

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX55/22 — Flight of Certain Ultralight Aeroplanes in Class D Airspace (Approved Flight Training Schools) Instrument 2022

Purpose

The purpose of this instrument is to continue to permit specified kinds of pilots to fly certain ultralight aircraft under the control of, or with the authorisation of, a flight training school approved by the Civil Aviation Safety Authority (*CASA*) (an *approved flight training school*):

- (a) in Class D airspace at the controlled aerodrome where the approved flight training school carries out flight training; and
- (b) without meeting certain licensing and competency requirements under Part 61 of the *Civil Aviation Safety Regulations 1998 (CASR)*.

Class D airspace is controlled airspace that is also used by passenger transport aircraft. However, the continued removal of the need to meet those licensing and competency requirements is offset by retaining the following:

- (a) conditions imposed in the interests of aviation safety;
- (b) the issue of directions about matters affecting the safe navigation and operation of aircraft.

Legislation

Section 98 of the *Civil Aviation Act 1988* (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 CASR and the *Civil Aviation Regulations 1988 (CAR)*.

CASR — Exemptions (Division 11.F.1)

Unless otherwise stated, each provision mentioned in this section is a provision of CASR.

Division 11.F.1 provides for the granting of exemptions from particular provisions of, relevantly, Civil Aviation Orders. Paragraph 11.160 (1) (b) provides that, for subsection 98 (5A) of the Act, CASA may grant an exemption from a provision of a Civil Aviation Order in relation to a matter mentioned in that subsection. Paragraph 98 (5A) (a) of the Act mentions, relevantly, “matters affecting the safe navigation and operation, or the maintenance, of aircraft”.

Under subregulation 11.160 (2), CASA may grant an exemption to a person or a class of persons, and may specify the class by reference to membership of a specified body or any other characteristic.

Under subregulation 11.160 (3), CASA may grant an exemption on application by a person or on its own initiative.

Under subregulation 11.175 (4), in deciding whether to renew an exemption, CASA must regard as paramount the preservation of at least an acceptable level of aviation safety. CASA

has regard to the same test when deciding whether to renew an exemption on its own initiative.

Subregulation 11.205 (1) provides that CASA may impose on an exemption any condition necessary in the interests of the safety of air navigation. Under regulation 11.210 of CASR, it is a strict liability offence not to comply with the obligations imposed by a condition.

Under regulation 11.225, an exemption must be published on the internet. Under subregulation 11.230 (1), the maximum duration of an exemption is 3 years.

CASR — Directions (Subpart 11.G)

Unless otherwise stated, each provision mentioned in this section is a provision of CASR.

Subpart 11.G provides for CASA to issue directions in relation to matters affecting the safety of air navigation. Paragraph 11.245 (1) (a) provides that, for subsection 98 (5A) of the Act, CASA may, by instrument, issue a direction about any matter affecting the safe navigation and operation of aircraft. However, subregulation 11.245 (2) provides that CASA may issue a direction of that kind:

- (a) only if CASA is satisfied that it is necessary to do so in the interests of the safety of air navigation; and
- (b) only if the direction is not inconsistent with the Act; and
- (c) only for the purposes of CASA's functions.

CASA's functions are set out in section 9 of the Act. Those functions include, relevantly at paragraph 9 (1) (a), conducting the safety regulation of civil air operations in Australian territory, in accordance with the Act and the regulations.

Under paragraph 11.250 (a), a direction under regulation 11.245 ceases to be in force on the day specified in the direction. Under regulation 11.255, it is an offence of strict liability to contravene a direction under regulation 11.245.

Civil Aviation Order 95.55 (CAO 95.55)

Unless otherwise stated, each provision mentioned in this section is a provision of CAO 95.55.

CAO 95.55 provides exemptions that enable operation of certain light sport aircraft, lightweight aeroplanes and, relevantly, ultralight aeroplanes under a less onerous regulatory scheme than the scheme that ordinarily applies under CAR and CASR. Among other requirements, aeroplanes relying on the regulatory scheme in CAO 95.55 must be listed with a sport aviation body (in accordance with the definition of *listed* in section 5).

Under Part 1 of the CASR Dictionary, *sport aviation body* means:

- (a) a body named in paragraphs (a) to (f) of that definition including, relevantly in paragraph (d), Recreational Aviation Australia Limited (*RAAus*); or
- (b) an ASAO; or
- (c) a body established in a Contracting State to administer sport aviation in that State.

Part 1 of the CASR Dictionary also defines **ASAO** (short for approved self-administering aviation organisation) as a person who holds an ASAO certificate that is in force and **ASAO certificate** as a certificate issued by CASA under regulation 149.075 of CASR.

