Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX14/25 – Serviceability of Equipment under the Part 91, 121, 133 and 135 Manuals of Standards – Exemption Instrument 2025

**Purpose**

The purpose of *CASA EX14/25 – Serviceability of Equipment under the Part 91, 121, 133 and 135 Manuals of Standards – Exemption Instrument 2025* (the ***exemption instrument***) is to exempt, in respect of certain prescribed equipment, certain operators and pilots in command of aircraft to which Part 91, 121, 133 or 135 of the *Civil Aviation Safety Regulations 1998* (***CASR***) applies from compliance with relevant provisions of Manuals of Standards (***MOSs***) that require that such equipment must be operative.

Safety conditions apply which may require, among other things, that alternative equipment is to be fitted or carried, and operative. Limits are set on the duration of any period of inoperability of the prescribed equipment.

**Legislation — CASR**

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 91 of CASR relevantly provides for “the rules of the air” for all pilots, and the general operating rules for pilots who are not operating under an Air Operator’s Certificate or other certificate. Regulation 91.040 empowers the making of standards in a relevant Part 91 MOS (the *Part 91 (General Operating and Flight Rules) Manual of Standards 2020*). Regulation 91.810 provides that the Part 91 MOS may prescribe requirements relating to equipment. Section 26.04 of the MOS requires prescribed equipment to be operative.

Part 121 of CASR relevantly deals mainly with requirements for the conduct of Australian air transport operations in multi-engine aeroplanes that have a maximum operational passenger seating configuration (***MOPSC***) of more than 9 or a maximum take-off weight of more than 8 618 kg. Regulation 121.015 empowers the making of standards in a relevant Part 121 MOS (the *Part 121 (Australian Air Transport Operations—Larger Aeroplanes) Manual of Standards 2020*). Regulation 121.460 provides that the Part 121 MOS may prescribe requirements relating to equipment. Section 11.06 of the MOS requires prescribed equipment to be operative.

Part 133 of CASR relevantly deals with the carriage in rotorcraft of passengers who are patients and medical personnel in medical transport operations. Regulation 133.025 empowers the making of standards in a relevant Part 133 MOS (the *Part 133 (Australian Air Transport Operations—Rotorcraft) Manual of Standards 2020*). Regulation 133.360 provides that the Part 133 MOS may prescribe requirements relating to equipment. Section 11.04 of the MOS requires prescribed equipment to be operative.

Part 135 of CASR prescribes requirements for the conduct of Australian air transport operations in aeroplanes that have an MOPSC of not more than 9 and a maximum take‑off weight of not more than 8 618 kg. Air transport operations include passenger transport, cargo transport and medical transport that is conducted for hire or reward. Regulation 135.040 empowers the making of standards in a relevant Part 135 MOS (the *Part 135 (Australian Air Transport Operations—Smaller Aeroplanes) Manual of Standards 2020*). Regulation 135.370 provides that the Part 135 MOS may prescribe requirements relating to equipment. Section 11.04 of the MOS requires prescribed equipment to be operative.

**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 not to comply with the obligations imposed by a condition set out in 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.).

**Background**

The civil aviation legislation consists of a scaled set of safety controls appropriate for the kind of operation being performed. Some safety controls prescribe that the aircraft used to conduct a particular kind of aviation operation be fitted with certain serviceable equipment.

For an Australian air transport operator, aircraft equipment requirements for the conduct of Australian air transport operations are contained in Chapter 11 of the Part 121, 133 or 135 MOS and for the conduct of private operations in Chapter 26 of the Part 91 MOS.

For some air transport operations, the aircraft operator is required to have a minimum equipment list (***MEL***) for the aircraft. A MEL specifies the circumstances under which an item of aircraft equipment may be unserviceable. A MEL must not permit the operation of an aircraft for a flight with an inoperative equipment item if the flight would be in contravention of the civil aviation legislation, for example, as contained in the Part 91, 121, 133 and 135 MOSs. These MOSs took effect on 2 December 2021.

In this context, the Part 91, 121, 133 and 135 MOSs aircraft equipment requirements only permit some equipment to be unserviceable for a flight. However, CASA has received feedback from Australian air transport operators that requiring some equipment to be operative for every flight was not necessary given the relative aviation safety risks relevant to those flights.

CASA assessed this feedback and identified that some equipment was more flexibly permitted to be unserviceable, without adverse effects on aviation safety, before the legislation changes on 2 December 2021. In light of this, CASA considered that an acceptable level of safety would be preserved, for Australian air transport operators if some specific aircraft equipment was permitted to be unserviceable, subject to being provided for in the aircraft MEL and conditional on a range of safety and duration provisions.

