

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Regulations 1988

Civil Aviation Safety Regulations 1998

Civil Aviation Order (Flight Operations) Repeal and Amendment Instrument 2021 (No. 1)

Purpose

The purpose of this instrument is to repeal Civil Aviation Orders (the **CAOs**) and other instruments that will no longer be required upon the commencement, on 2 December 2021, of the new legislative scheme under the *Civil Aviation Act 1988* (the **Act**) relating to flight operations. The instrument also amends 5 other CAOs to remove redundant provisions, retain some requirements from repealed regulations and to update references within the legislative scheme.

Legislation

Under section 27 of the Act, the Civil Aviation Safety Authority (**CASA**) may issue an Air Operators' Certificate (**AOC**) for the purposes of its functions. Under subregulation 27 (2) of the Act, an aircraft must not fly into or out of Australian territory or operate in Australian territory, and an Australian aircraft must not operate outside Australian territory, except as authorised by an AOC, by a New Zealand AOC in specified circumstances, or by a permission under section 27A.

Under subregulation 27 (9) of the Act, subregulation (2) applies only to the flying or operation of an aircraft for such purposes as are prescribed. Regulation 206 of the *Civil Aviation Regulations 1988* (**CAR**) prescribes, for subsection 27 (9) of the Act, the purposes for which an AOC is required. Those purposes currently include aerial work operations, regular public transport operations and charter operations. Regulation 206 of CAR will be amended on 2 December 2021.

Under paragraph 28BA (1) (b) of the Act, an AOC has effect subject to any conditions specified in the regulations or CAOs.

Section 98 of the Act empowers the Governor-General to make regulations for the Act and in the interests of the safety of air navigation. Relevantly, the Governor-General has made the *Civil Aviation Safety Regulations 1998* (**CASR**) and CAR.

Under subsection 98 (4A) of the Act, CASA may issue CAOs, not inconsistent with the Act or the regulations, and not prescribing any pecuniary penalty, with respect to any matter in relation to which regulations may be made for the purposes of section 28BA.

Regulation 5 of CAR applies if CASA is empowered or required under CAR or CASR to issue a direction, instruction or notification or to give a permission, approval or authority. It provides that CASA may issue the direction, instruction or notification or give the permission, approval or authority in CAOs or otherwise in writing (unless the contrary intention appears in the regulation conferring the power or function or imposing the obligation or duty).

Subregulation 215 (1) of CAR requires an operator to provide an operations manual for the use and guidance of the operations personnel of the operator. Under subregulation 215 (9), each member of the operations personnel of the operator must comply with all instructions contained in the operations manual in so far as they relate to their duties or activities.

Under subregulation 235 (1) of CAR, CASA may give directions setting out the method of estimating the weight and centre of gravity of an aircraft. Under subregulation 235 (7), CASA may give directions with respect to the method or loading of persons and goods on aircraft. Civil Aviation Order (CAO) 20.16.1 contains directions made by CASA under subregulation 235 (7).

Subpart 11.F of CASR provides for the granting of exemptions from particular provisions of the regulations. Subregulation 11.160 (1) of CASR provides that, for subsection 98 (5A) of the Act, CASA may grant an exemption from compliance with a provision of the regulations or a CAO. Regulation 11.205 provides that CASA may impose conditions on an exemption if necessary in the interests of the safety of air navigation.

Subpart 11.G of CASR provides for CASA to issue directions in relation to matters affecting the safety of air navigation. Subregulation 11.245 (2) of CASR provides that CASA may issue such a direction if CASA is satisfied that it is necessary to do so in the interests of the safety of air navigation, if the direction is not inconsistent with the Act, and for the purposes of CASA's functions. Under paragraph 11.250 (a) of CASR, a direction under regulation 11.245 ceases to be in force on the day specified in the direction. Under regulation 1.255, it is an offence of strict liability to contravene a direction under regulation 11.245.

