Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX81/25 – Serviceability of Equipment (Combination Flight Data and Voice Recorders) (CASA EX14/25) – Amendment Instrument 2025

Purpose

The purpose of *CASA EX81/25 – Serviceability of Equipment (Combination Flight Data and Voice Recorders) (CASA EX14/25) – Amendment Instrument 2025* is to amend instrument *CASA EX14/25 – Serviceability of Equipment under the Part 91, 121, 133 and 135 Manuals of Standards – Exemption Instrument 2025* (***CASA EX14/25***) to add a series of exemptions from compliance with Manuals of Standards (***MOSs***) made under Parts 91, 121, 133 and 135 of *Civil Aviation Safety Regulations 1998* (***CASR***) in relation to flight with inoperative flight recording equipment.

The instrument concerns aircraft equipped with 1 or more combination recorders (being a unit of equipment that combines the functions of a flight data recorder (***FDR***) and a cockpit voice recorder (***CVR***)) to meet the requirements under the relevant Manual of Standards (***MOS***) to have such equipment fitted and operative on the aircraft for a flight. The exemptions in the instrument deal with particular configurations of such equipment on aircraft like the Airbus A319, A320 and A321 which, despite the combination recorder being inoperative, may have a functional FDR or CVR within it. Subject to conditions and limits on the duration of any period of inoperability of the equipment, the exemptions broaden the circumstances in which an aircraft can fly with flight recording equipment inoperative, for example, if at least 1 FDR or 1 CVR remained operative on the aircraft.

CASA EX14/25 is an instrument that contains other exemptions in respect of certain prescribed equipment, for operators and pilots in command of aircraft to which Part 91, 121, 133 or 135 of CASR applies, that exempt the person from compliance with relevant provisions of a MOS made under the relevant Part, that require that such equipment must be operative.

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 Part 91 MOS requires prescribed equipment to be operative. Division 26.9 provides for flight recording equipment that must be fitted to an aircraft. Section 26.38 of the MOS provides for some circumstances in which certain flight recording equipment may be inoperative at the beginning of a flight from a departure aerodrome with no facility for the flight recorder to be repaired or replaced.

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 Part 121 MOS requires prescribed equipment to be operative. Division 7 of Chapter 11 of the MOS provides for flight recording equipment that must be fitted to an aeroplane. Section 11.34 provides for some circumstances in which certain flight recording equipment may be inoperative at the beginning of a flight from a departure aerodrome with no facility for the flight recorder to be repaired or replaced.

Part 133 of CASR deals with the operation of rotorcraft for Australian air transport operations, including the carriage of passengers who are patients and medical personnel in medical transport operations. Regulation 133.020 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 Part 133 MOS requires prescribed equipment to be operative. Division 7 of Chapter 11 of the MOS provides for flight recording equipment that must be fitted to a rotorcraft. Section 11.28 provides for some circumstances in which certain flight recording equipment may be inoperative at the beginning of a flight from a departure aerodrome with no facility for the flight recorder to be repaired or replaced.

Part 135 of CASR prescribes requirements for the conduct of Australian air transport operations in aeroplanes that have a 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 135.025 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 Part 135 MOS requires prescribed equipment to be operative. Division 7 of Chapter 11 of the MOS provides for flight recording equipment that must be fitted to an aeroplane. Section 11.35 provides for some circumstances in which certain flight recording equipment may be inoperative at the beginning of a flight from a departure aerodrome with no facility for the flight recorder to be repaired or replaced.

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 maximum penalty of 50 penalty units) 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.

Acts Interpretation Act

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument. Under subsection 13(1) of the *Legislation Act 2003* (the ***LA***), subsection 33(3) applies to legislative instruments as if each provision of the instrument were a section of an Act.

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 all 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 inoperative (***inoperative*** is defined in Part 1 of the CASR Dictionary). 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 Parts 91, 121, 133 and 135 MOSs. These MOSs took effect on 2 December 2021.

CASA received feedback from Qantas that the Airbus A321 aeroplane, which commenced operation in September 2025, has combination recorder equipment configured such that the combination recorder would be considered to be inoperative even if an FDR or a CVR within it was operative. This configuration was found to be common across various other aircraft.