**The exemption instrument**

Details of the exemption instrument are set out in Appendix 1. In brief:

For aircraft to which Part 91 of CASR applies, the relevant equipment is the flight crew intercommunications system for IFR flights with at least 2 pilots provided each assigned flight crew member must have an operative headset and microphone.

For aeroplanes to which Part 121 of CASR applies, the relevant equipment is equipment to ensure a clear view through the windshield, the anti-collision lights, the data link recorder, the flight crew intercommunication system, the emergency locator transmitters (***ELT***) for aircraft with a maximum certificated passenger seating capacity (***MCPSC***) greater than 19 and the ELT for aircraft with a MCPSC of 19 or less.

For rotorcraft to which Part 133 of CASR applies, the relevant equipment is the anti‑collision lights and the ELT.

For aeroplanes to which Part 135 of CASR applies, the relevant equipment is equipment to ensure a clear view through the windshield, the anti-collision lights, the flight crew intercommunication system and the ELT.

For all of the exempted equipment, significant compensating safety conditions apply, including that the relevant aircraft MEL must, in the first instance, permit a comparable degree of conditional inoperability.

In making the instrument, CASA was guided by the requirement under 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. CASA is satisfied that, in the context of the detailed safety conditions that must be complied with, an acceptable level of aviation safety is preserved.

***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 sunsetting 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 28 February 2027 by virtue of the terms of section 2. Thus, in practice, no sunsetting 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.

Item 2 of the Table in subsection 6(1), item 1 of the Table in subsection 7(1), and item 2 of the Table in subsection 8(1) require the relevant operators to have safety procedures for applicable aircraft operations on the ground with anti-collision light inoperative. Where these procedures are not yet in existence, their incorporation is permitted by subsection 98(5D) of the Act.

These procedure documents would be the private and proprietary intellectual property of the relevant operators and would not be generally available or free. CASA would, if an operator so agreed, make the relevant procedural documents available for public inspection by appointment at an appropriate CASA office on written request.

**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 external informal consultation with operators and CASA delegates who are authorised to approve MELs. The delegates provided consolidated feedback from industry on the equipment inoperative provisions provided by this instrument.

**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 reduce costs to Australian air transport operators associated with flight delays or cancellations that would otherwise be caused by compliance with the existing Part 121, 133 or 135 MOS Chapter 11 requirements for certain aircraft equipment. Thus, subject to the prescribed alternative safety controls within the instrument, the exemption will enable a longer period for Australian air transport operators to return certain aircraft equipment to serviceability.

For aviation safety reasons, the exemption instrument is specific to those 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 and is repealed at the end of 28 February 2027. The instrument has been made by a delegate of CASA relying on the power of delegation under subregulation 11.260(1) of CASR.

Appendix 1

CASA EX14/25 – Serviceability of Equipment under the Part 91, 121, 133 and 135 Manuals of Standards – Exemption Instrument 2025

1 Name of instrument

 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 28 February 2027.

3 Definitions

 Under this section, in the instrument, words and phrases have the same meaning as in the CASR Dictionary.

4 Application

 Under this section, the instrument applies according to its terms to the operator and the pilot in command of an aircraft for a relevant flight of a kind mentioned in the instrument.

Part 1 — Part 91 of CASR

5 Exemptions — Part 91 of CASR and the Part 91 MOS

 Under this section, the operator, and the pilot in command, of an aircraft in an operation to which Part 91 of CASR applies are each exempted from compliance with subregulation 91.810(2) of CASR (which requires compliance with the equipment prescriptions under the Part 91 MOS) but only to the extent of the requirement under section 26.04 of the Part 91 MOS that the relevant equipment must be operative.

 The conditions mentioned must be complied with and, for safety reasons, the particular exemption is in force only until the end of the specified number of calendar days after the day the relevant equipment was found to be inoperative.

 A Note explains that the practical effect of the exemption is that the inoperative relevant equipment must be repaired within the specified number of calendar days. A calendar day is any day of the week, including a Saturday, a Sunday or a public holiday.