Civil Aviation Order – Part 82

Under paragraph 28BA (1) (b) and subsection 98 (4A) of the Act, CASA has made CAO 82.0, CAO 82.1, CAO 82.3, CAO 82.5, CAO 82.6 and CAO 82.7 which impose conditions on AOCs for specified types of aircraft operations.

In addition, some provisions of CAO 82.0 are made under regulations 5 and 209 of CAR and some provisions of CAO 82.6 are made under regulation 5 and subregulations 207 (2), 215 (3), 217 (1) and 308 (1) of CAR and regulations 11.160 and 11.245 of CASR.

Civil Aviation Order – Part 100

CASA has made CAO 100.5 under regulations 30B, 38, 42A, 42, 50A and 50B of CAR. It contains general requirements in respect of the maintenance of Australian aircraft. It also contains provisions for regulations 174B and 175A of CAR.

CASA has made CAO 100.7 under subregulations 5 (1) and 235 (1) of CAR. It relates to weighing and loading of aircraft.

Flight operations regulations commencing on 2 December 2021

The flight operations regulations (the **FOR**) include the following regulations, which commence on 2 December 2021:

- *Civil Aviation Safety Amendment (Part 91) Regulations 2018*, which inserts new provisions in Part 91 of CASR, relating to general operating and flight rules for Australian aircraft

- *Civil Aviation Safety Amendment (Part 119) Regulations 2018*, which inserts new Part 119 of CASR, relating to certification and management of Australia air transport operators
- *Civil Aviation Safety Amendment (Part 121) Regulations 2018*, which inserts new Part 121 of CASR, relating to Australian air transport operations in larger aeroplanes
- *Civil Aviation Safety Amendment (Part 133) Regulations 2018*, which inserts new Part 133 of CASR, relating to Australian air transport operations in rotorcraft
- *Civil Aviation Safety Amendment (Part 135) Regulations 2018*, which inserts new Part 135 of CASR, relating to Australian air transport operations in smaller aeroplanes
- *Civil Aviation Safety Amendment (Part 138) Regulations 2018*, which inserts new Part 138 of CASR, relating to aerial work operations
- *Civil Aviation Safety Amendment (Operations Definitions) Regulations 2019*, which inserts new, and amends existing, definitions in the CASR Dictionary to support the FOR
- *Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019*, which inserts new Parts 103, 105 and 131 of CASR, relating to sport and recreation aircraft, parachuting and balloons and hot air airships, respectively
- *Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021 (the CATP Regulations)*, which repeals provisions of CAR and inserts new provisions in CASR to provide for a smooth transition from the old rules to the FOR.

The FOR are supported by a Manual of Standards made under each of Parts 91, 121, 133, 135 and 138 of CASR.

Schedule 1 of the CATP Regulations will repeal regulations 174B, 175A, 207, 209, 215 and 217 of CAR with effect immediately after the start of 2 December 2021. It will also amend regulation 235 of the CAR so that only current subregulation 235 (1) remains. Consequently, the text of subregulation 235 (1) will become regulation 235.

Item 35 of Schedule 1 of the CATP Regulations will replace regulation 206 of CAR with a revised list of prescribed purposes, for subsection 27 (9) of the Act, for which an AOC is required. Those purposes will be the following:

- (a) the flying or operation of an aircraft for balloon flying training (within the meaning of subregulation 5.01 (1) of CAR) that is:
 - (i) for the grant of a balloon flight crew licence or balloon flight crew rating under Part 5 of CAR; and
 - (ii) conducted for hire or reward;
- (b) an aerial application operation (within the meaning of regulation 137.010 of CASR) to which Part 137 of CASR applies that is conducted for hire or reward;
- (c) the operation of a glider involving the carriage of passengers that is conducted for hire or reward.

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.

Background

The FOR and related Manuals of Standards, commencing on 2 December 2021, have replaced the requirement for several legislative instruments, including CAO 82.3, CAO 82.5 and CAO 82.6. Amendment of other legislative instruments mentioned in this instrument is required to align with the terminology and structure of the FOR and avoid duplication of, and possible inconsistency between, regulatory requirements.