Operations with either the FDR or CVR inoperative within a combination recorder provides no additional risk to an aeroplane with an inoperative FDR or CVR where they are separate units. Each of the relevant MOSs currently provide for alleviations concerning flight without operative flight recording equipment, but the circumstances in which this is permissible under the Part 91, Part 121 and Part 133 MOSs are not broad enough to cover the situation where an FDR or CVR remains operative within an inoperative combination recorder.

CASA has assessed that an acceptable level of safety would be maintained for aircraft operating under the exemption. The rules about flying with inoperative FDRs and CVRs within combination recorders are similar to the rules currently applying for aircraft flying with inoperative single unit FDRs or CVRs. The preservation of an acceptable level of safety for Australian air transport operators is subject to conditions, including that an unserviceability is provided for in the aircraft MEL, and duration provisions that limit the period for which equipment can remain unserviceable.

The instrument

The exemptions in the instrument all relate to FDRs and CVRs installed in an aircraft in a combined unit (called a combination recorder). Aircraft may have 1 or more than 1 combination recorder fitted onto the aircraft. The aircraft may be aircraft to which Part 91, Part 121, Part 133 or Part 135 of CASR applies.

For the exempted equipment, 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 safety conditions that must be complied with, an acceptable level of aviation safety is preserved.

Section 1

Section 1 provides that the name of the instrument is *CASA EX81/25 – Serviceability of Equipment (Combination Flight Data and Voice Recorders) (CASA EX14/25) – Amendment Instrument 2025.*

Section 2

Section 2 provides that the instrument commences at the time that it is registered.

Section 3

Section 3 provides that CASA EX14/25 is amended as set out in Schedule 1.

Schedule 1

Item [1]

This item inserts section 5A, titled “Exemptions — Flight recording equipment: Part 91 operations”, into the instrument.

Under this section, the operator and the pilot in command of an aircraft, for a flight that is an aircraft operation to which Part 91 applies, are exempted from compliance with subregulation 91.810(2) of CASR to the extent that section 26.04 of the Part 91 MOS requires an FDR or a CVR, required to be fitted to the aircraft under Division 26.9 of the MOS, to be operative.

The exemption is expressed to apply to the extent that section 26.38 of the MOS does not otherwise permit the equipment to be inoperative. This is because section 26.38

provides for some circumstances in which an aircraft can be flown with equipment inoperative, but the exemption provides for a broader range of such circumstances.

The exemption applies to an aircraft that is required under Division 26.9 of the MOS to be fitted with both 1 FDR and 1 CVR, and the circumstances in which the exemption applies include that:

(a) the aircraft is fitted with not more than 1 combination recorder, the combination recorder is inoperative, but either the FDR or the CVR within the combination recorder remains operative; or

(b) the aircraft is fitted with more than 1 combination recorder, with none of the combination recorders operative, but with at least 1 FDR or CVR within a combination recorder operative.

In each case, the exemption permits that the equipment may be inoperative only if the aircraft begins a flight from a departure aerodrome with no facility for an FDR, CVR or combination recorder to be repaired or replaced.

It is a condition of the exemption that the MEL for the aircraft permits the aircraft to begin a flight with the relevant FDR or CVR within the combination recorder inoperative, under conditions no less prescriptive, including as to duration, than those mentioned in the section.

It is also a condition that the inoperative FDR or CVR within a combination recorder fitted to the aircraft must not have been inoperative for more than 21 calendar days.

Item [2]
This item inserts a new paragraph (aa) into the exemption set out in item 3 of the table in section 6 for an exemption from a Part 121 MOS provision regarding flying with an inoperative data link recorder. New paragraph (aa) provides for the condition that the MEL for the aeroplane must permit flight with the equipment inoperative under conditions no less restrictive than as set out for the exemption. This corrects an unintended omission.

Item [3]
This item inserts section 6A, titled “Exemptions — Flight recording equipment: Part 121 operations”, into the instrument.

Under this section, the operator and the pilot in command of an aeroplane, for a flight that is an aeroplane operation to which Part 121 applies, are exempted from compliance with subregulation 121.460(2) of CASR to the extent that section 11.06 of the Part 121 MOS requires an FDR or a CVR required to be fitted to the aircraft under Division 7 of Chapter 11 of the MOS to be operative.

