

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX61/25 – CASA EX105/23 and CASA EX67/24 Amendment Instrument 2025

Purpose

The purpose of *CASA EX61/25 – CASA EX105/23 and CASA EX67/24 Amendment Instrument 2025* (the **instrument**) is to amend the existing exemption and direction instruments *CASA EX105/23—Part 105 (Parachute Operators and Pilots) Instrument 2023 (CASA EX105/23)* and *CASA EX67/24 – Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2024 (CASA EX67/24)* applying to the conduct of parachuting operations to address an issue relating to the approval of aircraft cabin seating and restraint systems routinely used in parachuting aircraft.

Legislation — exemptions

Section 98 of the *Civil Aviation Act 1988* (the **Act**) empowers the Governor-General to make regulations for the Act and the safety of air navigation.

Subpart 11.F of CASR deals with exemptions. Under subregulation 11.160(1) of the *Civil Aviation Safety Regulations 1998 (CASR)*, 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) of CASR, an exemption may be granted to a person or a class of persons. Under subregulation 11.160(3) of CASR, CASA may grant an exemption on application, or on its own initiative. Under subregulation 11.170(3) of CASR, 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.

Under regulation 11.205 of CASR, CASA may impose conditions on an exemption if this is necessary in the interests of the safety of air navigation. Under regulation 11.210 of CASR, it is a strict liability offence (with a maximum penalty of 50 penalty units) not to comply with the obligations imposed by a condition. Under regulation 11.225 of CASR, 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) of CASR, an exemption may remain in force for 3 years or for a shorter period specified in the instrument.

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) of CASR, 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 of CASR, a direction ceases to be in force on a day specified in the instrument or, if no day is specified, 1 year after the instrument commences. Under subregulation 11.255(1) of CASR, it is a strict liability offence (with a maximum penalty of 50 penalty units) to contravene a direction under regulation 11.245 of CASR that is applicable to the person.

Background

Parachuting operations in Australia are conducted in accordance with the flight and operational rules set out in Parts 91 and 105 of CASR. Airworthiness requirements for aircraft used in parachuting operations are specified in Part 21 of CASR. The conduct of parachuting operations is administered on a national level by the Australian Parachute Federation Ltd (**APF**) under the provisions of Part 149 of CASR.

Parachute operators generally utilise aircraft that have been type certified in the normal category (Part 23 of CASR) to conduct their parachuting operations. However, the passenger cabins have often been modified to ensure that they are suited to the unique requirements of parachuting operations, particularly as they relate to facilitating egress from the aircraft in-flight.

These modifications generally involve the removal from the cabin of the conventional passenger seat and restraint systems (a forward-facing seat with a seat base, seat back and seat belt) and their replacement with seating and restraint systems which involve the use of single point restraints to restrain parachutists seated on bench seats or on the cabin floor.

Seating and restraint configurations of this nature (**parachuting configurations**) are approved for use in parachuting operations. Furthermore, the design of these parachuting configurations have been approved in accordance with appropriate procedures consistent with design and certification requirements specified in Part 21 of CASR. However, the APF have advised CASA that, in many cases, the approved modification of the aircraft to support a parachuting configuration has not been accompanied by consequential approved amendments to the individual aircraft flight manual (**AFM**) documenting the change in configuration and any changes in operational procedures (particularly related to weight, balance and centre of gravity) which may result from that modification.

As a result, the pilot in command (**PIC**) of a parachuting aircraft may not be able to comply with AFM instructions which:

- (a) limit the number of passengers which may be carried in the aircraft;
- (b) mandate the seating configuration for those passengers; and
- (c) mandate that those passengers be restrained by seatbelts or shoulder harnesses.

To the extent that the PIC is unable to comply with an instruction of that nature, contained in the AFM, they may be in contravention of paragraph 91.095(2)(a) of CASR which provides:

The pilot in command of the aircraft contravenes this subregulation if the pilot in command does not comply with either or both of the following:

- (a) any aircraft flight manual instructions for the aircraft;

...

It is therefore necessary that an exemption be granted, and supporting directions be issued, to ensure that the PIC of a modified parachuting aircraft does not contravene paragraph 91.095(2)(a) by failing to comply with AFM instructions which are no longer aligned with the approved cabin configuration of the relevant aircraft.

CASA is satisfied that conditions applying to the exemption (described further below and expressed in the instrument) will ensure that an acceptable level of safety will be maintained for operations conducted in accordance with this exemption.