 A Table sets out each of the Part 91 MOS provisions being exempted from, and the conditions to which the exemption is subject, as follow:

| **Item** | Column 1**Part 91 MOS provision** | Column 2**Conditions and duration** |
| --- | --- | --- |
| 1 | Subsection 26.41(3)(Flight crew intercommunications system — IFR flights) | 1. The aircraft must begin the flight with at least 2 pilots.
2. Each assigned flight crew member must have an operative headset and microphone that is not of a hand-held type.
3. The approved minimum equipment list (the ***MEL***) for the aircraft must permit the aircraft to begin a flight with the relevant headsets and microphones inoperative, under conditions no less restrictive, including as to duration, than those prescribed in this item.

*Note*   A MEL is approved under regulation 91.935.1. 3 calendar days.
 |

Part 2 — Part 121 of CASR

6 Exemptions — Part 121 of CASR and the Part 121 MOS

 Under this section, the operator, and the pilot in command, of an aircraft in an operation to which Part 121 of CASR applies are each exempted from compliance with subregulation 121.460(2) of CASR (which requires compliance with the equipment prescriptions under the Part 121 MOS) but only to the extent of the requirement under section 11.06 of the Part 121 MOS that the relevant equipment must be operative.

 The conditions mentioned must be complied with and, for safety reasons, the particular exemption is in force only until the end of the specified number of calendar days after the day the relevant equipment was found to be inoperative.

 A Note similar to that in section 5 is also included.

 A Table sets out each of the Part 121 MOS provisions being exempted from, and the conditions to which the exemption is subject, as follow:

| **Item** | Column 1**Part 121 MOS provision** | Column 2**Conditions and duration** |
| --- | --- | --- |
| 1 | Section 11.11(Equipment to ensure clear view through the windshield — the ***relevant equipment***) | 1. There must be no actual or forecast precipitation within 5 nautical miles of the aerodrome of intended take-off or landing.
2. The approved MEL for the aeroplane must permit the equipment required to ensure a clear view through the windshield to be inoperative, under conditions no less restrictive, including as to duration, than those prescribed in this item.
3. Low-visibility operations are not permitted.

*Note*Low-visibility operations are defined in Part 1 of the CASR Dictionary.1. 10 calendar days.
 |
| 2 | Section 11.16(Anti-collision lights) | 1. The aeroplane must not be operated at night.
2. The approved MEL for the aeroplane must permit the aeroplane to begin a flight with the relevant anti-collision lights inoperative, under conditions no less restrictive, including as to duration, than those prescribed in this item.
3. The operator must have operational procedures in its exposition or in the aeroplane MEL for operations on the ground with the anti-collision lights inoperative, including procedures for:
4. informing ground crew and maintenance personnel when they may, or may not, approach the aeroplane; and
5. the flight crew to determine that it is safe to start the aeroplane engines and taxi the aeroplane.
6. The procedures under paragraph (c) must be provided to all ground handling and maintenance personnel (***relevant personnel***) at each airport where the aeroplane would operate.
7. A process must be in place for notifying all relevant personnel that the anti-collision lights are not operating, and that the procedures therefore apply.
8. 3 calendar days.
 |
| 3 | Section 11.35(Data link recorder) | 1. The aeroplane cockpit voice recorder must be operative.
2. 21 calendar days.
 |
| 4 | Subsection 11.36(2)(Flight crew intercommunication system — headset and microphone, not hand-held type, for each flight crew member) | 1. The aeroplane must be fitted with operative equipment mentioned in subsection 11.36(1).
2. The approved MEL for the aeroplane must permit the aeroplane to begin a flight with the relevant headsets and microphones inoperative, under conditions no less restrictive, including as to duration, than those prescribed in this item.
3. 3 calendar days.
 |
| 5 | Subsection 11.47(3) but only in relation to items 1 and 2 in Table 11.48 of section 11.48(Emergency locator transmitters (***ELTs***)) | 1. The aeroplane operation must be one for which life rafts are NOT required to be carried.
2. The approved MEL for the aeroplane must permit the aeroplane to begin a flight with the relevant ELT inoperative, under conditions no less restrictive, including as to duration, than those prescribed in this item.
3. The aeroplane must be fitted with, or carry, at least 1 operative ELT.
4. 3 calendar days.
 |
| 6 | Subsection 11.47(3) but only in relation to items 3 and 4 in Table 11.48 of section 11.48(Emergency locator transmitters (***ELTs***)) | 1. One of the purposes of the aeroplane operation must be to fly the aeroplane to a place for repair, or refitting, of the ELT.
2. The approved MEL for the aeroplane must permit the aeroplane to begin a flight with the relevant ELT inoperative, under conditions no less restrictive, including as to duration, than those prescribed in this item.
3. The aeroplane operation must be one in which NO passengers of any kind are carried.
4. The aeroplane operation must be one for which life rafts are NOT required to be carried.
5. 3 calendar days.
 |

Part 3 — Part 133 of CASR

7 Exemptions — Part 133 of CASR and the Part 133 MOS

 Under this section, the operator, and the pilot in command, of a rotorcraft in an operation to which Part 133 of CASR applies are each exempted from compliance with subregulation 133.360(2) of CASR (which requires compliance with the equipment prescriptions under the Part 133 MOS) but only to the extent of the requirement under section 11.04 of the Part 133 MOS that the relevant equipment must be operative.