Regulation 215 of CAR and CAO 20.16.1 are repealed by, or as a result of, the CATP Regulations. However, it is appropriate that some of the provisions of that regulation and CAO continue to apply to some operators.

Overview of instrument

In accordance with subsection 33 (3) of the *Acts Interpretation Act 1901*, the instrument amends 5 CAOs and repeals 3 other CAOs (and 2 related amending instruments) and 2 other legislative instruments, made by CASA under its powers in the Act, CAR and CASR.

CASA has assessed the repeals and amendments in this instrument and is satisfied this has no adverse impact on the safety of the operator's operations.

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.

This instrument incorporates matters in provisions of the following instruments:

- CAR and CASR
- Part 91 Manual of Standards
- Part 133 Manual of Standards
- Part 135 Manual of Standards.

Unless specified otherwise in the instrument, those legislative instruments are incorporated as in force from time to time in accordance with subsection 14 (1) of the *LA*. These legislative instruments are freely available on the Federal Register of Legislation at:

<https://www.legislation.gov.au>

New paragraph 2.4E of CAO 82.1 and 5.5E of CAO 82.7 incorporate the requirements of the operator's operations manual, as existing from time to time, in accordance with subsection 98 (5D) of the Act. An operations manual, of an operator, is a 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 comply with the civil aviation legislation. 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 manual available to its personnel who have obligations under the document.

Content of instrument

Section 1 of the instrument names the instrument.

Section 2 of the instrument provides that the instrument commences on 2 December 2021. This is immediately before the commencement of the CATP Regulations.

Section 3 of the instrument provides for a reference in the instrument to a CAO identified by a specified number to be taken to include a reference to the section of the CAOs with that number. This is intended to address variations in how CAOs have been referred to. The note provides further explanation and an example demonstrating this issue.

Section 4 of the instrument provides that Schedule 1 amends *Civil Aviation Order 82.0 Instrument 2014*.

Section 5 of the instrument provides that Schedule 2 amends Civil Aviation Order 82.1.

Section 6 of the instrument provides that Schedule 3 amends Civil Aviation Order 82.7.

Section 7 of the instrument provides that Schedule 4 amends *Civil Aviation Order 100.5 (General requirements in respect of maintenance of Australian aircraft) 2011*.

Section 8 of the instrument provides that Schedule 5 amends *Civil Aviation Order 100.7 Instrument 2015*.

Section 9 of the instrument repeals the CAOs and other instruments mentioned in Schedule 6.

Schedule 1 – Amendments to Civil Aviation Order 82.0

Schedule 1 amends *Civil Aviation Order 82.0 Instrument 2014* as follows.

Item 1 repeals subsection 1D, which is a spent transitional provision.

Item 2 amends the application of CAO 82.0 so that it applies to AOCs authorising flying or operation of an aircraft for a purpose prescribed by regulation 206 of CAR. The purposes prescribed by regulation 206 of CAR are more limited than they were before 2 December 2021.

Subsection 2 of CAO 82.0 defines terms used throughout Part 82 of the CAOs. Items 3 and 4 repeal the definitions of terms that will no longer appear in Part 82 of the CAOs following the other repeals and amendments in this instrument.

Subsection 3 of CAO 82.0 prohibits an AOC holder that is authorised to conduct charter, or regular public transport, operations from using aircraft of another operator that is prevented from using the aircraft, unless CASA has given written approval to do so. Items 5 to 7 limit the scope of subsection 3 so that it only applies to the holder of an AOC authorising commercial glider passenger operations.

Item 8 repeals subsections 3A to 3E of CAO 82.0, which contain conditions of AOCs on subjects including operations to remote islands, distance limitations, polar operations, charter substitution arrangements, use of night vision devices and reporting on checks of certain flight crew. These subsections are no longer required following the commencement of the FOR.

Item 9 omits the note in paragraph 4.1 as it does not apply to the 3 prescribed purposes that CAO 82.0 will apply to.

Item 10 amends paragraph 5.1 so that it only applies where a Chief Pilot is required by CAO 82.1, as equivalent requirements are contained in CAO 82.7 for the Chief Pilot of a commercial balloon flying training operation.