The exemptions in CAO 95.55 also place a series of conditions on pilots who fly relevant aeroplanes in reliance on those exemptions. In particular, subparagraphs 9.2 (d) and (e) require that a person must not operate an aeroplane to which CAO 95.55 applies in, relevantly, Class D airspace unless, respectively:

- (a) the pilot in command holds a pilot licence with an aircraft category rating, the valid privileges of which include operating in controlled airspace and at a controlled aerodrome; and
- (b) the pilot in command has a valid flight review for the aircraft's class rating under Part 61 of CASR.

The Legislation Act 2003 (the LA) and the Act

Under paragraph 14 (1) (a) of the LA, a legislative instrument may make provision in relation to any matter by applying, adopting or incorporating provisions of, relevantly, an Act or a disallowable legislative instrument as in force at a particular time or as in force from time to time. Under paragraph 14 (1) (b) of the LA, subject to subsection 14 (2), 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.

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. Section 3 of this instrument repeals the instrument named *CASA EX86/19 – Flight of Certain Ultralight Aeroplanes in Class D Airspace (Approved Flight Training Schools) Instrument 2019 (CASA EX86/19)* that was registered as a legislative instrument. This instrument is, therefore, also a legislative instrument, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

The Acts Interpretation Act 1901 (the AIA)

Under subsection 33 (3) of the AIA, 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

Australian sport aviation operates under a system of self-administration. That system requires sport aviation bodies to register and administer the operation of various sport and recreational aircraft and sport aviation activities. All sport aviation bodies are overseen by CASA.

As well as being named in the definition of *sport aviation body* in Part 1 of the CASR Dictionary, RAAus is also:

- (a) an ASAO; and
- (b) the only sport aviation body with CASA's permission to administer the flights to which the instrument relates.

On 2 December 2021, Schedules 1 to 3 to the *Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019* commenced. Relevantly, Schedule 1 to those Regulations repealed and substituted Part 103 of CASR.

Under Part 1 of the CASR Dictionary, *Part 103 Manual of Standards* means the Manual of Standards issued by CASA under regulation 103.015. For the purposes of subsection 98 (5A) of the Act, regulation 103.015 of CASR confers discretionary power on CASA to issue a Manual of Standards for Part 103 of CASR, prescribing matters:

- (a) required or permitted by these Regulations to be prescribed by the Part 103 Manual of Standards; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Part.

The instrument repeals, renews and varies CASA EX86/19. Renewing CASA EX86/19 is required because the proposed Part 103 Manual of Standards did not commence as anticipated on 2 December 2021 and is currently being developed in response to industry feedback.

In response to that feedback, in November 2021 CASA decided to defer making the Part 103 Manual of Standards. Since then:

- (a) CASA's Aviation Safety Advisory Panel (*ASAP*) has established a Technical Working Group (*TWG*) made up of Part 103 stakeholders to provide advice regarding the Part 103 Manual of Standards; and
- (b) the TWG has been working with CASA.

After it completes its advice, the TWG will provide that advice and related recommendations to the ASAP.

CASA intends to include provisions in the proposed Part 103 Manual of Standards to give effect to the policy related to the instrument. CASA will not need to issue instruments of the same kind after those provisions of the proposed Part 103 Manual of Standards commence.

CASA is confident that the proposed Part 103 Manual of Standards will commence before the exemptions in the instrument cease to be in force on 31 July 2025. However, because the related TWG processes have not concluded, CASA cannot anticipate with any certainty when the proposed Part 103 Manual of Standards will commence. For that reason, CASA cannot include the commencement of the Part 103 Manual of Standards as an event giving rise to the

repeal of the instrument. However, CASA will repeal the instrument if, when it is made, the Part 103 Manual of Standards includes content that:

- (a) has the same effect as the instrument as a whole; and
- (b) commences before the exemptions in the instrument cease to be in force.

To accommodate the record retention requirements mentioned in section 20 of CASA EX86/19, that instrument is expressed to be repealed at the earlier of:

- (a) the end of the period of 5 years following the repeal of CAO 95.55; and
- (b) the end of 31 July 2027.

However, the remaining provisions of CASA EX86/19 cease to be in force or (in the case of the conditions on the exemptions) to have effect at the end of 31 July 2022.

Subsections 6 (1) and 13 (1) of CASA EX86/19 exempt particular classes of persons from compliance with subparagraphs 7.3 (d) and (e) of the version of CAO 95.55 that was in force at the time CASA EX86/19 commenced. However, the ways the instrument varies CASA EX86/19 include revising those exemption provisions to reflect relevant amendments and renumbering of CAO 95.55 that have taken place since CASA EX86/19 commenced. Other ways the instrument varies CASA EX86/19 are described in more detail under the heading “Content of instrument”.

