

Question on notice no. 307

Portfolio question number: SQ23-005061

2023-24 Supplementary Budget estimates

**Rural and Regional Affairs and Transport Committee, Infrastructure,
Transport, Regional Development, Communications and the Arts Portfolio**

Senator Bridget McKenzie: asked the Civil Aviation Safety Authority on 2 November 2023—

- (1.Operators of health services to remote Australia which help over 800 Australian families living with a disability, will be grounded by an upcoming 1 December 2023 deadline imposed under 7AA of?CASA EX82/21 - Part 119 of CASR - Supplementary Exemptions and Directions Instrument 2021 (Attachment A) , a deadline which does not correlate to the rest of the Instrument.?You've previously stated to operators that the intention of the deadline was to enable CASA to engage with relevant stakeholders, has this engagement occurred?
- 2.Will CASA agree to extend this deadline to 1 December 2024, like the other items in the Instrument, to enable this stakeholder engagement process to be effected, noting this deadline is six weeks away and is causing unnecessary stress on both operators and those needing health services?
- 3.Has CASA looked at creating a separate class for Not for Profits and Charities that provided much needed transport for routine medical visits for rural and regional people, including a number of NDIS recipients, to avoid the risk of these critical services no longer being able to operate?
- 4.Regional communities are heavily reliant on services like Angel Flight and Fly2Health to be able to make routine medical appoints hundreds of kilometres away from their home as health services often aren't available in the more remote regions, if these not for profits are no longer able to operate as a result of these regulations, does CASA intend to explain to these communities why they are no longer able to access these vital flights?

Answer —

Please find answer attached

Rural and Regional Affairs and Transport

QUESTION ON NOTICE

Supplementary Budget Estimates 2023 - 2024

Infrastructure, Transport, Regional Development, Communications and the Arts

Committee Question Number: 307

Departmental Question Number: SQ23-005061

Division/Agency Name: Agency - Civil Aviation Safety Authority

Hansard Reference: Written (02 November 2023)

Topic: CASA - Health service operators impacted by deadline imposed under instrument

Senator Bridget McKenzie asked:

1. Operators of health services to remote Australia which help over 800 Australian families living with a disability, will be grounded by an upcoming 1 December 2023 deadline imposed under 7AA of CASA EX82/21 – Part 119 of CASR – Supplementary Exemptions and Directions Instrument 2021 (Attachment A), a deadline which does not correlate to the rest of the Instrument. You've previously stated to operators that the intention of the deadline was to enable CASA to engage with relevant stakeholders, has this engagement occurred?
2. Will CASA agree to extend this deadline to 1 December 2024, like the other items in the Instrument, to enable this stakeholder engagement process to be effected, noting this deadline is six weeks away and is causing unnecessary stress on both operators and those needing health services?
3. Has CASA looked at creating a separate class for Not for Profits and Charities that provided much needed transport for routine medical visits for rural and regional people, including a number of NDIS recipients, to avoid the risk of these critical services no longer being able to operate?
4. Regional communities are heavily reliant on services like Angel Flight and Fly2Health to be able to make routine medical appointments hundreds of kilometres away from their home as health services often aren't available in the more remote regions, if these not for profits are no longer able to operate as a result of these regulations, does CASA intend to explain to these communities why they are no longer able to access these vital flights?

Answer:

1. The exemption contained in section 7AA of CASA EX82/21 only applies to defined business aviation, government aviation or owner recreational aviation activities. CASA has not yet conducted the stakeholder engagement activities that could lead to enduring rules not based on an exemption.
2. CASA has extended the deadline in section 7AA of CASA EX82/21 by a further 12 months until 1 December 2024, with a commitment to consider further extensions if they are needed to enable the stakeholder engagement activities to occur.

3. CASA has noted the interest from stakeholders in the creation of a not for profit/charity exclusion from being required to hold an Air Operator's Certificate. CASA does not yet have a finalised policy position on the operation of such an exclusion. However, on a case-by-case basis, CASA has facilitated the ongoing conduct of certain charitable and public interest flight operations without the need for an Air Operator's Certificate.
4. Operators, such as Angel Flight and Fly2Health, continue to operate without needing to hold an Air Operator's Certificate. CASA will be extending the exemption in section 7AA of CASA EX82/21 until 1 December 2024 to enable the relevant policy development and stakeholder engagement activities to occur.



Australian Government

Civil Aviation Safety Authority

CASA EX82/21 – Part 119 of CASR – Supplementary Exemptions and Directions Instrument 2021

as amended

made under regulations 11.160, 11.205 and 11.245 of the *Civil Aviation Safety Regulations 1998*.

