

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### **CASA EX93/22 — Amendment of CASA EX81/21 (Maximum Take-off Weight for Aerial Application Operations) Instrument 2022**

##### **Purpose**

The purpose of *CASA EX93/22 — Amendment of CASA EX81/21 (Maximum Take-off Weight for Aerial Application Operations) Instrument 2022* (the **instrument**) is to amend a direction in *CASA EX81/21 – Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021 (CASA EX81/21)* relating to compliance by pilots in command with aircraft flight manual instructions so that, for pilots in command of certain aeroplanes engaged in an aerial application operation, the direction regarding this matter in section 6 of *CASA EX92/22 – Part 137 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2022 (CASA EX92/22)* applies.

The amendment is required because of the exemption in *CASA EX92/22* which, in summary, exempts pilots of certain aeroplanes engaged in aerial application operations from compliance, during a flight, with the flight manual instructions for the aircraft that are about the aircraft's maximum take-off weight. The amendment will ensure the pilots also need not comply with activities relating to compliance with aircraft flight manual instructions about the aircraft's maximum take-off weight before and after flight. Conditions on the exemption in *CASA EX92/22* will apply.

##### **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 the *Civil Aviation Safety Regulations 1998 (CASR)*.

Subpart 11.G of CASR provides for the Civil Aviation Safety Authority (**CASA**) to issue directions in relation to matters affecting the safety of air navigation. Under paragraph 11.245 (1) (a) of CASR, CASA may, by instrument, issue a direction about any matter affecting the safe navigation and operation of aircraft. 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 11.255 it is an offence of strict liability to contravene a direction under regulation 11.245.

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.

Under subsection 33 (3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable

in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument. Under subsection 13 (1) of the LA, subsection 33 (3) applies to legislative instruments as if each provision of the instrument were a section of an Act.

### Background

Part 91 of CASR (**Part 91**) is a comprehensive code of general flight and operational safety rules for Australian-registered aircraft wherever located, and for foreign-registered aircraft in Australian territory. Part 91 contains the baseline rules for “private operations” and commenced on 2 December 2021. The explanatory statement for CASA EX81/21 states that CASA EX81/21 made a number of exemptions against Part 91 to facilitate implementation of Part 91 in accordance with CASA’s transition policies for Part 91 and were designed to correct technical errors and omissions in Part 91 which gave rise to unintended obligations, and that they will be rectified in the next set of amendments to Part 91. CASA EX81/21 also includes some directions for similar purposes.

The explanatory statement for CASA EX81/21 states in relation to the direction in section 5 that: “The direction requires pilots in command of an aircraft to comply with requirements and limitations of the aircraft flight manual instructions for activities that occur before, during or after a flight. The relevant provision of Part 91 (91.095) incorrectly requires compliance with the flight manual instructions only during a flight.” It is anticipated that this oversight will be rectified in the next amendments made to Part 91.

CASA EX92/22 commenced on 1 December 2022. Section 4 of that instrument includes an exemption relating to the maximum take-off weight of aeroplanes engaged in aerial application operations, and section 6 includes a related direction. The exemption ensures that the higher of the 3 maximum gross weights stated in subregulation 137.190 (1) of CASR applies.

The direction in section 6 of CASA EX92/22 provides that the direction in section 5 of CASA EX81/21 does not apply to a pilot in command of a relevant aeroplane, or a relevant single engine aeroplane, that is engaged in an aerial application operation, in relation to ensuring that any activity in relation to the flight or operation, if occurring before or after the flight, is conducted in a way that meets any requirement or limitation for an activity that:

- (a) is mentioned in the aircraft flight manual instructions for the aircraft; and
- (b) relates to compliance with the aeroplane’s maximum take-off weight mentioned in the aircraft flight manual instructions.

The terms ‘relevant aeroplane’ and ‘relevant single engine aeroplane’ are defined in CASA EX92/22 as follows:

**relevant aeroplane** means an aeroplane, other than a relevant single engine aeroplane, that has a permanently installed jettison system to allow the pilot in command of the aeroplane to jettison, in flight, the contents of a hopper or vessel permanently installed in the aeroplane.

**relevant single engine aeroplane** means a registered single engine aeroplane that:

- (a) has a permanently installed jettison system to allow the pilot in command of the aeroplane to jettison, in flight, the contents of a hopper or vessel permanently installed in the aeroplane; and
- (b) is employed in private operations; and
- (c) has been issued a current certificate of airworthiness in the restricted category.