Subparagraphs 9.2 (d) and (e) of CAO 95.55 require that a person must not operate an aeroplane to which CAO 95.55 applies to fly in Class A, B, C or D airspace, or a restricted area, unless the pilot in command meets specified requirements related to the pilot in command’s licence, rating, privileges and valid flight review under Part 61 of CASR. There is a limited range of circumstances in which CASA considers it appropriate to relax the requirements in subparagraphs 9.2 (d) and (e) of CAO 95.55 in relation to the flight in controlled airspace of aeroplanes listed with RAAus. Those circumstances include, subject to conditions, flights in Class D airspace at the controlled aerodrome where an approved flight training school carries out flight training.

Since CASA EX86/19 commenced on 3 September 2019, CASA has issued instruments of approval in accordance with section 5 of that instrument to 15 flight training schools, of which 11 are existing approval holders.

The instruments of approval held by existing approval holders are expressed to repeal on the repeal of CASA EX86/19. Therefore, CASA has made arrangements to issue renewed instruments of approval to the related flight training schools, expressed to commence immediately after the instrument commences.

Overview of instrument

The instrument is intended to continue to permit specified kinds of pilots to fly certain ultralight aircraft under the control of, or with the authorisation of an approved flight training school:

- (a) in Class D airspace at the controlled aerodrome where the approved flight training school carries out flight training; and
- (b) without meeting certain licensing and competency requirements under Part 61 of CASR.

CASA has assessed that the conditions and directions in CASA EX86/19 preserve an acceptable level of aviation safety and has retained those conditions and directions in the instrument. In addition, CASA maintains oversight of RAAus and the approved flight training schools by performing ongoing surveillance in accordance with the *CASA Surveillance Manual*. Based on that assessment and ongoing surveillance, CASA is satisfied that the instrument will not have a negative impact on the aviation safety of the related operations.

In accordance with subsection 33 (3) of the AIA, the instrument repeals and varies CASA EX86/19, which is no longer required with the making of the instrument.

Documents incorporated by reference

The instrument incorporates by reference, the following:

- (a) requirements of the *Part 61 Manual of Standards Instrument 2014* (the **Part 61 MOS**), as in force from time to time;
- (b) provisions of:
 - (i) CAO 95.55, as in force from time to time; and
 - (ii) any instrument that remakes CAO 95.55, as the remade instrument is in force from time to time.

The Part 61 MOS sets out requirements for Part 61 of CASR relating to, relevantly, pilot licensing. The Part 61 MOS and CAO 95.55 is each a disallowable legislative instrument and is each freely available on the Federal Register of Legislation (the **FRL**).

The instrument also incorporates by reference matters in the following:

- (a) *CASA EX69/21 — Medical Certification (Private Pilot Licence Holders with Basic Class 2 Medical Certificate) Exemption 2021*. CASA EX69/21 is a disallowable legislative instrument and is freely available on the FRL;
- (b) the *Recreational Aviation Australia Flight Operations Manual*, issue 7.1.1, dated 31 March 2021 (the **RAAus Operations Manual**). At the time of making this instrument, the RAAus Operations Manual is freely available at <https://www.raa.asn.au/storage/raaus-flight-operations-manual-issue-711.pdf>;
- (c) *CASA OAR 046/22 — Determination of Airspace and Controlled Aerodromes Etc. (Designated Airspace Handbook) Instrument 2022* (the **Determination**), as in force from time to time. The Determination makes determinations about volumes of airspace (including volumes of airspace of a specified class) and is a legislative instrument made under regulation 5 of the *Airspace Regulations 2007*. Under paragraph (a) of item 3 of the table in regulation 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, the Determination (being a determination made under regulation 5 of the *Airspace Regulations 2007*) is not a disallowable legislative instrument and is, therefore, not subject to paragraph 14 (1) (a) of the LA. However, in accordance with subsection 98 (5D) of the Act, the Determination (and any subsequent determination made under regulation 5 of the *Airspace Regulations 2007*) may be applied, adopted or incorporated, as in force from time to time (even if the subsequent determination does not exist when this instrument is made). The Determination is freely available on the FRL, as would be any subsequent determination made under regulation 5 of the *Airspace Regulations 2007*;

- (d) the Austroads publication titled *Assessing fitness to drive for commercial and private vehicle drivers*, 6th edition, 2022. At the time of making this instrument, that publication is freely available by searching for the publication title on the Austroads Publications page, located at <https://austroads.com.au/publications>.