This compilation was prepared on 24 December 2022 taking into account amendments up to instrument *CASA EX108/22 – Amendment of CASA EX82/21 – Instrument (No. 2) 2022*. It is a compilation of *CASA EX82/21 – Part 119 of CASR – Supplementary Exemptions and Directions Instrument 2021*, as amended and in force on 24 December 2022.

Prepared by the Advisory and Drafting Branch, Legal, International and Regulatory Affairs Division, Civil Aviation Safety Authority, Canberra.

Compilation No. 3.

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Part 1 Preliminary, Definitions and Application

1 Name

This instrument is *CASA EX82/21 – Part 119 of CASR – Supplementary Exemptions and Directions Instrument 2021*.

2 Duration

This instrument:

- (a) commences on 2 December 2021 (the **commencement date**); and
- (b) is repealed at the end of 1 December 2024 (thereby, for paragraph 11.250 (a) of CASR, ceasing to be in force on and from the beginning of 2 December 2024).

3 Definitions

- (1) In this instrument:

aerial work (air ambulance) operation has the same meaning as in regulation 202.405 of CASR.

ATPL is short for air transport pilot licence.

air operations has the same meaning as in subparagraph 28 (1) (b) (iv) of the Act.

Australian air transport operation has the meaning given by regulation 119.010 of CASR.

Australian air transport operator has the meaning given by subregulation 119.015 (2).

CAO means Civil Aviation Order.

CAR means the *Civil Aviation Regulations 1988*, as in force immediately before 2 December 2021, and any mention of a provision of CAR refers to that provision as so in force.

CASR means the *Civil Aviation Safety Regulations 1998*.

charter operations has the same meaning as it had in regulation 206 of CAR immediately before 2 December 2021.

civil aviation legislation has the meaning given by section 3 of the *Civil Aviation Act 1988*.

early applicant, for a particular AOC or AOC variation, means a person:

- (a) who at least 90 days before the commencement date — applied for the AOC or AOC variation under the civil aviation legislation in force on the date of the application; but
- (b) whose application was still under consideration by CASA on the commencement date.

exposition content, for a safety system, means the exposition content required for the safety system under Part 119 of CASR, and under any applicable related requirements under Part 121, Part 133 and Part 135 of CASR.

FDAP is short for flight data analysis program.

HFP&NTS program means an Australian air transport operator's program for training and assessing operational safety-critical personnel in human factors principles and non-technical skills.

high capacity aircraft has the meaning given by subsection 2 of CAO 82.0, as in force immediately before 2 December 2021.

HOFo is short for head of flying operations, and has the same meaning as in the Act.

HOTC is short for head of training and checking, and has the same meaning as the expression head of the training and checking part of an organisation has in subsection 28 (3) of the Act.

medical transport operation means a Part 133 operation that is a medical transport operation within the meaning given by paragraph (1) (a) of the definition of **medical transport operation** in the CASR Dictionary.

MOPSC is short for maximum operational passenger seat configuration.

MTOW is short for maximum take-off weight.

NVIS operation means an NVIS flight that is any of the following operations using NVIS:

- (a) a medical transport operation;
- (b) training or checking for a Part 133 operator in relation to its crew members who conduct NVIS flights during the operator's medical transport operations;
- (c) a maintenance flight of an aircraft for the purpose of ensuring the serviceability of the aircraft, or the NVIS, for NVIS operations mentioned in any other paragraph of this definition;
- (d) a test flight of an aircraft for the purpose of certifying the aircraft, or the NVIS, for NVIS operations mentioned in any other paragraph of this definition.

operational safety-critical personnel has the meaning given by the CASR Dictionary.

Part 133 operation means an Australian air transport operation mentioned in regulation 133.005, and includes a medical transport operation.

regular public transport operations has the same meaning as it had in regulation 206 of CAR immediately before 2 December 2021.

safety management system or **SMS**, for an Australian air transport operator, has the meaning given by the CASR Dictionary.

safety system means a safety system that is one of the following:

- (a) an SMS, including its exposition content;
- (b) an HFP&NTS program, including its exposition content;
- (c) a T&C system, including its exposition content.

scheduled air transport operation has the meaning given by the CASR Dictionary.

T&C is short for training and checking.

the Act means the *Civil Aviation Act 1988*.

- (2) To avoid doubt, in this instrument, unless a contrary intention appears:
 - (a) words and expressions have the same meaning as in Part 119 of CASR, the CASR Dictionary, and in the Act, as applicable; and
 - (b) mention of a provision with the prefix "119." is a reference to that provision as contained in Part 119 of CASR.
- (3) To avoid doubt, any document incorporated into this instrument is so incorporated as it is in force from time to time.