Overview of instrument

The instrument allows the PIC of an aircraft engaged in parachuting operations not to comply with AFM instructions which are not aligned with the approved passenger cabin configuration of the aircraft.

The exemption within the instrument is subject to conditions which require the PIC to comply with procedures developed by the aircraft operator which are appropriate for the parachuting configuration of the aircraft.

The instrument also issues directions to the aircraft operator requiring the operator to ensure that the PIC complies with those procedures.

Documents incorporated by reference

Under subsection 14(1) of the *Legislation Act 2003* (the **LA**), a legislative instrument may make provision in relation to matters by applying, adopting or incorporating provisions of an Act or disallowable legislative instrument as in force at a particular time or as in force from time to time. A legislative instrument may also make provision in relation to matters by applying, adopting or incorporating any matter contained in any other instrument or writing as in force at, or before, the time the legislative instrument commences. Under subsection 14(2) of the LA, unless the contrary intention appears, the legislative instrument may not make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time. However, subsection 98(5D) of the Act provides that, despite section 14 of the LA, a legislative instrument made under the Act or the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time, even if the other instrument or writing does not yet exist when the legislative instrument is made.

In accordance with paragraph 15J(2)(c) of the LA, each incorporated document is described below, together with the manner of incorporation and how it may be obtained.

Aircraft flight manual instructions

Aircraft flight manual instructions is defined in the CASR Dictionary to comprise the flight manual, checklists of normal, abnormal and emergency procedures for the aircraft and any operating limitation, instructions, markings and placards relating to the aircraft. The instructions comprise information required to safely operate the specific aircraft. Instructions are incorporated as they exist from time to time, consistent with the definition of ***flight manual*** in the CASR Dictionary.

These documents are publicly available but not for free. The AFM instructions for an aircraft is proprietary to the owner of the aircraft design (usually the manufacturer). The incorporated

requirements are at the aircraft-specific level, and instructions are required to be provided to owners of aircraft. Where available, and by prior arrangement, CASA will make AFM instructions available for inspection at any CASA office.

Operations manual of an operator

An operations manual for a parachuting operator is the 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 conduct their authorised operations safely in compliance with the civil aviation legislation. The operations manual is provided by the operator to the APF as the approved self-administering aviation organisation (**ASAO**) responsible for overseeing the conduct of parachuting operations pursuant to Part 149 of CASR.

An operations manual is not publicly or freely available. It is proprietary to the operator and will generally include commercial in confidence information about the operator's business. The incorporated requirements of an operations manual are at the operator-specific level and apply only to the operator and its personnel. Further, the operator is under obligations to make the operations manual available to its personnel who have obligations under the document.

Part 105 ASAO exposition

A Part 105 exposition is a document, or suite of documents, submitted by the APF to CASA as part of the APF's application under Part 149 of CASR, to be an ASAO for parachuting operations conducted in accordance with Part 105 of CASR.

The exposition contains the matters specified in regulation 149.340 of CASR and includes the processes and procedures utilised by the APF to ensure that its member clubs conduct parachuting operations in accordance with the requirements of Part 105 of CASR.

The APF's exposition is not publicly or freely available. It is proprietary to the APF and includes commercial in confidence information about the APF's business.

APF membership form

The APF membership form is the form by which parachutists apply to become financial members of the APF. Parachutists must be members of the APF in order to lawfully conduct a parachute descent.

The APF membership form is freely available from the APF or from its individual member clubs.

Content of instrument

Preliminary clauses

Sections 1 to 4 of the instrument specify the title of the instrument and its commencement date, as well as identifying the two existing instruments which are amended by the terms of the instrument.

Schedule 1

This schedule sets out the amendments which the instrument makes to existing instrument CASA EX105/23 as follows:

Item 1 inserts a definition of CASR into section 3 of the existing instrument.

Item 2 repeals section 8 of the existing instrument and replaces it with new sections 8 to 11 which have the following effect:

Subsection 8(1) inserts definitions which are relevant to the operation of the exemptions granted in subsection (4) and the directions issued in section 10.

Subsection 8(2) and (3) provide additional guidance on the interpretation of terms used in the exemption and the intended effect of references to incorporated documents.

Subsection 8(4) exempts the pilot in command of an aeroplane engaged in parachuting operations from compliance with paragraph 91.095(2)(a) of CASR, to the extent of an instruction that would otherwise:

- (a) limit the number of passengers that may be carried on the aeroplane
- (b) mandate the seating configuration for those passengers; and
- (c) mandate that those passengers be restrained by seat belts or shoulder harnesses.