Content of instrument

Part 1 — Preliminary

Section 1 names the instrument.

Section 2 sets out the duration of the instrument.

The note located immediately below section 2 sets out when the provisions of the instrument apply and cease to be in force or to have effect. In particular, paragraphs (a) and (b) of the note set out, for regulation 11.250 of CASR, when the directions in the provisions of the instrument mentioned in those paragraphs cease to be in force.

Section 3 repeals CASA EX86/19.

Section 4 of the instrument contains definitions.

The intention of the definition of “***relevant aeroplane***, of an approved flight training school” is to limit the scope of the instrument to operations in aircraft that are usually under the control of an approved flight training school and to prevent, for example, the use of any aircraft that might be used from time to time by an approved flight training school for its flying training activities. This limitation avoids arrangements where aircraft that are not usually used by a flight training school are temporarily placed under the control of a school in order for the pilot to take advantage of the exemption.

To correct an unintentionally narrow scope of 2 concepts included in CASA EX86/19, the instrument varies CASA EX86/19 in the following ways:

- (a) changes the definition of ***C3.1 elements*** to a definition of ***C3 elements***;
- (b) changes the definition of ***C3.1 performance criteria*** to a definition of ***C3 performance criteria***;
- (c) makes some consequential changes to the expression of those definitions, most substantially by mentioning the previously omitted elements and their locations in the Part 61 MOS;
- (d) updates internal cross-references to those elements and performance criteria.

Similarly, to correct an unintentionally narrow scope of a particular element of the competency requirement for a controlled aerodrome endorsement, the instrument varies CASA EX86/19 in another way. Specifically, the instrument adds “and landing” (and, therefore, mentions the full title of the element in the Part 61 MOS) in column 1 of item 4 of the table in the following provisions:

- (a) subsection 9 (1) — directing that the chief flying instructor (***CFI***) of an approved flight training school must not authorise an RAAus restricted pilot to fly a particular kind of flight unless the CFI or a senior instructor has completed specific assessment and recordkeeping requirements;
- (b) subsection 12 (1) — directing that the CFI of an approved flight training school must not authorise an RAAus restricted pilot to fly another particular kind of flight unless the CFI

or a senior instructor has completed specific assessment and recordkeeping requirements;

- (c) subsection 17 (3) — directing that the CFI of an approved flight training school must not authorise an RAAus pilot's first flight of another particular kind unless the CFI has completed specific assessment and recordkeeping requirements.

Further information about the kinds of flights mentioned in subsections 9 (1), 12 (1) and 17 (3) of the instrument is included in the description of those subsections below.

CASA has assessed that the unintentionally narrow scope of those provisions in CASA EX86/19 has not had a practical effect on the aviation safety of the related operations because approved flight training schools have been training and assessing RAAus pilots and RAAus restricted pilots using the additional elements and performance criteria.

Apart from those changes, the instrument varies CASA EX86/19 in only minor or technical ways, most substantially by:

- (a) revising the opening words of subsection 9 (3) for consistency with the opening words of subsections 9 (1) and (2); and
- (b) updating the titles or versions of documents mentioned in the instrument; and
- (c) if necessary, updating the location of those documents on the internet.

Part 2 — Approval of flight training schools

Section 5 of the instrument relates to approval by CASA of a flight training school that has been first approved by RAAus in accordance with the RAAus Operations Manual.

Subsections 5 (1) and (2) enable CASA, after receiving a written application from a person that operates a flight training school of the kind described in the preceding paragraph, to approve the flight training school for one or more of the following kinds of flights, each of which is defined in section 4 of the instrument:

- (a) a relevant private hire flight;
- (b) a relevant solo training flight.

Subsection 5 (3) sets out matters that CASA must consider in deciding whether to grant an approval to a person of the kind mentioned in the preceding paragraph, without limiting the matters that CASA may consider in making that decision.

The instrument is intended to operate in conjunction with approvals of flight training schools granted by CASA, by instrument in writing, in accordance with section 5. CASA has made arrangements to issue renewed instruments of approval to existing approval holders, expressed to commence immediately after the instrument commences. As the need for the instrument to cover additional RAAus flight training schools arises in the future, CASA may issue more instruments of approval in accordance with section 5.

A decision by CASA to refuse to approve a person under section 5 is subject to merits review by the Administrative Appeals Tribunal under section 31 of the Act or regulation 201.004 (Table 201.004, item 1) of CASR.

Part 3 — Relevant solo training flights by RAAus restricted pilots

The exemption in subsection 6 (1) of the instrument covers each of the following:

- (a) the entity with control of relevant aeroplanes — an approved flight training school, if approved for a relevant solo training flight;
- (b) the RAAus restricted pilot flying the relevant solo training flight.