3A Table of Contents

A Table of Contents may be added to the front of the compilation of this instrument but it is for reader guidance only and is not a formal part of this instrument.

4 Application

This instrument applies, according to its terms, to the operator, and the pilot in command, of an aircraft to which Part 119 of CASR applies.

Part 2 Directions

5 Use of EFBs — direction

- (1) In this section:

EFB is short for electronic flight bag, and means an information system for the flight crew members of an aircraft, that allows storing, updating, delivering, and displaying, with or without computing, digital data to support flight operations or flight duties on the aircraft.

relevant CAO means CAO 82.0, as in force immediately before 2 December 2021.

- (2) Subject to subsection (4), an Australian air transport operator must not use an EFB in an operation for the first time unless CASA, in writing, has approved the use of the EFB by the operator and the aircraft's flight crew.
- (3) An Australian air transport operator must include in its exposition information, procedures and instructions in relation to:
- (a) use of the EFB by the operator's flight crew members; and
 - (b) management of the EFB, including access to it, and the security and updating of it; and
 - (c) how the operator will obtain CASA approval of any changes to the use of the EFB as described in the exposition.
- (4) Subsection (2) does not apply to an Australian air transport operator if, immediately before 2 December 2021, the operator was an AOC holder:
- (a) authorised to conduct charter operations, regular public transport operations, or aerial work (air ambulance) operations; and
 - (b) in compliance with the requirements of paragraph 11.1 and Appendix 9 of the relevant CAO.

6 Operation of foreign-registered aircraft — direction

- (1) An Australian air transport operator must not operate a foreign-registered aircraft (the **relevant foreign aircraft**) in an Australian air transport operation for the first time unless CASA, in writing, has approved the operator's application to operate the aircraft in the operation.
- (2) An Australian air transport operator approved in accordance with subsection (1) must not change the operation of the relevant foreign-registered aircraft (other than to cease operating the aircraft) unless CASA, in writing, has approved the operator's application to change the operation of the aircraft.
- (3) An application for a CASA approval under subsection (1) or (2) must be accompanied by the information that is described in paragraphs 28A (1) (c) to (h) of the Act.
- (4) If the relevant foreign aircraft is the subject of, or included under, an agreement mentioned in paragraph 28A (1) (a) or (b) of the Act that indicates the period of time during which the aircraft may be operated by the Australian air transport operator, then the operator must not operate the aircraft outside that period of time.

- (5) Subsections (1) to (4) of this section do not apply to an Australian air transport operator in relation to the operation of:
 - (a) an aircraft registered in New Zealand and operated under an Australian AOC with ANZA privileges; or
 - (b) an aircraft for the operation of which the operator holds a permission under section 27A of the Act.

6A First use of NVIS in an NVIS operation under Part 133 – significant change – direction

- (1) This section applies to an Australian air transport operator (the *operator*) for a Part 133 operation.
- (2) Before conducting an NVIS operation for the first time in a Part 133 operation, the operator must apply for, and obtain, the written approval of CASA as if:
 - (a) the first conduct of the NVIS operation were a significant change within the meaning of that expression in regulation 119.020; and
 - (b) regulations 119.090, 119.095 and 119.100 applied to the first conduct of the NVIS operation as if it were such a significant change.
- (3) If CASA gives the operator its approval under subsection (2) for a particular NVIS operation, no subsequent approval under subsection (2) is required before the operator may conduct a different NVIS operation for the first time in a Part 133 operation.

6B Retention of historical records — direction

- (1) This section applies to an Australian air transport operator if, immediately before 2 December 2021, the operator was an AOC holder authorised to conduct charter operations, or regular public transport operations, or aerial work (air ambulance) operations (the *operator*).
- (2) The operator must retain in safe custody, for the periods mentioned in subsection (3), each of the records held by the operator on 1 December 2021 that were mentioned in each of the following provisions (as applicable to the operator's AOC) as the provision was in force immediately before 2 December 2021:
 - (a) CAO 82.1, Appendix 1, paragraphs 2.3, 2.4 and 2.5;
 - (b) CAO 82.3, Appendix 1, paragraph 2.5;
 - (c) CAO 82.5, Appendix 1, paragraph 2.4.
- (3) For subsection (2), the period for retention of the records is at least the period, commencing on 2 December 2021, that the similar or analogous record is to be retained under Subpart 119.J.