 The conditions mentioned must be complied with and, for safety reasons, the particular exemption is in force only until the end of the specified number of calendar days after the day the relevant equipment was found to be inoperative.

 A Note similar to that in section 5 is also included.

 A Table sets out each of the Part 133 MOS provisions being exempted from, and the conditions to which the exemption is subject, as follow:

| **Item** | Column 1**Part 133 MOS provision** | Column 2**Conditions and duration** |
| --- | --- | --- |
| 1 | Section 11.13(Anti-collision lights) | 1. The rotorcraft must not be operated at night.
2. The approved MEL for the rotorcraft must permit the rotorcraft to begin a flight with the relevant anti‑collision lights inoperative, under conditions no less restrictive, including as to duration, than those prescribed in this item.
3. The operator must have operational procedures in its exposition or in the rotorcraft MEL for operations on the ground with the anti-collision lights inoperative, including procedures for:
4. informing ground crew and maintenance personnel when they may, or may not, approach the rotorcraft; and
5. the flight crew to determine that it is safe to start the rotorcraft engines and taxi the rotorcraft.
6. The procedures under paragraph (c) must be provided to all ground handling and maintenance personnel (***relevant personnel***) at each location where the rotorcraft would operate.
7. A process must be in place for notifying all relevant personnel that the anti-collision lights are not operating, and that the procedures therefore apply.
8. 3 calendar days.
 |
| 2 | Subsection 11.41(1)(Emergency locator transmitters (***ELTs***)) | 1. One of the purposes of the rotorcraft operation must be to fly the rotorcraft to a place for repair, or refitting, of the ELT.
2. The approved MEL for the rotorcraft must permit the rotorcraft to begin a flight with the relevant ELT inoperative, under conditions no less restrictive, including as to duration, than those prescribed in this item.
3. The rotorcraft operation must be one in which NO passengers of any kind are carried.
4. The rotorcraft operation must be one for which life rafts are NOT required to be carried.
5. 3 calendar days.
 |

Part 4 — Part 135 of CASR

8 Exemptions — Part 135 of CASR and the Part 135 MOS

 Under this section, the operator, and the pilot in command, of an aeroplane in an operation to which Part 135 of CASR applies are each exempted from compliance with subregulation 135.370(2) of CASR (which requires compliance with the equipment prescriptions under the Part 135 MOS) but only to the extent of the requirement under section 11.04 of the Part 135 MOS that the relevant equipment must be operative.

 The conditions mentioned must be complied with and, for safety reasons, the particular exemptions are in force only until the end of the specified number of calendar days after the day the relevant equipment was found to be inoperative.

 A Note similar to that in section 5 is also included.

 A Table sets out each of the Part 135 MOS provisions being exempted from, and the conditions to which the exemption is subject, as follow:

| **Item** | Column 1**Part 135 MOS provision** | Column 2**Conditions and duration** |
| --- | --- | --- |
| 1 | Section 11.11(Equipment to ensure clear view through the windshield) | 1. There must be no actual or forecast precipitation within 5 nautical miles of the aerodrome of intended take-off or landing.
2. The approved MEL for the aeroplane must permit the equipment required to ensure a clear view through the windshield to be inoperative, under conditions no less restrictive, including as to duration, than those prescribed in this item.
3. Low-visibility operations are not permitted.