An ***RAAus restricted pilot*** is defined to be the holder of a particular kind of certificate issued by, or under the delegated authority of, RAAus who is authorised by an approved flight training school to fly a relevant solo training flight. The instrument permits relevant solo training flights by RAAus restricted pilots:

- (a) only under the supervision of an approved flight training school; and
- (b) only if criteria specified in the instrument, which are intended to ensure that the flight can be flown safely, have been met.

Under subsection 6 (2) of the instrument, the exemption in subsection 6 (1) is subject to the conditions mentioned in sections 7, 8, 10 and 19 (described below).

Under subsection 6 (3) of the instrument, the exemption in subsection 6 (1) ceases to be in force at the end of 31 July 2025.

Section 7 of the instrument imposes conditions on an RAAus restricted pilot not to fly a relevant solo training flight unless the RAAus restricted pilot meets specified medical certification and aeronautical radio licensing requirements.

Section 8 of the instrument imposes a condition on an approved flight training school to ensure that an RAAus restricted pilot, in relation to a relevant solo training flight, holds appropriate certificates relating to medical fitness and the use of radios.

The directions in subsections 9 (1), (2) and (3) of the instrument are issued to the CFI or a senior instructor of an approved flight training school and relate to RAAus restricted pilots.

Subsection 9 (1) of the instrument provides that an approved flight training school's CFI must not authorise a relevant solo training flight by an RAAus restricted pilot within an aerodrome traffic circuit unless the assessment and recordkeeping requirements for controlled aerodrome competence mentioned in paragraphs 9 (1) (a) and (b) have been met.

The table in subsection 9 (1) of the instrument sets out the elements of the competency requirements and the related performance criteria in the Part 61 MOS that an approved flight training school's CFI or senior instructor must use to assess whether an RAAus restricted pilot has demonstrated each element of the competency requirements for a controlled aerodrome endorsement mentioned in paragraph 9 (1) (a).

Subsection 9 (2) of the instrument provides that an approved flight training school's CFI must not authorise a relevant solo training flight within an aerodrome traffic circuit unless the assessment and recordkeeping requirements for controlled airspace competence mentioned in paragraphs 9 (2) (a) and (b) have been met.

Subsection 9 (3) of the instrument provides that an approved flight training school's CFI must not authorise a relevant solo training flight within an aerodrome traffic circuit unless the

assessment and recordkeeping requirements for flight radio competence mentioned in paragraphs 9 (3) (a) and (b) have been met.

Subsection 9 (4) of the instrument provides that the directions in subsections 9 (1), (2) and (3) cease to be in force at the end of 31 July 2025.

Under the condition in section 10, an approved flight training school must not permit an RAAus restricted pilot to commence a relevant solo training flight of the school unless its CFI has:

- (a) authorised the RAAus restricted pilot, in writing, to fly the relevant solo training flight; and
- (b) recorded the authorisation in accordance with section 11.

Paragraphs 11 (1) (a) and (b) direct the CFI of an approved flight training school to make particular records for, respectively:

- (a) an RAAus restricted pilot's first relevant solo training flight of the school; and
- (b) any subsequent relevant solo training flight of the school by an RAAus restricted pilot.

Subsection 11 (2) of the instrument provides that the direction in subsection 11 (1) ceases to be in force at the end of 31 July 2025.

The directions in subsections 12 (1), (2), (3), (4) and (5) of the instrument are issued to the CFI or a senior instructor of an approved flight training school and relate to RAAus restricted pilots.

The direction in subsection 12 (1) of the instrument requires that the CFI of an approved flight training school must not authorise a relevant solo training flight that involves one or more transitions between Class D and Class G airspace unless the assessment and recordkeeping requirements for controlled aerodrome competence mentioned in paragraphs 12 (1) (a) and (b) have been met.

The table in subsection 12 (1) of the instrument sets out the elements of the competency requirements and the related performance criteria in the Part 61 MOS that an approved flight training school's CFI or senior instructor must use to assess whether an RAAus restricted pilot has demonstrated each element of the competency requirements for a controlled aerodrome endorsement mentioned in paragraph 12 (1) (a).

The direction in subsection 12 (2) provides that an approved flight training school's CFI must not authorise an RAAus restricted pilot to fly a relevant solo training flight involving one or more transitions between Class D and Class G airspace unless each of the following has been met in relation to the RAAus restricted pilot:

- (a) the assessment and recordkeeping requirements for controlled airspace competence mentioned in subsection 9 (2);
- (b) the assessment and recordkeeping requirements for flight radio competence mentioned in subsection 9 (3).