This exemption will facilitate the lawful operation of an aircraft which has been modified to a parachuting configuration without accompanying changes being made to the AFM to recognise the differences in configuration.

Subsection 8(5) provides that the exemption granted in subsection (4) is subject to the conditions set out in new section 9.

Subsection 9(1) provides that modification of an aeroplane to a parachuting configuration in a way which attracts the operation of the exemption in subsection 8(4) must have been approved:

- (a) by an authorised person or an approved design organisation under regulation 21.437 of CASR; or
- (b) otherwise in accordance with a Part 21 approval; or
- (c) by an approval continued in force according to its terms under regulation 202.054 of CASR.

These conditions ensure that the modification of the aeroplane to a parachuting configuration has been designed and approved by an appropriately qualified person using appropriate engineering principles and techniques.

Subsection 9(2) requires the pilot in command to comply with the aeroplane operator's procedures for ensuring that the aeroplane:

- (a) remains within its maximum take-off weight (*MTOW*);
- (b) remains within its centre of gravity limits and requirements at all stages of the operation; and

- (c) complies with all limits, restrictions and conditions imposed by the approval of the modification mentioned in paragraph 9(1)(c), (d) or (e).

These conditions ensure that the PIC follows procedures designed by the operator of the aeroplane to take into account the modification of the aeroplane to a parachute configuration.

They include procedures to ensure that the aircraft is loaded and operated in a way which ensures that critical weight, centre of gravity and other limitations imposed by the designer of the modifications, are observed at all times.

Subsection 9(3) requires the PIC, of an aeroplane to which the exemption in subsection 8(4) applies, to verify that each parachutist carried on the flight has signed an acknowledgement form that states that the parachutist has been informed in writing that the modification of the aeroplane to a parachuting configuration affords the parachutists a reduced level of safety protection in certain circumstances (in-flight turbulence, emergency landing) when compared to the aeroplane in its unmodified passenger carrying configuration.

While seating and restraint systems used in parachuting aeroplanes are approved for the purposes of parachuting operations, they offer less safety protection than certified seating arrangements used in standard passenger carrying operations because they generally comprise only a single point restraint, seating on the floor of the aeroplane cabin, or seating on a bench seat that does not meet the same crashworthiness standards as the passenger seats which are fitted in the aeroplane in its unmodified passenger carrying configuration.

While this reduction in the overall level of safety is consistent with safety standards required for parachuting operations, CASA considers it appropriate that parachutists be made aware of this fact as a part of the process of making an informed decision whether or not to participate in a higher risk aviation activity such as parachuting.

The requirement for the PIC to verify that each parachutist has completed the acknowledgement form does not require the PIC to personally sight each completed form. Subsections 10(2) and (3) require the operator to put in place procedures to establish a system whereby the PIC is able to rely on the verification provided to them by others (the Drop Zone Safety Officer) who have personally established that each parachutist has completed the signed acknowledgment within the 12 months before the flight.

Subsections 9(4), (5) and (6) provide, in combination, that the notification and acknowledgment required under subsection 9(3):

- (a) is to be contained in the APF membership form;
- (b) is to be given to parachutists in sufficient time, before the conduct of a flight, to enable them to read and understand the notification and provide an informed acknowledgement;
- (c) need only be completed once every 12 months.

Subsection 10(1) directs the operator of the aeroplane to which the exemption in subsection 8(4) applies, to ensure that the PIC of the aircraft complies with the conditions on the exemption set out in section 9, including the procedures referred to in subsection 9(2).

Subsection 10(2) directs the aeroplane operator to have procedures dealing with the matters specified in subsections 9(2), (3) and (4).

Subsection 10(3) directs the aeroplane operator to ensure, before a flight to which section 8 applies:

- (a) each parachutist is an APF member who has completed the acknowledgment referred to in subsection 9(3);
- (b) the person who is performing the duties of Drop Zone Safety Officer for the flight verifies to the PIC that each parachutist is an APF member who has completed the acknowledgement referred to in subsection 9(3).

Subsection 10(4) disapplies section 5 of CASA EX67/24 (which is a direction that requires compliance with AFM instructions before, during or after a flight) to any requirement or limitation in the AFM which is the subject of the exemption granted under section 8.

Section 11 provides that the instrument is repealed with effect from the end of 1 December 2026.