Item 11 inserts notes to explain that, from 2 December 2021, CAO 82.1 only applies to AOC holders authorised to conduct commercial glider passenger operations, and that the requirements for AOC holders conducting commercial Part 137 aerial application operations will be in Part 137 of CASR, rather than Appendix 1 of CAO 82.0.

Item 12 omits subsections 7 to 10, which relate to flight crew training, experience and qualifications. These provisions will no longer be relevant to operations to which Part 82 of the CAOs will apply.

Item 13 replaces paragraph 11.1 so that it is limited to commercial aerial application operations. It also refers to authorised aeronautical information, which is a term that will be defined in the CASR Dictionary, rather than to paragraph 233 (1) (h) of CAR, which will be repealed by the CATP Regulations.

Item 14 amends paragraph 2.2 (a) of Appendix 1 to update the reference to CASR and include the Manuals of Standards in the legislation that the Chief Pilot is responsible for ensuring compliance with.

Items 15 and 16 omit subclause 4.1 and Table A of Appendix 1, which prescribe minimum qualifications for a Chief Pilot. Those provisions are not relevant to commercial glider passenger operations.

Item 17 omits Appendices 2 to 8C, which relate to adequate aerodromes, extended diversion time operations, polar operations, line checks for multi-crew pilot (aeroplane) licence holders, proficiency checks and aeronautical experience requirements for certain operations. These subjects do not apply to the 3 prescribed purposes that CAO 82.0 will apply to. The FOR will contain provisions on these subjects, where appropriate.

Appendix 9 of CAO 82.0 contains provisions relating to use of electronic flight bags (*EFB*).

Item 18 amends the definition of the term *electronic flight bag* in subclause 1.1 of Appendix 9 so that the references in that definition to regulations 207 and 232A of CAR and to CAO 20.18 are to those provisions as in force immediately before 2 December 2021.

Items 19 and 20 amend subparagraph 1.3 (a) (i) and paragraph 3.6 (b) of Appendix 9 so that they refer to authorised aeronautical information, which is a term that will be defined in the CASR Dictionary, rather than to paragraph 233 (1) (h) of CAR, which will be repealed by the CATP Regulations.

Item 21 omits subclause 5.4 of Appendix 9, which relates to EFB Administrator training.

Item 22 substitutes subclause 6.3 of Appendix 9 to refer to authorised aeronautical information, rather than to paragraph 233 (1) (h) of CAR, which will be repealed by the CATP Regulations.

Item 23 omits subclause 6.5 of Appendix 9, which relates to approval of a person to provide flight crew training in permitted EFB.

Schedule 2 — Amendments to Civil Aviation Order 82.1

CAO 82.1 currently applies to AOCs authorising aerial work operations and charter operations. From 2 December 2021, the FOR will apply to those operations when conducted in aeroplanes and rotorcraft.

Schedule 2 amends CAO 82.1 as follows.

Item 1 amends the title of CAO 82.1 to reflect that its application will be limited to AOCs authorising the operation of a glider involving the carriage of passengers that is conducted for hire or reward. These are known as commercial glider passenger operations.

Items 2 and 3 amend paragraphs 1.1 and 1.2 of CAO 82.1 to limit the application of the CAO to AOCs authorising the operation of a glider for the purpose prescribed by paragraph 206 (c) of CAR, that is the operation of a glider involving the carriage of passengers that is conducted for hire or reward.

Item 4 inserts new subsection 1A which has a definition of the term *approved loading system*. This definition is the same as the definition in subsection 2 of CAO 20.16.1. The term is used in new subsection 2A of CAO 82.0, inserted by item 7.

Item 5 inserts new paragraphs 2.4A to 2.4D relating to an AOC holder's operations manual. They contain requirements which reflect requirements currently in subregulations 215 (1), (2), (5) and (8) of CAR, which will be repealed by the CATP Regulations.