The direction in subsection 12 (3) provides that an approved flight training school's CFI must not authorise an RAAus restricted pilot to fly the RAAus restricted pilot's first relevant solo training flight involving one or more transitions between Class D and Class G airspace unless

the recordkeeping requirements mentioned in paragraphs 12 (3) (a), (b) and (c) have been met.

The direction in subsection 12 (4) provides that an approved flight training school's CFI must not authorise an RAAus restricted pilot to fly a relevant solo training flight involving one or more transitions between Class D and Class G airspace unless the following requirements have been met:

- (a) the CFI or a senior instructor of the approved flight training school has conducted with the RAAus restricted pilot the flights mentioned in paragraph 12 (4) (a);
- (b) the RAAus restricted pilot has received the practical training in flight mentioned in paragraph 12 (4) (b);
- (c) if a senior instructor conducts one or more of the flights mentioned in paragraph 12 (4) (a) — the CFI of the approved flight training school is satisfied, on reasonable grounds, that the RAAus restricted pilot has received the practical training in flight mentioned in paragraph 12 (4) (b).

The direction in subsection 12 (5) sets out a circumstance in which an RAAus restricted pilot is not required to receive the practical training mentioned in paragraph 12 (4) (b) from the CFI or a senior instructor of an approved flight training school.

Subsection 12 (6) of the instrument provides that the directions in subsections 12 (1), (2), (3), (4) and (5) cease to be in force at the end of 31 July 2025.

Part 4 — Relevant private hire flights by RAAus pilots

The exemption in subsection 13 (1) of the instrument covers each of the following:

- (a) the entity with control of relevant aeroplanes — an approved flight training school, if approved for a relevant private hire flight;
- (b) an RAAus pilot who is the pilot in command of the relevant private hire flight.

Under subsection 13 (2) of the instrument, the exemption in subsection 13 (1) is subject to the conditions mentioned in sections 14, 15, 18 and 19.

Under subsection 13 (3) of the instrument, the exemption in subsection 13 (1) ceases to be in force at the end of 31 July 2025.

An RAAus pilot is defined to be the holder of a pilot certificate issued by, or under the delegated authority of, RAAus who is authorised by an approved flight training school to conduct a relevant private hire flight. Pilots of that kind are generally permitted to fly specified kinds of aeroplanes without supervision (but subject to the restrictions in CAO 95.55). Instead, the instrument would permit pilots of that kind to operate a relevant aeroplane in Class D airspace at the controlled aerodrome where an approved flight training school carries out flight training without complying with subparagraphs 9.2 (d) and (e) of CAO 95.55 but only:

- (a) in the circumstances mentioned in the instrument; and
- (b) subject to the conditions mentioned in sections 14, 15, 18 and 19.

In effect, section 13 of the instrument permits flights in Class D airspace by RAAus pilots (even though pilots of that kind are not supervised for the flight by an approved flight training

school) only if criteria specified in the instrument, which are intended to ensure that the flight can be conducted safely, have been met. The instrument will permit RAAus pilots to hire and operate a relevant aeroplane for private use within Class D airspace at the controlled aerodrome where an approved flight training school carries out flight training, subject to the approved flight training school's checks and control.

Under the condition in section 14, an approved flight training school must not permit an RAAus pilot to commence a relevant private hire flight of the approved flight training school, unless its CFI has authorised the RAAus pilot, in writing, to conduct the flight.

Section 15 of the instrument imposes conditions on an RAAus pilot not to fly a relevant private hire flight unless the RAAus pilot meets specified medical certification and aeronautical radio licensing requirements.

Subsection 16 (1) of the instrument directs the CFI of an approved flight training school not to authorise a relevant private hire flight of the school unless the CFI is satisfied that the RAAus pilot who is the pilot in command of the relevant private hire flight holds appropriate certificates relating to medical fitness and the use of radios.

Subsection 16 (2) of the instrument provides that the direction in subsection 16 (1) ceases to be in force at the end of 31 July 2025.

The directions in subsections 17 (1), (2), (3), (4) and (5) of the instrument are issued to the CFI of an approved flight training school and relate to RAAus pilots.

The direction in subsection 17 (1) of the instrument requires that the CFI of an approved flight training school must not authorise an RAAus pilot's first relevant private hire flight unless the CFI:

- (a) is satisfied, on reasonable grounds, that the RAAus pilot has received the practical training in flight mentioned in paragraph 17 (1) (a); and
- (b) has conducted with the RAAus pilot one or more flights of the kind mentioned in paragraph 17 (1) (b).

The direction in subsection 17 (2) of the instrument sets out a circumstance in which an RAAus pilot is not required to receive the practical training mentioned in paragraph 17 (1) (a) from the CFI of an approved flight training school.

