is deployed; and
 - (b) deploy and use the equipment.

Operational inspections

- (11) Under this subsection, before a flight in which the relevant equipment will, or may, be used for the first time, any applicable Place-In-Service inspection must be carried out in accordance with the manufacturer's Owner's Manual for the equipment.
- (12) Under this subsection, before any flight in which the relevant equipment will, or may, be used, it must be inspected:
 - (a) to determine its serviceability; and
 - (b) to ensure that no dangerous projections or sharp edges are liable at any time to damage or interfere with the relevant equipment.
- (13) Under this subsection, after any flight in which the relevant equipment was used, it must be inspected:
 - (a) to determine its continued serviceability; and
 - (b) to ensure that it had not been damaged in any way.

Inspections and maintenance

- (14) Under this subsection, without affecting any other inspection requirement, the relevant equipment must be inspected and maintained, at the intervals, and in accordance with the manufacturer's Instructions for Continuing Airworthiness (*ICA*) as contained in Owner's Manual.
- (15) Under this subsection, any safety alerts, or revised ICA, issued by the manufacturer must be noted and complied with.

Procedures and records

- (16) Under this subsection, procedures must be documented to ensure that records are kept of the following:
 - (a) the date of manufacture of the relevant equipment;
 - (b) the date the relevant equipment was placed in service;
 - (c) each occasion on which the relevant equipment was used;

Note The details under paragraphs (a), (b) and (c) may be used to determine the service life and retirement of the relevant equipment: see subsections 9(18) and (19).
 - (d) how the relevant equipment is stored, and when and how it is cleaned;
 - (e) when the relevant equipment was maintained, including details of the maintenance;
 - (f) when any safety alerts, or revised ICA, are issued by the manufacturer, and what action was taken in response to them.

Labelling

- (17) Under this subsection, if not already contained in the manufacturer's labelling, manufacturer-sourced information referenced in paragraphs (a) to (g) below must be recorded or displayed as applicable and as appropriate:
 - (a) manufacturer's name;
 - (b) part number;
 - (c) serial number;
 - (d) date of manufacture;
 - (e) service life-limit date;
 - (f) authorised payload;
 - (g) authorised number of persons.

Retirement

- (18) Under this subsection, relevant equipment that has a metal structure, or that is subject to loads, tensions, weather or wear must be retired and replaced in accordance with any conditions in the relevant permission.
- (19) Under this subsection, attachment items must be retired and replaced in accordance with any conditions in the relevant permission.

10 Direction — the relevant operator

This section sets out a direction to relevant operators to establish procedures in relation to the exemption instrument. Thus, the relevant operator must ensure that the operator's exposition or operations manual (as applicable) contains:

- (a) a copy of this instrument; and
- (b) a copy of the relevant permission; and
- (b) procedures to ensure compliance with the conditions in this instrument.

11 Direction — the pilot in command

This section sets out a direction to the pilot in command of a relevant helicopter in a relevant operation, that the pilot must not commence the operation unless they are satisfied that the conditions under sections 8 and 9 have been complied with.

Statement of Compatibility with Human Rights

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

CASA EX91/24 – Use of Certain External Load Equipment in SAR and Medical Transport Operations – Exemption 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 EX91/24 – Use of Certain External Load Equipment in SAR and Medical Transport Operations – Exemption Instrument 2024* (the **exemption instrument**) is to exempt from airworthiness approval requirements certain equipment used for, or in relation to, the retrieval of injured persons in a medical transport operation (an **MTO**), or in an aerial work search and rescue operation (a **SAR operation**), under Part 133 or Part 138, respectively, of the *Civil Aviation Safety Regulations 1998 (CASR)*.

Relevant equipment, in a generic sense, is defined as any article, appliance, part, or material, however described, that:

- (a) is not part of the aircraft approved design; and
- (b) is used as part of a SAR operation or an MTO for the purposes of:
 - (i) carrying a person external to a rotorcraft; or
 - (ii) restraining a person inside a rotorcraft at an open door while they operate a winch or carry out similar duties; and
- (c) is not approved under Part 21 of CASR.

In practical terms, the types of equipment typically used in these operations, *include* harnesses, stretchers, litters, rescue baskets, and rescue vests. The relevant MTO and SAR operations are often referred to as human external cargo, or HEC.

The relevant equipment that is the subject of the exemption instrument is used in MTO and SAR operations for the carriage of persons external to the rotorcraft.

As mentioned, harnesses, stretchers, litters, rescue baskets, and rescue vests are all types of equipment typically used in these operations.

The relevant equipment might be described as legacy equipment which met, and generally continues to meet, the safety requirements in force before 2 December 2021. The post-2 December 2021 requirements under Parts 133 and 138 are essentially similar to those earlier standards except that specific airworthiness approval under Part 21 is now required.

For some of the relevant equipment, approval under Part 21, which deals with certification and airworthiness requirements for aircraft and parts, is possible and

pending because it can, in due course, meet the relevant airworthiness standards prescribed under Part 21.

Other equipment cannot be approved under Part 21 as the equipment was not manufactured to a recognised engineering standard, and hence an airworthiness assessment cannot be made. However, that equipment might still be safe to use temporarily, subject to appropriate safety conditions.

CASA has issued various exemption instruments in the past 12 months for some specific equipment that is used in MTO and SAR operations. Further applications for more exemptions are expected because of the essential nature of the relevant equipment and operators desire to be legally compliant as far as practicable.