Item 5 also inserts new paragraph 2.4E, which is a direction under regulation 11.245 of CASR relating to compliance by the operations personnel of an operator with instructions in its operations manual that relate to their duties or activities. This reflects the requirement currently in subregulation 215 (9) of CAR, which will be repealed by the CATP Regulations. In accordance with paragraph 11.250 (a) of CASR, new paragraph 2.4F specifies the day on which the direction in paragraph 2.4E ceases to be in force.

Item 6 amends paragraph 2.5 to omit the reference to subregulations 215 (3) and (6) of CAR. Although those subregulations are being repealed by the CATP Regulations, the requirement in paragraph 2.5 will remain a condition on the AOCs to which CAO 82.1 applies.

Item 7 inserts new subsection 2A relating to loading and passenger lists. These are not new requirements as they are the same as those currently in subsections 3 and 7 of CAO 20.16.1. CAO 20.16.1 is made under subregulation 235 (7) of CAR, which will be repealed by the CATP Regulations.

Item 8 omits subsections 3, 4 and 5, which relate to operating crew training and checking, flight crew experience for certain operations, and fitment of a ground proximity warning system on foreign-registered aircraft. These requirements do not apply to the prescribed purposes that CAO 82.1 will apply to.

Item 9 amends paragraph 6.1 to reflect that CAO 82.1 only applies to commercial glider passenger operations and not to all charter or aerial work operations.

Item 10 omits the note in paragraph 6.5, which is not relevant to commercial glider passenger operations.

Appendix 1 of CAO 82.1 contains requirements for the facilities and documentation that the operator is required to provide and maintain. Item 11 omits subclause 1.2 of Appendix 1, which relates to certain aerial work operations not relevant to commercial glider passenger operations.

Item 12 amends subparagraph 2.1 (a) of Appendix 1 to update the reference to CASR and to add any applicable Manuals of Standards to the list of documents that the operator is required to keep in a reference library and make available to its operating crew.

Subclause 2.5 of Appendix 1 lists documents that the operator is required to provide. Items 13 and 15 omit paragraphs 2.5 (b), (d), (e) and (f) from the list as they do not apply to gliders.

Item 14 amends paragraph 2.5 (c) of Appendix 1, relating to passenger lists, so that it refers to new paragraph 2A.2, which will contain the requirement previously in subsection 7 of CAO 20.16.1.

Item 16 omits Appendices 2, 3, 3A and 4, which relate to training and checking, carriage and use of automatic dependent surveillance – broadcast equipment, and standards for Mode S transponder equipment. These Appendices are linked to subsections 3 and 5 of the CAO, which are omitted by item 8. They do not apply to the prescribed purposes that CAO 82.1 will apply to.

Schedule 3 – Amendments to Civil Aviation Order 82.7

Schedule 3 amends Civil Aviation Order 82.7 – Air Operators' Certificates authorising aerial work operations and charter operations in balloons, as follows.

Item 1 amends the title of CAO 82.7 to reflect that, from 2 December 2021, its application will be limited to AOCs authorising the flying or operation of an aircraft for the purpose

prescribed by paragraph 206 (a) of CAR. These operations are known as commercial balloon licence or rating training.

Item 2 amends paragraph 1.1 to limit the application of the CAO to AOCs authorising the flying or operation of an aircraft for the purpose prescribed by paragraph 206 (a) of CAR.

Items 3 and 4 insert notes after the definitions of the terms *flight crew member* and *passenger* in paragraph 2.1. The notes alert readers that those terms have a different meaning in CAO 82.7 than they have in the CASR Dictionary.

Item 5 inserts new paragraphs 5.5A to 5.5D relating to that AOC holder's operations manual. They contain requirements which reflect requirements currently in subregulations 215 (1), (2), (5) and (8) of CAR, which will be repealed by the CATP Regulations.

Item 5 also inserts new paragraph 5.5E, which is a direction under regulation 11.245 of CASR relating to compliance by the operations personnel of an operator with instructions in its operations manual that relate to their duties or activities. This reflects the requirement currently in subregulation 215 (9) of CAR, which will be repealed by the CATP Regulations. In accordance with paragraph 11.250 (a) of CASR, new paragraph 5.5F specifies the day on which the direction in paragraph 5.5E ceases to be in force.