Part 3 Exemptions and directions

7AA Certain operations not air transport — exemption

- (1) In this section:
employed means employed by the operator under a contract of service, or a contract for services.

exempted transport operation means one of the following:

- (a) the operation or use of an aircraft by a company, a partnership, or a sole trader (the ***business***):
 - (i) for the carriage of passengers, or goods (not being goods for sale or exchange); and
 - (ii) where the predominant purpose of the carriage is to facilitate the conduct of the operator's business; and
 - (iii) where the facilitation is merely ancillary to conducting the business; and
 - (iv) where no passenger gives any reward for the carriage of themselves, or otherwise shares in the costs of the carriage; and
 - (v) where the carriage of any passenger, or the passenger's notional share of the costs of the carriage, is not rewarded by anyone else; and
 - (vi) where the aircraft is flown by a pilot who is a related pilot, or a professional pilot employed by the business to fly the aircraft; and

Note The word pilot, in the singular, includes pilots, plural, if applicable.

 - (vii) where the aircraft used has a maximum certificated passenger seating capacity that is not greater than 19;
- (b) the operation of an aircraft directly by a government organisation (the ***government organisation***):
 - (i) for the carriage of passengers, or goods (not being goods for sale or exchange); and
 - (ii) where the predominant purpose of the carriage is to facilitate the conduct of the government organisation's official activities; and
 - (iii) where the facilitation is merely ancillary to conducting those activities; and
 - (iv) where no passenger gives any reward for the carriage of themselves, or otherwise shares in the costs of the carriage; and
 - (v) where the carriage of any passenger, or the passenger's notional share of the costs of the carriage, is not rewarded by anyone else; and
 - (vi) where the aircraft is flown by a pilot who is a professional pilot employed by the government organisation to fly the aircraft; and

Note The word pilot, in the singular, includes pilots, plural, if applicable.

- (vii) where the aircraft used has a maximum certificated passenger seating capacity that is not greater than 19;
- (c) the operation of an aircraft for the transportation of any of the following:
 - (i) the owner of the aircraft (the ***owner***);
 - (ii) a passenger directly associated with the owner;

provided that:

 - (iii) the owner is not given any reward for the transportation; and
 - (iv) the aircraft is flown by the owner, or by a professional pilot; and

Note The word pilot, in the singular, includes pilots, plural, if applicable.

- (iv) the passenger is being transported for recreational purposes.

government organisation means any department, agency, body, entity or force of the Commonwealth government, or of a State or Territory government.

Note A company that provides flight services under contract to a government organisation is not a government organisation. If a company carries passengers or goods under contract for, or on behalf of, a government organisation, the exemption under section 7AA does not apply to such carriage.

maximum certificated passenger seating capacity has the meaning given by the CASR Dictionary.

MOS means Manual of Standards.

operator means the business, the government organisation, or the owner, (as the case requires) within the meaning of **exempted transport operation**.

professional pilot means the holder of a commercial pilot licence, or an air transport pilot licence.

related pilot means any of the following (as applicable, within the meaning of **exempted transport operation**) who holds at least a private pilot licence:

- (a) the aircraft owner;
- (b) the sole proprietor;
- (c) the business partner;
- (d) the company director;
- (e) the company shareholder.

reward means money, goods, services, or property, or any other benefit or advantage of any kind, or the promise of any of the foregoing.

- (2) The operator is exempted from compliance with the following:

- (a) for an aeroplane:
 - (i) Part 119 of CASR; and
 - (ii) Subpart 91.F of CASR;
- (b) for a rotorcraft — Part 119 of CASR.

- (3) The exemptions in paragraph (2) (a) are subject to the condition that the operator must comply with, and ensure that the aeroplane conforms to the performance requirements under:

- (a) regulations 121.390, 121.395 and 121.420 of CASR; and
- (b) subject to subsection (4), the applicable requirements in the Part 121 MOS as made under regulations 121.395 and 121.420 of CASR (the **applicable MOS requirements**).

Note The applicable requirements in the Part 121 MOS are in Chapter 9, Division 1A, and Chapter 9, Division 2, respectively.

- (4) For paragraph (3) (b):

- (a) in paragraph 9.08H (1) (a) of the Part 121 MOS, the words, “the operator’s exposition”, are to be taken to say, “the operator and pilot in command”; and
- (b) in subsection 9.08K (2) of the Part 121 MOS, the words, “the operator’s exposition states procedures requiring the pilot in command to have a plan”, are to be taken to say “the pilot in command has a plan”; and
- (c) in subsection 9.08K (3) of the Part 121 MOS, the words, “The procedures” are to be taken to say, “The plan”; and
- (d) in paragraph 9.12 (2) (c) of the Part 121 MOS, the words, “using procedures specified in the operator’s exposition”, are to be taken to say, “determined by the operator and the pilot in command”; and
- (e) all of the applicable MOS requirements must be read and applied, *mutatis mutandis*, to harmonise with the requirements and intent of this section.