CASA has decided, therefore, to issue an exemption instrument of general application to MTO and SAR operators to provide a period of transition that will allow these operators to become compliant with the applicable requirements of Part 133 and 138 by obtaining the necessary Part 21 airworthiness approvals for their equipment, or by obtaining approved replacement equipment.

A key safety element in the scheme of the exemption instrument is to permit the continued use of the relevant equipment, but only if the operator obtains express permission from CASA to use the equipment, subject to safety conditions, until it is either approved under Part 21, or replaced with Part 21 approved equipment. One or other of these outcomes must be achieved as soon as practicable, but in any case not later than the end of 30 June 2026.

With aviation safety the most important consideration, CASA will use its experience and familiarity with the relevant equipment to assess its critical safety aspects in relation to, and proportionate to, its deployment in the particular type of operation. CASA will assess whether, as the paramount consideration, an acceptable level of aviation safety would be preserved in deciding to give any particular operator the relevant use permission.

In other words, relevant operators are being given a compliance window of not more than about 18 months. However, it is expected that, unless there are extraordinary circumstances, the compliance goals will have been achieved well within that period. In any event, the exemption instrument will not be renewed.

Human Rights Implications

The exemption instrument engages the following human rights without imposing unacceptable limitations, as follows:

- the right to work and rights at work under Article 6 of the International Covenant on Economic, Social and Cultural Rights (*ICESCR*)
- the right to enjoyment of just and favourable conditions of work, including safe and healthy working conditions under Article 7 of the ICESCR
- the right to life under Article 6 of the International Covenant on Civil and Personal Rights (*ICCPR*).

Article 6 of the ICESCR

Article 6 of the ICESCR protects the right to work and rights at work.

The right to work includes the right of everyone to the opportunity to gain their living by work which they freely choose or accept. Rights in work include the enjoyment of just and favourable conditions of work and to form and join trade unions.

The UN Committee on Economic Social and Cultural Rights has stated that the right to work affirms the obligation of States parties to assure individuals their right to freely chosen or accepted work, including the right not to be deprived of work unfairly.

The Committee has also stated that, for the right to work, the labour market must be open to everyone. In particular, there can be no discrimination in access to and maintenance of employment on the grounds enumerated in article 2 of ICESCR, namely race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, which has the intention or effect of impairing or nullifying exercise of the right to work. Age should be considered to be a status on which discrimination under article 2 of ICESCR is prohibited. Limiting the work entitlements of non-citizens would not constitute unlawful discrimination under article 2 of ICESCR.

Article 4 of ICESCR provides that countries may subject economic social and cultural rights only to such limitations “as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society”. The UN Committee has stated that such limitations must be proportional, and must be the least restrictive alternative where several types of limitations are available, and that even where such limitations are permitted, they should be of limited duration and subject to review. Measures that are retrogressive to the realisation of economic, social and cultural rights must also be properly justified. A retrogressive measure is one that reduces the extent to which an economic, social and cultural right is guaranteed.

The exemption instrument may limit the right to work and rights at work as it will impose conditions for the use of relevant equipment which may result in the equipment not being available for use, impacting on the employment of relevant emergency workers who may have been engaged to use it.

However, these limitations are permissible because unless subjected to and compliant with safety conditions the equipment could not be safely used.

The limitation is, therefore, considered to be a reasonable, necessary and proportionate requirement in the context of aviation safety.

Article 7 of the ICESCR

Article 7 of the ICESCR protects the right to enjoyment of just and favourable conditions of work, including safe and healthy working conditions.

The exemption instrument is congruent with this right because it will impose safety conditions for the use of relevant equipment which may otherwise have been unsafe for relevant emergency workers to use.

Article 6 of the ICCPR

Article 6 of the ICCPR protects the right to life.

The exemption instrument is congruent with this right because it will impose safety conditions for the use of relevant equipment which may otherwise have been unsafe for relevant emergency workers to use.

This engagement is in the context of CASA's statutory purpose. The aim of CASA and its regulatory framework is to uphold aviation safety by prescribing the conduct of individuals and organisations involved in civil aviation operations, including flight operations. It is, therefore, a threshold requirement for all CASA legislative instruments that they preserve, promote and enhance aviation safety and, thereby, contribute to safe and healthy working conditions for crew and ground staff.

The exemption instrument allows more time, until not later than 30 June 2026, for relevant operators to transition to full compliance with CASR Part 133 and CASR Part 138 in relation to MTO and SAR operations using legacy equipment which does not have Part 21 approval.

The use of the equipment could potentially impact on the life of crew members (for example operating winches) or medical patients or rescued persons (retrieved in litters or stretchers).

However, the equipment must not be used without specific CASA approval from the National Manager, Airworthiness & Engineering, CASA, and the permission itself, if granted, may be conditional.

In addition, the relevant operator of the equipment is subject to a series of expressed safety conditions to ensure its safe use in operation.

With aviation safety the most important consideration, CASA will use its experience and familiarity with the relevant equipment to assess its critical safety aspects in relation to, and proportionate to, its deployment in the particular type of operation. CASA will assess whether, as the paramount consideration, an acceptable level of aviation safety would be preserved in deciding to give any particular operator the relevant use permission.

Human rights implications

This legislative instrument is compatible with human rights and to the extent that it may engage certain rights it does so in a way that promotes the right to life, 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.

Conclusion

This legislative instrument is compatible with human rights.

Civil Aviation Safety Authority