Item 6 amends paragraph 5.6 to omit the reference to subregulations 215 (3) and (6) of CAR. Although those subregulations are being repealed by the CATP Regulations, the requirement in paragraph 5.6 will remain a condition on the AOCs to which CAO 82.7 applies.

Item 7 amends paragraph 2.1 (a) of Appendix 1 to update the reference to CASR and to add any applicable Manuals of Standards to the list of documents that the operator is required to keep in a reference library and make available to its operating crew.

Item 8 omits paragraph 2.5 (b) of Appendix 1, which refers to the requirement in CAO 20.16.1 relating to passenger lists. That requirement does not apply to commercial balloon licence or rating training.

Item 9 amends paragraph 3.2 (a) of Appendix 2 to update the reference to CASR and include the Manuals of Standards in the legislation that the Chief Pilot is responsible for ensuring compliance with.

Item 10 amends subclause 5.1 of Appendix 2 to replace gender specific language with gender neutral language.

Schedule 4 – Amendments to Civil Aviation Order 100.5

Schedule 4 amends *Civil Aviation Order 100.5 (General requirements in respect of maintenance of Australian aircraft) 2011* as follows.

Item 1 amends the enacting words for CAO 100.5 to include regulation 11.245 of CASR in the powers under which the CAO is made. This results from the amendment in item 5.

Item 2 inserts a new definition of the term **PSEA** in subsection 2. It means a prescribed single-engine aeroplane. From 2 December 2021, the term **prescribed single-engine aeroplane** will be defined in subregulation 135.240 (3) of CASR.

Paragraph 2A.2 relates to maintenance of night vision goggles. Item 3 substitutes a revised paragraph 2A.2, which applies to operations in any aircraft and not just helicopters. It also refers to maintenance requirements in the Part 133 Manual of Standards or the Part 91 Manual of Standards, depending on whether the flight is a Part 133 operation. Paragraph 2A.2 has been revised to ensure consistency with those new requirements, which commence on 2 December 2021.

Item 4 omits paragraph 2A.3, which is no longer a requirement because of the amendment in item 3.

Item 5 substitutes subsection 10, which provides for approval, under subparagraphs 174B (2) (d) (ii) and 175A (1) (d) (ii) of CAR, of single engine turbine-powered aeroplanes (*ASETPA*) for the conduct of certain passenger-carrying operations. Those subparagraphs are being repealed by the CATP Regulations. Instead, from 2 December 2021, regulation 135.240 of CASR and the Part 135 Manual of Standards will include requirements for certain operations in prescribed single engine aeroplanes. The revised paragraph 10.1 will include a direction under regulation 11.245 of CASR that is of similar effect to paragraphs 174B (2) (d) and 175A (1) (d) of CAR before they are repealed. It will also recognise the approvals of aircraft as *ASETPA* by CASA that were in the type certificate (*TC*), supplemental type certificate (*STC*) or type acceptance certificate (*TAC*) for the aircraft immediately before 2 December 2021.

In accordance with regulation 201.004 of CASR, a decision by CASA to refuse to grant an approval as a PSEA on a TC, STC or TAC is subject to merits review by the Administrative Appeals Tribunal.

In accordance with paragraph 11.250 (a) of CASR, new paragraph 10.2 specifies the day on which the direction in paragraph 10.1 ceases to be in force.

Item 6 amends the heading of Appendix 2 to reflect the change in terminology from approved single engine turbine-powered aeroplanes (*ASETPA*) to prescribed single-engine aeroplane (PSEA).

Item 7 replaces the notes under the heading of Part 1 of Appendix 2 with a note that better reflects the revised subsection 10.1 that is substituted by item 5.

Item 8 amends the note under subclause 9.1 of Part 1 of Appendix 2 to replace the reference to *ASETPA* approval with a reference to approval of inclusion of the aircraft on the TC, STC or TAC for the aircraft.