- (5) This section ceases to have effect at the end of 1 December 2023.

7AB Certain air transport operations — “cross-hiring” exemption

- (1) This section applies to an Australian air transport operator (the *relevant operator*) who conducts:
 - (a) a medical transport operation; or
 - (b) a non-scheduled air transport operation;but only if:
 - (c) the operation is an Australian air transport operation (*relevant operations*) in an aircraft (the *relevant aircraft*) for which the relevant operator is not also the registered operator or the holder of an approval under regulation 119.025 for subparagraph 119.080 (1) (h) (ii); and
 - (d) the relevant aircraft does not conduct scheduled air transport operations.
- (2) The relevant operator is exempted from the following for the conduct of relevant operations in the relevant aircraft:
 - (a) paragraph 119.080 (1) (h);

Note Paragraph 119.080 (1) (h) imposes an AOC condition that Australian air transport operators must be the registered operators of the relevant aircraft. “Cross-hiring” is a colloquial term to describe some common circumstances in which the relevant aircraft operator is not also the registered operator.
 - (b) regulation 119.060 but only in relation to paragraph 119.080 (1) (h).
- (3) The exemptions under subsection (2) are subject to the condition that the relevant operator’s exposition must contain procedures to ensure that the requirements expressed in subsection (4) are complied with.
- (4) For subsection (3), the requirements are the following:
 - (a) if the relevant operator’s use of the relevant aircraft in a relevant operation does not require CASA’s approval under regulation 119.090 (Application for approval of significant changes), including as a consequence of the exemptions in section 7 of this instrument — the relevant operator must:
 - (i) before any such use, assesses any differences between the relevant aircraft and other aircraft being used by the operator; and
 - (ii) determine whether additional training or competency assessment is required for any member of the operational safety-critical personnel before the relevant aircraft is used in a relevant operation; and
 - (iii) if additional training or competency assessment is so required — ensure that the relevant training or assessment or both is completed before the relevant aircraft is used in a relevant operation;
 - (b) before the relevant aircraft is used in a relevant operation, the relevant operator must:
 - (i) be fully aware of the continuing airworthiness and maintenance status of the aircraft insofar as they are relevant to the operator’s use of the aircraft; and
 - (ii) ensure that the aircraft complies with the safety requirements of the regulations for the operation;
 - (c) the relevant operator must ensure that the arrangements between the operator and the registered operator for managing the continuing airworthiness of the relevant aircraft during the operator’s use of it are recorded in the exposition.
- (5) This section ceases to have effect at the end of 1 December 2024.

7 Significant change of type or model of aircraft — exemption

- (1) This section applies to an Australian air transport operator (the *operator*).

- (2) The operator is exempted from compliance with the following provisions of CASR:
 - (a) subregulation 119.090 (1);
 - (b) subregulation 119.090 (4);
 but only to the extent that the significant change is one described in subparagraph (a) (viii) of the definition of **significant change** in regulation 119.020.
- (3) However, the exemptions in subsection (2) are subject to the condition that, for a change of the kind mentioned in subsection (4) or (5) (a **relevant change**), the operator must:
 - (a) apply in writing for CASA approval as if subregulation 119.090 (3) applied to the change; and
 - (b) obtain CASA's approval in writing.
- (4) For subsection (3), a relevant change means any change in relation to any of the following:
 - (a) the operator's use of a multi-crew aircraft for which a legislative instrument, in accordance with paragraph 61.055 (1) (a) of CASR, has prescribed type ratings that may be granted for a multi-crew operation;
 - (b) the operator's use of a type of aircraft for which single-pilot type ratings are required under paragraph 61.060 (1) (a) of CASR, for which a legislative instrument, in accordance with subparagraph 61.060 (1) (b) (i) of CASR, has prescribed the type ratings that may be granted for single-pilot operation;
 - (c) the operator's use of a variant model:
 - (i) of a type mentioned in paragraph (a) or (b); and
 - (ii) for which the operator's flight crew members require differences training;
 - (d) the operator's use of a type of aircraft:
 - (i) that is covered by a class rating; and
 - (ii) for which initial type specific training and flight review are required.
- (5) For subsection (3), a relevant change means the operator's first use of any of the following in an Australian air transport operation:
 - (a) an aircraft covered by a class rating where the aircraft is the first aircraft of that class rating to be used by the operator for Australian air transport operations;
 - (b) a pressurised aircraft;
 - (c) a turbine-powered aircraft;
 - (d) an aeroplane that:
 - (i) is covered by a class rating; and
 - (ii) has an MOPSC > 9, or an MTOW > 8 618 kg;
 - (e) a rotorcraft that:
 - (i) is covered by a class rating; and
 - (ii) has an MTOW > 3 175 kg.