The direction in subsection 17 (3) of the instrument provides that the CFI of an approved flight training school must not authorise an RAAus pilot's first relevant private hire flight in a relevant aeroplane of the school unless the assessment and recordkeeping requirements for controlled aerodrome competence mentioned in paragraphs 17 (3) (a) and (b) have been met.

The table in subsection 17 (3) of the instrument sets out the elements of the competency requirements and the related performance criteria in the Part 61 MOS that an approved flight training school's CFI must use to assess whether an RAAus pilot has demonstrated each element of the competency requirements for a controlled aerodrome endorsement mentioned in paragraph 17 (3) (a).

The direction in subsection 17 (4) of the instrument provides that the CFI of an approved flight training school must not authorise an RAAus pilot's first relevant private hire flight in a

relevant aeroplane of the school unless the assessment and recordkeeping requirements for controlled airspace competence mentioned in paragraphs 17 (4) (a) and (b) have been met.

The direction in subsection 17 (5) of the instrument provides that the CFI of an approved flight training school must not authorise an RAAus pilot's first relevant private hire flight in a relevant aeroplane of the school unless the assessment and recordkeeping requirements for flight radio competence mentioned in paragraphs 17 (5) (a) and (b) have been met.

Subsection 17 (6) of the instrument provides that the directions in subsections 17 (1), (2), (3), (4) and (5) cease to be in force at the end of 31 July 2025.

Under the condition in subsection 18 (1), an approved flight training school must not permit an RAAus pilot to commence their first relevant private hire flight of the approved flight training school unless the approved flight training school's CFI has recorded specified information in the RAAus pilot's logbook.

Under the condition in subsection 18 (2), an approved flight training school must ensure that the CFI of the school includes the authorisation mentioned in paragraph 18 (1) (a) for each relevant private hire flight conducted by a particular RAAus pilot (other than the first relevant private hire flight mentioned in subsection 18 (1)).

Part 5 – Condition and directions – reporting, record retention and audit – approved flight training schools

Section 19 of the instrument imposes a condition on an approved flight training school that reports an accident or incident under the *Transport Safety Investigation Act 2003* or the *Transport Safety Investigation Regulations 2021* in relation to a relevant private hire flight or a relevant solo training flight. That condition requires an approved flight training school to, as soon as practicable after reporting the accident or incident, provide a copy of the report to CASA.

The directions in subsections 20 (1), (2) and (3) of the instrument are issued to an approved flight training school in relation to record retention and CASA's access to records made for the purposes of the instrument. Those directions are required to ensure that, in the interests of aviation safety, CASA can adequately monitor each approved flight training school's compliance with the instrument.

Subsection 20 (4) provides that the directions in subsections 20 (1), (2) and (3) cease to be in force at the end of:

- (a) 31 July 2030; or
- (b) the date of any earlier repeal under subparagraph 2 (b) (i) of the instrument.

Sunsetting

As the instrument relates to aviation safety and is made under CASR, Part 4 of Chapter 3 of the LA (the *sunsetting provisions*) do not apply to the instrument (see item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). However, the instrument will be repealed at the earlier of the following, which will occur before the sunsetting provisions would have repealed the instrument if they had applied:

- (a) the end of the period of 5 years following the repeal of CAO 95.55;
- (b) the end of 31 July 2030.

Any renewal of the instrument will be subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA. Therefore, the exemption from sunseting does not affect parliamentary oversight of this instrument.

Consultation

The instrument would, like CASA EX86/19, substantively affect the business of approved flight training schools.

Flight training schools that have been, or will be, brought within the scope of the instrument do so voluntarily — either by cooperating with CASA’s arrangements to renew an existing instrument of approval or by applying to CASA for an initial approval in accordance with section 5 of the instrument.

As the Explanatory Statement (the *ES*) for CASA EX86/19 mentions, during initial consultation CASA consulted several flight training schools that would be approved in accordance with section 5 on an advanced draft and those flight training schools expressed satisfaction with its expression.

The instrument, like CASA EX86/19, affects the management of Class D airspace by Airservices Australia (*AA*). During initial consultation, CASA did not provide AA with a consultation draft of CASA EX86/19. However, as the ES for CASA EX86/19 mentions:

- (a) as part of the application process the flight training schools that applied to CASA for the exemption consulted AA air traffic control tower unit supervisors on the proposal; and
- (b) the AA air traffic control tower unit supervisors expressed support for the flight training schools to operate in Class D airspace at aerodromes where the flight training schools carry out flight training.