Item 9 omits subclause 13 of Part 1 of Appendix 2, which requires an *ASETPA* to have global navigation satellite system (*GNSS*) equipment in accordance with specified provisions of CAR. Those provisions of CAR are repealed by the CATP Regulations. Relevant requirement for GNSS will instead apply under the Part 135 Manual of Standards.

Item 10 omits the note under the heading of Part 2 of Appendix 2, which is no longer suitable because of the amendment of subsection 10 by item 5.

Schedule 5 – Amendments to Civil Aviation Order 100.7

Schedule 5 amends *Civil Aviation Order 100.7 Instrument 2015* as follows.

Item 1 amends the enacting words for CAO 100.7 to include regulation 11.245 of CASR in the powers under which the CAO is made. This results from the amendment in item 3. Also, the reference to subregulation 235 (1) of CAR is replaced by a reference to regulation 235 of CAR to reflect the amendment of that regulation by the CATP Regulations.

Item 2 amends subparagraph 4.1A (d) so that it refers to the relevant paragraphs in new regulation 91.875 of CASR instead of subregulation 262AP (3) of CAR, which is repealed by the CATP Regulations on 2 December 2021.

Item 3 revises paragraph 5.1, which refers to a provision in regulation 235 of CAR that is being repealed by the CATP Regulations. Instead, the new paragraph 5.1 is a direction under regulation 11.245 of CASR that contains the same requirement as previously in subregulations 235 (7) to (8) of CAR and paragraph 5.1 of CAO 100.7.

In accordance with paragraph 11.250 (a) of CASR, new paragraph 5.1A specifies the day on which the direction in paragraph 5.1 ceases to be in force.

Item 4 amends paragraph 7.1 to replace the reference to subregulation 235 (1) of CAR with a reference to regulation 235 of CAR. This results from the amendment of that regulation by the CATP Regulations.

Schedule 6 – Repeal of instruments

Schedule 6 (in conjunction with section 9) repeals CAO 82.3 and CAO 82.5, which impose conditions on AOCs authorising regular public transport operations. These requirements are superseded by the FOR, in particular, new Parts 91, 119, 121, 133 and 135 of CASR and the related Manuals of Standards.

Schedule 6 (with section 9) also repeals Civil Aviation Amendment Order (No. R54) 2004 (FRL ref: F2005B00882) and Civil Aviation Amendment Order (No. R55) 2004 (FRL ref: F2005B00883), which are amending instruments that substituted the CAO 82.3 and CAO 82.5, respectively, that appeared as a Schedule to the amending instrument. To avoid doubt, those amending instruments are also being repealed to ensure that they do not continue to appear on the Federal Register of Legislation as being in force.

Schedule 6 (with section 9) also repeals CAO 82.6, which contains conditions on AOCs, and other requirements, relating to use of night vision imaging systems in helicopters. These requirements are superseded by the FOR.

Schedule 6 (with section 9) also repeals *CASA 30/21 – Required Communication Performance and Required Surveillance Performance (RCP 240 and RSP 180) Capability Declarations – Direction 2021 (CASA 30/21)*. That instrument is a direction under regulation 11.245 of CASR. It will no longer be required as provisions on this subject will be included in section 11.09 of the Part 91 Manual of Standards, which commences on 2 December 2021.

Instrument *CASA EX45/21 – ATSB Winching Operations Instrument 2021 (CASA EX45/21)* was made under regulations 11.160 and 11.205 of CASR and subregulations 151 (3), 250 (2) and (3) and 251 (3) of CAR. It is also repealed by Schedule 6 (with section 9).

CASA EX45/21 is expressed to be repealed on the day of commencement of “Schedule 1 to the *Civil Aviation Legislation Amendment (Part 138) Regulations 2018*”. This is an incorrect

reference to the *Civil Aviation Safety Amendment (Part 138) Regulations 2018*, which commences on 2 December 2021. CASA is repealing CASA EX45/21 by this instrument to avoid doubt about the effectiveness of the repeal provision in CASA EX45/21.