8 HOFO requirements — exemption

- (1) In this section:

operator means an Australian air transport operator who, immediately before 2 December 2021, held an AOC, or was an early applicant for an AOC or an AOC variation, that:

- (a) authorised the use of single-pilot type certificated aircraft for:
 - (i) charter operations; or

- (ii) aerial work (air ambulance) operations; and
 - (b) did not authorise regular public transport operations.
- (2) This section applies to a person (the **relevant HOFO**) who:
 - (a) on 2 December 2021 is the HOFO or the nominated HOFO (as the case requires) of an operator; and
 - (b) immediately before 2 December 2021 was the operator's Chief Pilot or nominated Chief Pilot; and
 - (c) immediately before 2 December 2021 did not hold an ATPL.
- (3) A relevant HOFO is exempted from the requirements of:
 - (a) paragraph 119.135 (1) (a); and
 - (b) subregulation 119.135 (2).
- (4) The exemptions under subsection (3) are subject to the condition that the HOFO must meet the requirements set out in subclause 4.3 in Appendix 1 of CAO 82.0, as in force immediately before 2 December 2021, as if:
 - (a) subclause 4.3 continued to apply; and
 - (b) the HOFO were a Chief Pilot; and
 - (c) the operator were the AOC holder.
- (5) This section ceases to have effect on the earliest of the following:
 - (a) the end of 1 March 2023;
 - (b) the day on which the operator commences scheduled air transport operations;
 - (c) the day the HOFO ceases to be the operator's HOFO.

9 **HOFO requirements — directions**

- (1) This section applies to an operator mentioned in section 8.
- (2) The operator must ensure that the HOFO complies with the requirements under subsection 8 (4).
- (3) If the operator intends that when the exemptions under section 8 cease to have effect, the HOFO to whom they applied will continue to be the operator's HOFO, then, before that ceasing to have effect, the operator must give CASA the operator's exposition content in relation to the HOFO's compliance with the requirements of:
 - (a) paragraph 119.135 (1) (a); and
 - (b) subregulation 119.135 (2).
- (4) If the operator intends to nominate a new person to be the HOFO for the period after the exemptions under section 8 cease to have effect, then before that ceasing to have effect the following must be approved in writing by CASA:
 - (a) the nomination of the person;
 - (b) the operator's exposition content in relation to the person's compliance with the requirements of paragraph 119.135 (1) (a) and subregulation 119.135 (2) (the **relevant requirements**).
- (5) The operator must not commence scheduled air transport operations until CASA, in writing, approves the operator's exposition content in relation to the HOFO's compliance with the relevant requirements.

10 HOTC requirements — exemption

- (1) In this section:
operator means an Australian air transport operator who, immediately before 2 December 2021:
 - (a) held an AOC, or was an early applicant for an AOC or an AOC variation, that authorised the use of single-pilot type certificated aircraft for one or more of the following:
 - (i) charter operations, or aerial work (air ambulance) operations, in other than high capacity aircraft;
 - (ii) regular public transport operations in other than high capacity aircraft; and
 - (b) was not required by subsection 8 of CAO 82.3, as in force immediately before 2 December 2021, to use 2 pilots for an operation under the AOC before 2 December 2021.
- (2) This section applies to a person (the *relevant HOTC*) who:
 - (a) on 2 December 2021 is the HOTC or the nominated HOTC (as the case requires) of an operator; and
 - (b) immediately before 2 December 2021:
 - (i) was the operator's Chief Pilot; and
 - (ii) did not hold an ATPL.
- (3) A relevant HOTC is exempted from the requirements of:
 - (a) paragraph 119.145 (1) (a); and
 - (b) subregulation 119.145 (2).
- (4) The exemptions under subsection (3) are subject to the condition that the HOTC must meet the requirements set out in subclause 4.3 in Appendix 1 of CAO 82.0, as in force immediately before 2 December 2021, as if:
 - (a) subclause 4.3 continued to apply; and
 - (b) the HOTC were the Chief Pilot; and
 - (c) the operator were the AOC holder.
- (5) This section ceases to have effect on the earliest of the following:
 - (a) the end of 1 March 2023;
 - (b) the day the operator commences scheduled air transport operations in:
 - (i) a high capacity aircraft; or
 - (ii) an aircraft, other than a high capacity aircraft, that would have triggered a requirement for 2 pilots under subsection 8 of CAO 82.3, as in force immediately before 2 December 2021, as if it were in force;
 - (c) the day the relevant HOTC ceases to be the operator's HOTC.