The exemption is expressed to apply to the extent that section 11.34 of the MOS does not otherwise permit the equipment to be inoperative. This is because section 11.34 provides for some circumstances in which an aeroplane can be flown with equipment inoperative, but the exemption provides for a broader range of such circumstances.

The exemption applies to an aeroplane that is required under Division 7 of Chapter 11 of the MOS to be fitted with both 1 FDR and 1 CVR, and the circumstances in which the exemption applies include that:

(a) the aeroplane is fitted with not more than 1 combination recorder, the combination recorder is inoperative, but either the FDR or the CVR within the combination recorder remains operative; or

(b) the aeroplane is fitted with more than 1 combination recorder, with none of the combination recorders operative, but with at least 1 FDR or CVR within a combination recorder operative.

In each case, the exemption permits that the equipment may be inoperative only if the aeroplane begins a flight from a departure aerodrome with no facility for an FDR, CVR or combination recorder to be repaired or replaced.

It is a condition of the exemption that the MEL for the aeroplane permits the aeroplane to begin a flight with the relevant FDR or CVR within a combination recorder inoperative, under conditions no less prescriptive, including as to duration, than those mentioned in the section.

It is also a condition that the inoperative FDR or CVR within a combination recorder fitted to the aircraft must not have been inoperative for more than 21 calendar days.

Item [4]
This item inserts section 7A, titled "Exemptions — Flight recording equipment: Part 133 operations", into the instrument.

Under this section, the operator and the pilot in command of a rotorcraft, for a flight that is a rotorcraft operation to which Part 133 applies, are exempted from compliance with subregulation 133.360(2) of CASR to the extent that section 11.04 of the Part 133 MOS requires an FDR or a CVR required to be fitted to the rotorcraft under Division 7 of Chapter 11 of the MOS to be operative.

The exemption is expressed to apply to the extent that section 11.28 of the MOS does not otherwise permit the equipment to be inoperative. This is because section 11.28 provides for some circumstances in which a rotorcraft can be flown with equipment inoperative, but the exemption provides for a broader range of such circumstances.

The exemption applies to a rotorcraft that is required under Division 7 of Chapter 11 of the MOS to be fitted with both 1 FDR and 1 CVR, and the circumstances in which the exemption applies include that:

(a) the rotorcraft is fitted with not more than 1 combination recorder, the combination recorder is inoperative, but either the FDR or the CVR within the combination recorder remains operative; or

(b) the rotorcraft is fitted with more than 1 combination recorder, with none of the combination recorders operative, but with at least 1 FDR or CVR within a combination recorder operative.

In each case, the exemption permits that the equipment may be inoperative only if the rotorcraft begins a flight from a departure aerodrome with no facility for an FDR, CVR or combination recorder to be repaired or replaced.

It is a condition of the exemption that the MEL for the rotorcraft permits the rotorcraft to begin a flight with the relevant FDR or CVR within a combination recorder inoperative, under conditions no less prescriptive, including as to duration, than those mentioned in the section.

It is also a condition that the inoperative FDR or CVR within a combination recorder fitted to the aircraft must not have been inoperative for more than 21 calendar days.

Item [5]
This item inserts section 8A, titled "Exemptions — Flight recording equipment: Part 135 operations", into the instrument.

Under this section, the operator and the pilot in command of an aeroplane, for a flight that is an aeroplane operation to which Part 135 applies, are exempted from compliance with subregulation 135.370(2) of CASR to the extent that section 11.04 of the Part 133 MOS requires an FDR or a CVR required to be fitted to the rotorcraft under Division 7 of Chapter 11 of the MOS to be operative.

The exemption is expressed to apply to the extent that section 11.35 of the MOS does not otherwise permit the equipment to be inoperative. This is because section 11.35 provides for some circumstances in which an aeroplane can be flown with equipment inoperative, but the exemption provides for a broader range of such circumstances.

The exemption applies to an aeroplane that is required under Division 7 of Chapter 11 of the MOS to be fitted with both 1 FDR and 1 CVR, and the circumstances in which the exemption applies are that:

(a) the aeroplane is fitted with not more than 1 combination recorder and the combination recorder is inoperative; and
(b) neither the FDR nor the CVR within the combination recorder are operative.