Legislation Act 2003

Paragraph 10 (1) (d) of the LA provides that an instrument will be a legislative instrument if it includes a provision that amends or repeals another legislative instrument. This instrument repeals CAO 82.3, CAO 82.5 and CAO 82.6 and instruments CASA 30/21 and CASA EX45/21, and amends CAO 82.0, CAO 82.1, CAO 82.7, CAO 100.5 and CAO 100.7, which are legislative instruments. Therefore, the instrument is a legislative instrument, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

As the instrument relates to aviation safety and is made under the Act, CASR and CAR, 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*).

This instrument will be repealed in accordance with section 48A of the LA, which will occur before the sunsetting provisions would have repealed the instrument if they had applied. Therefore, the exemption from sunsetting does not directly affect parliamentary oversight of this instrument. However, the instrument also amends CAO 82.0, CAO 82.1, CAO 82.7, CAO 100.5 and CAO 100.7, which are also exempt from the sunsetting provisions. Those CAOs deal with aviation safety matters that, once identified, require a risk response or treatment plan. As such, those CAOs are intended to have enduring operation and it would not be appropriate for them to be subject to sunsetting.

The exemption from the sunsetting provisions affects parliamentary oversight by not requiring the CAOs to be remade at the end of the sunsetting period (remaking would have the effect that the whole instrument must be re-tabled and would become subject to disallowance in the Parliament under sections 38 and 42 of the LA). However, it is likely that, over time, further CAO amendments will be made and these will be subject to tabling and disallowance in the Parliament in the normal way.

Consultation

CASA undertook extensive consultation in the development of the FOR and related Manuals of Standards. Details of the consultation is set out in the explanatory statements for each of the regulations and Manuals of Standards. The repeals and amendments in this instrument are consequential to commencement of the FOR and anticipated by the aviation industry. The consultation on those reforms included proposals for the repeal or amendment of the CAOs as set out in 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.

CASA prepared Regulation Impact Statements (*RISs*) for the FOR that address the economic and cost impact and the risks associated with different industry sectors. The RIS for each of the FOR can be found in the explanatory statements for those regulations.

The amendments and repeals in this instrument are consequential to the FOR. They are designed to avoid the cost and time impact on operators due to inappropriate application of duplicate regulatory schemes in the FOR and the CAOs and CASA 30/21.

Office of Best Practice Regulation (*OBPR*)

This instrument is covered by the RISs for the FOR, which were assessed by OBPR as compliant with the Best Practice Regulation requirements with a level of analysis commensurate with the likely impacts (OBPR id: 23625 and 24505).

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights at Attachment 1 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Making and commencement

The instrument has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

The instrument commences on 2 December 2021 and is automatically repealed in accordance with section 48A of the LA.

Statement of Compatibility with Human Rights

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

Civil Aviation Order (Flight Operations) Repeal and Amendment Instrument 2021 (No. 1)

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 flight operations regulations (the **FOR**) are a suite of regulations relating to flight operations under the *Civil Aviation Act 1988* (the **Act**), which commence on 2 December 2021. They amend the *Civil Aviation Regulations 1988* (**CAR**) and the *Civil Aviation Safety Regulations 1998* (**CASR**).

The FOR and related Manuals of Standards will replace the requirement for several legislative instruments on the same topics, including Civil Aviation Order (**CAO**) 82.3, CAO 82.5 and CAO 82.6.

The purpose of this legislative instrument is to repeal those 3 CAOs and other instruments that will no longer be required upon the commencement, on 2 December 2021, of the new legislative scheme.

Amendment of other legislative instruments is required to align with the terminology and structure of the FOR and avoid duplication of, and possible inconsistency between, regulatory requirements. Therefore, the legislative instrument also amends 5 other CAOs to remove redundant provisions, retain some requirements from repealed regulations and to update references within the legislative scheme.

CASA has assessed the repeals and amendments in this instrument and is satisfied this has no adverse impact on the safety of the aircraft operator's operations.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

Civil Aviation Safety Authority