11 HOTC requirements — directions

- (1) This section applies to an operator mentioned in section 10.
- (2) The operator must ensure that the HOTC complies with the requirements under subsection 10 (4).
- (3) If the operator intends that, when the exemptions under section 10 cease to have effect, the HOTC to whom they applied will continue to be the operator's HOTC, then, before that ceasing to have effect, the operator must give CASA the operator's exposition content in relation to the HOTC's compliance with the requirements of:
 - (a) paragraph 119.145 (1) (a); and

- (b) subregulation 119.145 (2).
- (4) If the operator intends to nominate a new person to be the HOTC for the period after the exemptions under section 10 cease to have effect, then before that ceasing to have effect the following must be approved in writing by CASA:
 - (a) the nomination of the person;
 - (b) the operator's exposition content in relation to the person's compliance with the requirements of paragraph 119.145 (1) (a) and subregulation 119.145 (2) (the **relevant requirements**).
- (5) The operator must not commence scheduled air transport operations of the kind mentioned in paragraph 10 (5) (b) until CASA, in writing, approves the operator's exposition content in relation to the HOTC's compliance with the relevant requirements.

12 HOTC experience requirements — exemption

- (1) This section applies to the HOTC of an Australian air transport operator (the **operator**).
- (2) The HOTC is exempted from compliance with:
 - (a) paragraph 119.145 (3) (b); and
 - (b) subregulation 119.145 (4).
- (3) The exemptions in subsection (2) are subject to the condition that the HOTC must have at least the following minimum experience:
 - (a) at least 300 hours flight time conducting training in a type of aeroplane or rotorcraft that is the same as, or substantially similar to, a type of aeroplane or rotorcraft used to conduct a significant proportion of the operator's Australian air transport operations;
 - (b) at least 6 months' experience in the conduct or management of air operations.
- (4) To avoid doubt, nothing in this section affects CASA's power, under regulation 119.105, to direct the operator to change its exposition to include instructions requiring the HOTC to have more than the minimum experience provided for under subsection (3).

13 HOTC experience requirements — direction

- (1) This section applies to an operator mentioned in section 12 in relation to a HOTC mentioned in section 12.
- (2) The operator must ensure that the HOTC complies with the requirements under subsection 12 (3).

14 Training and checking for operational safety-critical personnel — exemption

- (1) This section applies to an Australian air transport operator (the **operator**) to whom subregulation 119.170 (5) applies.
- (2) The operator is exempted from compliance with subregulation 119.170 (4), but only in relation to operational safety-critical personnel (a **relevant person**) who are not any of the following:
 - (a) flight crew members;
 - (b) cabin crew members;
 - (c) other crew members assigned duties on board an aircraft for the flying or safety of the aircraft.

- (3) The exemption in subsection (2) is subject to the condition that the operator's training and checking system must include a description of how the operator will satisfy itself:
 - (a) that each relevant person:
 - (i) is competent to carry out the assigned duties; and
 - (ii) in carrying out the duties — is not likely to have an adverse effect on aviation safety; and
 - (b) that immediate action will be taken in the interests of aviation safety if a relevant person:
 - (i) loses competence; or
 - (ii) is likely to have an adverse effect on aviation safety.
- (4) This section ceases to have effect at the end of 1 March 2023.

15 Training and checking for operational safety-critical personnel — direction

- (1) This section applies to an Australian air transport operator (the *operator*).
- (2) The operator must comply with subsection (3) not later than the earlier of:
 - (a) 2 March 2023; and
 - (b) the day on and from which the operator ceases to take advantage of the exemption under section 14.
- (3) The operator must include in its exposition information, procedures and instructions on how its training and checking system will comply with subregulation 119.170 (4) in relation to each of its operational safety-critical personnel who is not a flight crew member, a cabin crew member, or another crew member who has duties on board an aircraft for the flying or safety of the aircraft.

16 Authorised persons acting in the absence of key personnel — exemption

- (1) This section applies to an Australian air transport operator (the *operator*).
- (2) The operator is exempted from compliance with subparagraph 119.205 (1) (e) (iv) unless the operator chooses to name in the exposition a person who is authorised to carry out the responsibilities of a key person when the position holder is absent from the position, or cannot carry out the responsibilities of the position.