*Note*Low-visibility operations are defined in Part 1 of the CASR Dictionary.1. 10 calendar days.
 |
| 2 | Section 11.16*(*Anti-collision lights) | 1. The aeroplane must not be operated at night.
2. The approved MEL for the aeroplane must permit the aeroplane to begin a flight with the relevant anti-collision lights inoperative, under conditions no less restrictive, including as to duration, than those prescribed in this item.
3. The operator must have operational procedures in its exposition or in the aeroplane MEL for operations on the ground with the anti-collision lights inoperative, including procedures for:
4. informing ground crew and maintenance personnel when they may, or may not, approach the aeroplane; and
5. the flight crew to determine that it is safe to start the aeroplane engines and taxi the aeroplane.
6. The procedures under paragraph (c) must be provided to all ground handling and maintenance personnel (***relevant personnel***) at each airport where the aeroplane would operate.
7. A process must be in place for notifying all relevant personnel that the anti-collision lights are not operating, and that the procedures therefore apply.
8. 3 calendar days.
 |
| 3 | Subsection 11.37(3)(Flight crew intercommunication system) | 1. The aeroplane must be fitted with operative equipment mentioned in subsection 11.37(1).
2. The approved MEL for the aeroplane must permit the aeroplane to begin a flight with the relevant headsets and microphones inoperative, under conditions no less restrictive, including as to duration, than those prescribed in this item.
3. The flight must begin with at least 2 pilots.
4. 3 calendar days.
 |
| 4 | Subsection 11.47(1) (Carriage of ELTs (***ELTs***)) | 1. One of the purposes of the aeroplane operation must be to fly the aeroplane to a place for repair, or refitting, of the ELT.
2. The approved MEL for the aeroplane must permit the aeroplane to begin a flight with the relevant ELT inoperative, under conditions no less restrictive, including as to duration, than those prescribed in this item.
3. The aeroplane operation must be one in which NO passengers of any kind are carried.
4. The aeroplane operation must be one for which life rafts are NOT required to be carried.
5. 3 calendar days.
 |

Appendix 2

**Statement of Compatibility with Human Rights**

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

CASA EX14/25 – Serviceability of Equipment under the Part 91, 121, 133 and 135 Manuals of Standards – Exemption Instrument 2025.

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 EX14/25 – Serviceability of Equipment under the Part 91, 121, 133 and 135 Manuals of Standards – Exemption Instrument 2025* (the ***exemption instrument***) is to exempt, in respect of certain prescribed equipment, the operator and the pilot in command of an aircraft to which Part 91, 121, 133 or 135 of the *Civil Aviation Safety Regulations 1998* applies from compliance with relevant provisions of Manuals of Standards (***MOSs***) that require the equipment must be operative.

Safety conditions apply which may require, among other things, that alternative equipment is to be fitted or carried, and operative. Limits are set on the duration of any period of inoperability of the prescribed equipment.

For some air transport operations, the aircraft operator is required to have a minimum equipment list (***MEL***) for the aircraft. A MEL specifies the circumstances under which an item of aircraft equipment may be unserviceable. A MEL must not permit the operation of an aircraft for a flight with an inoperative equipment item if the flight would be in contravention of the civil aviation legislation, for example, as contained in the Part 91, 121, 133 and 135 MOSs. These MOSs took effect on 2 December 2021.

In this context, the Part 91, 121, 133 and 135 MOSs aircraft equipment requirements only permit some equipment to be unserviceable for a flight. However, CASA has received feedback from Australian air transport operators that requiring some equipment to be operative for every flight was not necessary given the relative aviation safety risks relevant to those flights.

CASA assessed this feedback and identified that some equipment was more flexibly permitted to be unserviceable, without adverse effects on aviation safety, before the legislation changes on 2 December 2021. In light of this, CASA considered that an acceptable level of safety would be preserved, for Australian air transport operators with a MEL for a relevant aircraft, if some specific aircraft equipment was permitted to be unserviceable in an increased number of circumstances, subject to a range of safety and duration conditions.

**Human Rights Implications**

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

* the right to life under Article 6 of the International Covenant on Civil and Personal Rights (***ICCPR***)
* 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.

**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 exemption instruments that through their safety conditions, they contribute to an acceptably safe aviation environment and deliver safe and healthy working conditions for crew and ground staff, as applicable.

In this instance, the instrument permits time-limited, and safety-conditioned operations with less critical equipment unserviceable but backed-up by acceptable alternatives, generally to enable flights to be completed or to travel to appropriate maintenance facilities.

**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 will to some degree protect the right to work and rights at work by permitting time-limited, and safety-conditioned commercial operations with less critical equipment unserviceable but backed-up by acceptable alternatives, generally to enable flights to be completed or to travel to appropriate maintenance facilities.

Such limitations as are expressed on the continuation of operations are 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 permit time‑limited, and safety-conditioned operations with less critical equipment unserviceable but backed-up by acceptable alternatives, generally to enable flights to be completed or to travel to appropriate maintenance facilities.

**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. Any limitations on rights arising from the instrument 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**