Schedule 2

This schedule amends existing instrument CASA EX67/24.

Item 1 inserts a new subsection 5(3) which clarifies that the direction in subsection 5(1) of CASA EX67/24 applies subject to new subsection 10(4) of CASA EX105/23.

Legislation Act 2003

The exemptions and directions in this instrument are for the safe navigation and operation of aircraft and apply to classes of persons. The instrument is a legislative instrument under the Act and the LA and subject to registration, and tabling and disallowance in the Parliament, under sections 15G, and 38 and 42, of the LA.

Sunsetting

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

However, this instrument will be repealed automatically under section 48A of the LA. The provisions of existing instrument CASA EX105/23 affected by this instrument will be repealed at the end of 1 December 2026 and the provision of existing instrument CASA EX67/24 affected by this instrument will be repealed at the end of 1 December 2027. Those repeals will occur before the sunsetting provisions would have repealed existing instrument CASA EX105/23 or CASA EX67/24, or this instrument, if they had applied. Any renewal of, or further amendment to, existing instrument CASA EX105/23 or CASA EX67/24 will be subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA. Therefore, the exemption from sunsetting does not affect parliamentary oversight of this 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 insofar 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.

The exemptions and directions contained in this instrument have been consulted directly with the APF, whose member clubs are most directly affected by its operation. CASA took into account feedback provided by the APF in finalising the form and content of this instrument.

CASA is satisfied that no further consultation is appropriate or reasonably practicable for this instrument for section 17 of the LA.

Sector risk, economic and cost impact

Subsection 9A(1) of the Act states that, in exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration.

Subsection 9A(3) of the Act states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9(1)(c), CASA must:

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

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

As the instrument essentially regularises existing operational practices and procedures, it is expected that it will have a cost neutral impact on affected operators.

Impact on categories of operations

The instrument is likely to have a beneficial impact on affected operators conducting operations under Part 105, by clarifying that existing operational practices and procedures can continue to be lawfully used in the conduct of parachuting operations.

Impact on regional and remote communities

The benefits and efficiencies referred to in the paragraph immediately above are likely to flow through regional and remote communities to the extent that affected operators are based in or conduct their operations in those communities.

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 exemption and direction instruments (OIA reference number: OIA23-06252).

Statement of Compatibility with Human Rights

The Statement in Appendix 1 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The exemption 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 it does so in a way that is reasonable, necessary and proportionate in the context of aviation safety.

Making and commencement

The exemption has been made by the Executive Manager, National Operations & Standards of CASA, a delegate of CASA, relying on the power of delegation under subregulation 11.260(1) of CASR.

The instrument commences at the time of registration.

Statement of Compatibility with Human Rights

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

CASA EX61/25 — CASA EX105/23 and CASA EX67/24 Amendment 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 EX61/25 — CASA EX105/23 and CASA EX67/24 Amendment Instrument 2025* (the **instrument**) is to amend the existing exemption and direction instruments *CASA EX105/23—Part 105 (Parachute Operators and Pilots) Instrument 2023 (CASA EX105/23)* and *CASA EX67/24 – Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2024 (CASA EX67/24)* applying to the conduct of parachuting operations to address an issue relating to the approval of aircraft cabin seating and restraint systems routinely used in parachuting aircraft.

The instrument allows the pilot in command (**PIC**) of an aircraft engaged in parachuting operations not to comply with aircraft flight manual instructions which are not aligned with the approved passenger cabin configuration of the aircraft.

The exemption within the instrument is subject to conditions which require the PIC to comply with procedures developed by the aircraft operator which are appropriate for the parachuting configuration of the aircraft.

The instrument also issues directions to the aircraft operator requiring the operator to ensure that the PIC complies with those procedures.

Human rights implications

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

- the right to life under Article 6 of the International Covenant on Civil and Political Rights (the **ICCPR**)
- the right to safe and healthy working conditions under Article 7 of the International Covenant on Economic, Social and Cultural Rights (the **ICESCR**).

Right to life under the ICCPR

Right to safe and healthy working conditions under the ICESCR

Although the instrument contains exemptions from a provision of Part 91 of CASR, it does so in the context of substitute, and acceptable, conditions and directions 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, the instrument may reasonably be said to support the

right to life, and to contribute to safe and healthy working conditions on board parachuting aircraft.

Conclusion

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 is reasonable, necessary and proportionate in the interests of aviation safety.

Civil Aviation Safety Authority