17 Safety systems — direction

- (1) This section applies to an Australian air transport operator (the *operator*) who:
 - (a) immediately before 2 December 2021:
 - (i) conducted charter operations, or aerial work (air ambulance) operations (the *operations*); and
 - (ii) was not required under the civil aviation legislation, as in force immediately before 2 December 2021, to have a safety system for the operations; and
 - (b) on or after 2 December 2021, changes their operations to include a safety system for the first time (*changed operations*).
- (2) The operator must not commence changed operations:
 - (a) using the relevant safety system exposition content; or

- (b) using any key personnel named or nominated by the operator for the safety system (relevant key personnel);
- until the day CASA's written approval of the following takes effect:
 - (c) the relevant safety system exposition content;
 - (d) the relevant key personnel.
- (3) For approval under subsection (2), the operator must apply in writing as if the changed operations were a significant change within the meaning of that expression in paragraph 119.020 (1) (c).

18 FDAP — exemption

- (1) This section applies to an Australian air transport operator (the **operator**) to whom, on and after 2 December 2021, regulation 119.195 otherwise applies.
- (2) The operator is exempted from paragraph 119.195 (3) (d).
- (3) It is a condition of the exemption in subsection (2) that the operator must comply with the following provisions of CAO 82.5, as in force immediately before 2 December 2021, as if they applied to the operator as they relate to operational flight data for FDAP purposes:
 - (a) subparagraphs 2A.2 (f), (g) and (h);
 - (b) subparagraphs 2A.3 (d) and (e);
 - (c) subsection 2AA;
 - (d) Appendix 1A.
- (4) The exemption under subsection 2 cease to have effect at the end of 1 December 2024.

Note See also Part 11 of *CASA EX87/21 – Flight Operations Regulations – SMS, HFP&NTS, and T&C Systems – Supplementary Exemptions and Directions Instrument 2021*. Under this instrument, an Australian air transport operator who, immediately before 2 December 2021, was not required to have an FDAP, is exempted from the Part 119 FDAP requirement for a period of up to 3 years, depending on circumstances mentioned in section 54 of the instrument.

19 Safety information — direction

- (1) In this section:

safety information means any safety data or information, in any form, generated within, or captured, collected or held by and within, an operator's approved SMS or FDAP, including personal information relating to individuals.
- (2) Without affecting section 18, this section applies to an Australian air transport operator (the **operator**) for Australian air transport operations (the **operations**) if the operator:
 - (a) is required to have one or both of the following for the operations:
 - (i) an SMS under regulation 119.190;
 - (ii) an FDAP under regulation 119.195; and
 - (b) is not taking the benefit of the exemption from that obligation provided by *CASA EX87/21 – Flight Operations Regulations – SMS, HFP&NTS, and T&C Systems – Supplementary Exemptions and Directions Instrument 2021*.
- (3) The operator must comply with the following provisions of CAO 82.5, as in force immediately before 2 December 2021, as if they applied to the operator as they relate to any safety information arising from the operations:
 - (a) subparagraphs 2A.2 (f), (g) and (h);
 - (b) subparagraphs 2A.3 (d) and (e);

Note The deemed application of sub-subparagraph 2A.3 (d) (i) does not prevent an operator from using safety information for the purposes of taking preventive, corrective or remedial action that is necessary to maintain or improve safety. An example of the use of safety information for these purposes is its use by an operator for internal training purposes.

- (c) subsection 2AA;
 - (d) Appendix 1A.
- (4) This section ceases to have effect at the end of 1 December 2024.

Note to CASA EX82/21 – Part 119 of CASR – Supplementary Exemptions and Directions Instrument 2021

CASA EX82/21 – Part 119 of CASR – Supplementary Exemptions and Directions Instrument 2021 (in force under regulations 11.160, 11.205 and 11.245 of the *Civil Aviation Safety Regulations 1998*) as shown in this compilation is amended as indicated in the tables below.

Table of instruments

Title	Date of FRLI registration	Date of commencement	Application, saving or transitional provisions
CASA EX82/21 – Part 119 of CASR – Supplementary Exemptions and Directions Instrument 2021	6 October 2021 (see F2021L01406)	2 December 2021	—
CASA EX147/21 – Amendment of CASA EX82/21 – Instrument 2021	1 December 2021 (see F2021L01683)	2 December 2021	—
CASA EX41/22 – Amendment of CASA EX82/21 – Instrument (No. 1) 2022	3 May 2022 (see F2022L00670)	4 May 2022	—
CASA EX108/22 – Amendment of CASA EX82/21 – Instrument (No. 2) 2022	23 December 2022 (see F2022L01765)	24 December 2022	—

Table of amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
s. 3	am. F2021L01683
s. 3A	ad. F2022L00670
s. 6A	ad. F2021L01683
s. 6B	ad. F2021L01683
s. 6B, heading	rs. F2022L00670
s. 7AA	ad. F2022L00670 rs. F2022L01765
s. 7AB	ad. F2022L00670