The exemption permits that the equipment may be inoperative only if the aeroplane begins a flight from a departure aerodrome with no facility for an FDR, CVR or combination recorder to be repaired or replaced.

It is a condition of the exemption that the MEL for the aeroplane permits the aeroplane to begin a flight with the FDR and CVR within the combination recorder inoperative, under conditions no less prescriptive, including as to duration, than those mentioned in the section.

It is also a condition that the inoperative combination recorder fitted to the aeroplane must not have been inoperative for more than 3 calendar days.

Legislation Act 2003
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 general 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, 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.

In this case, the instrument amends the principal exemption instrument and is almost immediately spent and repealed in accordance with the automatic repeal provisions in section 48A of the LA. The principal exemption instrument is itself repealed at the end of 28 February 2027 by virtue of the terms of paragraph 2(b) of the principal exemption instrument. Thus, in practice, no sunsetting avoidance issues arise and there is no impact on parliamentary oversight.

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

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

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.

Qantas initially identified the unintended limitations associated with combination recorders that are the subject of the instrument and that would affect operators generally in relation to the same equipment. Although a formal public consultation has not been undertaken, there has been external informal consultation with Qantas as an operator that would use the exemption provisions. CASA is, therefore, satisfied that no further consultation is appropriate or reasonably practicable for this instrument for section 17 of the LA.

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 reference number: OIA23-06252).

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 when the flight operations suite of regulations (comprising Parts 91, 119, 121, 133 and 135 of CASR) commenced, since the instrument does not create any new environmental impacts arising from the related flight operations.

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 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 at the time that it is registered and is automatically repealed in accordance with section 48A of the LA.

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

Statement of Compatibility with Human Rights

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

CASA EX81/25 – Serviceability of Equipment (Combination Flight Data and Voice Recorders) (CASA EX14/25) – 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 EX81/25 – Serviceability of Equipment (Combination Flight Data and Voice Recorders) (CASA EX14/25) – Amendment Instrument 2025* is to amend instrument *CASA EX14/25 – Serviceability of Equipment under the Part 91, 121, 133 and 135 Manuals of Standards – Exemption Instrument 2025* (***CASA EX14/25***) to add a series of exemptions from compliance with Manuals of Standards (***MOSs***) made under Parts 91, 121, 133 and 135 of *Civil Aviation Safety Regulations 1998* (***CASR***) in relation to flight with inoperative flight recording equipment.

The instrument concerns aircraft equipped with 1 or more combination recorders (being a unit of equipment that combines the functions of a flight data recorder (***FDR***) and a cockpit voice recorder (***CVR***)) to meet the requirements under the relevant MOS to have such equipment fitted and operative on the aircraft for a flight. The exemptions in the instrument deal with particular configurations of such equipment on aircraft like the Airbus A319, A320 and A321 which, despite the combination recorder being inoperative, may have a functional FDR or CVR within it. Subject to conditions and limits on the duration of any period of inoperability of the equipment, the exemptions broaden the circumstances in which an aircraft can fly with flight recording equipment inoperative, for example, if at least 1 FDR or 1 CVR remained operative on the aircraft.

CASA EX14/25 is an instrument that contains other exemptions in respect of certain prescribed equipment, for operators and pilots in command of aircraft to which Part 91, 121, 133 or 135 of CASR applies, that exempt the person from compliance with relevant provisions of a Manual of Standards made under the relevant Part, that require that such equipment must be operative.

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 Parts 91, 121, 133 and 135 MOSs. The aircraft equipment requirements under these MOSs only permit some equipment to be unserviceable for a flight.

CASA received feedback from Qantas about the Airbus A321 aeroplane regarding the configuration of flight recording equipment installed on the aircraft. CASA assessed the feedback and considered that an acceptable level of safety would be preserved if the combination recorder equipment on aircraft generally was permitted to be inoperative, subject to conditions and limits placed on the period during which equipment may be inoperative.

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.

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 (the ***UN Committee***) 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 UN 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 non-critical equipment unserviceable, 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 non-critical equipment unserviceable, generally to enable flights to be completed or to travel to appropriate maintenance facilities. The absence of operative flight recording equipment on an aircraft does not affect the safe operation of the 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 promotes 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.

Civil Aviation Safety Authority