

1.38 The committee requests the minister's advice as to:

- **how personal information collected in accordance with subsection 15(2) of the instrument will be used and managed; and**
- **what safeguards are in place to protect the personal privacy of individuals in relation to that information.**

Instrument	CASA EX111/18 — English Language Proficiency Assessments Exemption 2018 [F2018L01214]
Purpose	Extends exemptions relating to certain English language proficiency requirements to 30 September 2021
Authorising legislation	<i>Civil Aviation Safety Regulations 1998</i>
Portfolio	Infrastructure, Regional Development and Cities
Disallowance	15 sitting days after tabling (tabled Senate 10 September 2018). Notice of motion to disallow must be given by 15 November 2018 ²⁹

Parliamentary oversight: continuing exemption³⁰

1.39 Scrutiny principle 23(3)(d) of the committee's terms of reference requires the committee to consider whether an instrument contains matters more appropriate for parliamentary enactment (that is, matters that should be enacted via primary rather than delegated legislation). This may include instruments that grant or extend exemptions from compliance with principal or enabling legislation.

1.40 The Civil Aviation Safety Regulations (CASR) establishes two English language proficiency standards: the aviation English language proficiency (AELP) standard and general English language proficiency (GELP) standard. The CASR requires student pilots and applicants for recreational pilot licences to satisfy the GELP standard, while applicants for flight crew licences, flight radio endorsements and aeronautical radio operator certificates (AROCs) must satisfy the AELP standard.

1.41 The instrument exempts persons from the requirement to meet the GELP standard if they have been assessed as meeting the AELP standard. It also exempts applicants for AROCs from the requirement to meet the AELP standard if they have been assessed as meeting the GELP standard.

29 In the event of any change to the Senate's sitting days, the last day for the notice would change accordingly.

30 Scrutiny principle: Senate Standing Order 23(3)(d).

1.42 The instrument continues existing exemptions from certain English language proficiency requirements in the CASR, first introduced in October 2015.³¹ The explanatory statement to the instrument explains that the exemptions were first made at the request of the aviation industry, to 'resolve difficulties conducting English language proficiency assessments that have arisen since the introduction of the flight crew licencing regulations in 2014'.³² The explanatory statement also states that CASA has been working with industry to resolve the difficulties associated with English language proficiency assessments.³³ However, the explanatory statement does not indicate whether the exemptions continued by the instrument are intended to be interim measures, pending substantive amendments to the CASR.

1.43 The committee generally prefers that exemptions are not used to, or do not continue for such time as to, operate as de facto amendments to primary legislation or principal regulations. In this regard, the committee notes that the instrument extends the exemptions originally enacted for an additional three years, to 30 September 2021. However, no information is provided as to whether further amendments to the principal regulations are being considered to remove the need for the continued exemptions.

1.44 The committee requests minister's advice as to:

- **whether amendments to the Civil Aviation Safety Regulations are being considered to resolve the difficulties associated with English language proficiency assessments; and**
- **if not, the justification for continuing the exemptions to the Civil Aviation Safety Regulations.**

Merits review³⁴

1.45 Scrutiny principle 23(3)(c) of the committee's terms of reference requires the committee to ensure that instruments do not unduly make the rights and liberties of citizens dependent upon administrative decisions which are not subject to review of their merits by a judicial or other independent tribunal.

1.46 Section 4 of the instrument provides that the Civil Aviation Safety Authority (CASA) may, in writing, approve a person to conduct an assessment of an individual's English language proficiency (with reference to the GELP and AELP standards).

31 CASA EX 146/15 [F2015L00717]. This instrument is due to expire on 30 September 2018.

32 Explanatory statement, p. 5.

33 Explanatory statement, p. 5.

34 Scrutiny principle: Senate Standing Order 23(3)(c).

Neither the instrument nor the explanatory statement sets out any matters that CASA must take into consideration when making this decision.

1.47 It appears to the committee that decisions by CASA to approve, or not approve, a person to conduct AELP and GELP assessments may involve at least an element of discretion. Such decisions also appear to have the potential to affect the interests of individuals, particularly prospective assessors. It therefore appears that decisions by CASA in relation to the approval of a person to conduct GELP and AELP assessments may be suitable for merits review.

1.48 The committee notes that section 297A of the Civil Aviation Regulations provides that an application may be made to the Administrative Appeals Tribunal (AAT) for review of certain decisions. Section 31 of the *Civil Aviation Act 1988* also provides that an application may be made to the AAT for review of a 'reviewable decision'.³⁵ However, it is not clear to the committee whether those provisions extend to merits review of decisions made under legislative instruments that are made under the CASR. In this regard, the committee notes that neither the instrument nor its explanatory statement indicates whether decisions by CASA to approve, or refuse to approve, a person to conduct GELP and AELP assessments would be subject to merits review.

1.49 The committee requests the minister's advice as to:

- **whether decisions by the Civil Aviation Safety Authority to approve, or refuse to approve, a person to conduct English language proficiency assessments are subject to merits review; and**
- **if not, what characteristics of those decisions would justify excluding merits review.**

35 'Reviewable decision' is defined under that section to include refusals to grant or issue a certificate, permission, permit or licence granted or issued under that Act or the regulations (that is, the CASR or the Civil Aviation Regulations 1988).