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

Sector risk, economic and cost impact

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

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

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

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

As the instrument replaces an expiring instrument with largely the same provisions and conditions, there will be no change of economic or cost impact on individuals, businesses or the community.

Impact on categories of operations

By encouraging the use of approved flight training schools, the instrument is likely to have a beneficial effect on approved flight training schools and related businesses, a beneficial effect which will expand as CASA approves additional flight training schools. The instrument is also likely to improve the opportunities for RAAus pilots and RAAus restricted pilots to receive flight training and flying experience in Class D airspace.

Impact on regional and remote communities

The instrument is likely to have a beneficial effect on the regional communities in which approved flight training schools are located because it will lead RAAus pilots, RAAus restricted pilots and their companions to visit those communities. Once again, that beneficial effect will expand as CASA approves additional flight training schools in regional areas.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (*RIS*) is not required in this case, as the exemptions and the directions in the instrument are covered by a standing agreement between CASA and OBPR under which a RIS is not required for exemptions and directions (OBPR id: 14507).

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 a delegate of CASA relying on the power of delegation under subregulation 11.260 (1) of CASR.

The instrument commences on 1 August 2022 and is repealed at the earlier of:

- (a) the end of the period of 5 years following the repeal of CAO 95.55; and
- (b) the end of 31 July 2030.

Statement of Compatibility with Human Rights

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

CASA EX55/22 — Flight of Certain Ultralight Aeroplanes in Class D Airspace (Approved Flight Training Schools) Instrument 2022

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

This legislative instrument repeals, renews and varies the instrument named *CASA EX86/19 – Flight of Certain Ultralight Aeroplanes in Class D Airspace (Approved Flight Training Schools) Instrument 2019 (CASA EX86/19)*.

Therefore, this instrument continues to permit specified kinds of pilots to fly certain ultralight aircraft under the control of a flight training school approved by CASA (an ***approved flight training school***) in Class D airspace at the controlled aerodrome where the approved flight training school carries out flight training without meeting certain licensing and competency requirements under Part 61 of the *Civil Aviation Safety Regulations 1998 (CASR)*. However, the continued removal of the need to meet those licensing and competency requirements is offset by retaining the following:

- (a) conditions imposed in the interests of aviation safety;
- (b) the issue of directions about matters affecting the safe navigation and operation of aircraft.

Class D airspace is controlled airspace that is also used by passenger transport aircraft. The flights are limited to pilots operating aircraft under the control of, or with the authorisation of, an approved flight training school.

To correct an unintentionally narrow scope of 2 concepts included in *CASA EX86/19*, the instrument varies *CASA EX86/19* in the following ways:

- (a) changes the definition of ***C3.1 elements*** to a definition of ***C3 elements***;
- (b) changes the definition of ***C3.1 performance criteria*** to a definition of ***C3 performance criteria***;
- (c) makes some consequential changes to the expression of those definitions, most substantially by mentioning the previously omitted elements and their locations in the *Part 61 Manual of Standards Instrument 2014*;
- (d) updates internal cross-references to those elements and performance criteria.

CASA has assessed that the unintentionally narrow scope of those definitions in *CASA EX86/19* has not had a practical effect on the aviation safety of the related operations

because approved flight training schools have been training and assessing RAAus pilots and RAAus restricted pilots using the additional elements.

Apart from those changes, the instrument varies CASA EX86/19 in only minor or technical ways — most substantially by updating the titles or versions of documents mentioned in the instrument and, if necessary, updating the location of those documents on the internet.

Human rights implications

This legislative instrument engages the right to privacy in Article 17 of the International Covenant on Civil and Political Rights. It engages with that right to privacy by including conditions and directions about recordkeeping of, and access to, documents that contain personal information about the pilots who wish to operate the ultralight aircraft in Class D airspace at the aerodromes where approved flight training schools carry out flight training. The documents include aviation-related licences that indicate that pilots hold certain competencies, and medical certificates that state that pilots meet certain medical standards.

The recordkeeping and access requirements are necessary for CASA to perform its safety regulatory functions in relation to the risk mitigators that are put in place to enable the pilots to fly in Class D airspace. Further, those requirements are not more onerous than those that apply to pilots who hold licences under Part 61 of CASR.

The instrument is consistent with the protection of personal information by the *Privacy Act 1988*, including the Australian Privacy Principles in Schedule 1 to that Act. The engagement with the right to privacy promotes the general welfare of Australian society by ensuring that pilots operating in controlled airspace are competent to do so. The recordkeeping and access requirements are reasonable and proportionate to the risks associated with the exemptions, conditions and directions in the instrument.

Conclusion

This legislative instrument is compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Civil Aviation Safety Authority