A note is included under section 6 of CASA EX92/22 that explains what the direction in section 5 of CASA EX81/21 does and why the direction in section 6 is required.

### **Overview of instrument**

In accordance with subsection 33 (3) of the *Acts Interpretation Act 1901*, the instrument amends CASA EX81/21. The instrument substitutes section 5 of CASA EX81/21 with a new section 5 with two subsections. New subsection 5 (1) sets out the previous direction relating to compliance with flight manual instructions by the pilot in command for the flight and operation of an aircraft. New subsection 5 (2) provides that subsection 5 (1) applies subject to section 6 of CASA EX92/22.

In determining whether to issue the direction in the instrument, CASA has had regard to its impact on aviation safety and is satisfied that it will not adversely affect aviation safety.

### **Documents incorporated by reference**

The instrument incorporates section 6 of *CASA EX92/22 – Part 137 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2022*, as in force from time to time.

CASA EX92/22 is freely available on the Federal Register of Legislation.

### **Content of instrument**

Section 1 of the instrument sets out the name of the instrument.

Section 2 sets out the commencement of the instrument.

Section 3 amends CASA EX81/21 as set out in Schedule 1 to the instrument.

Schedule 1 substitutes section 5 of CASA EX81/21 with a new section 5 titled “Flight manual instructions — direction”. New subsection 5 (2) makes clear that the direction in subsection 5 (1) is subject to the direction in section 6 of CASA EX92/22. A note is included below new section 5 that states that the direction in section 6 of CASA EX92/22 sets out how this direction applies to the pilot in command of specified aeroplanes engaged in an aerial application operation.

### **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 amends CASA EX81/21 that was registered as a legislative instrument and is, therefore, also a legislative instrument, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

### **Sunsetting**

As the instrument relates to aviation safety and is made under CASR, Part 4 of Chapter 3 of the LA does not apply to the instrument (as per item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). The instrument deals with aviation safety matters that, once identified, require a risk response or treatment plan. Generally speaking, item 15, when invoked, is necessary in order to ensure that, in the interests of aviation safety, a relevant instrument has enduring effect, certainty and clarity for aviation operators, both domestic and international.

In this case, the instrument amends CASA EX81/21 and is almost immediately spent and repealed in accordance with the automatic repeal provisions in Subdivision A in Division 1 of Part 3 of Chapter 3 of the LA. CASA EX81/21 is itself repealed at the end of 1 December 2024 by virtue of the terms of section 2 of that instrument. Thus, in practice, no sunset avoidance issues arise and there is no impact on parliamentary oversight.

### **Consultation**

The instrument amends a direction in CASA EX81/21 to remove an unnecessary burden on pilots in command of certain aeroplanes engaged in aerial application operations in relation to activities before or after flight that relate to compliance with any requirements or limitations that relate to maximum take-off weight that are set out in the aircraft flight manual instructions. The amendment is of a technical nature and is required because of the exemption in CASA EX92/22 relating to maximum take-off weights of these aircraft. CASA EX92/22 has previously been the subject of consultation. In these circumstances, CASA is satisfied that no 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.

The economic and cost impact of the instrument has been determined by:

- (a) the identification of individuals and businesses affected by the instrument; and
- (b) consideration of how the direction as amended will affect individuals and businesses; and
- (c) consideration of community impacts, beyond those direct impacts on individuals and businesses affected by the instrument, that are relevant if the instrument were to result in flow-on effects to other aviation businesses, or local non-aviation businesses that experience a change in their activity due to the instrument.

The requirements of the amendment made by the instrument apply to pilots in command of aircraft. The instrument will not require these individuals to meet new requirements as the amendment replicates the current direction relating to compliance by pilots in command with requirements or limitations set out in the aircraft flight manual instructions for the aircraft, except that it provides relief for pilots in command of certain aircraft engaged in aerial

application operations regarding compliance with any requirements or limitations regarding maximum take-off weight that are set out in the aircraft flight manual for the aircraft.

Accordingly, it is considered that the instrument makes minor or machinery changes to an existing instrument. CASA has assessed that the economic and cost impact of the instrument is not significant. The Office of Best Practice Regulation (**OBPR**) has also determined that Regulation Impact Statements (**RIS**) are not required for amending instruments of this kind. As there is no significant economic or cost impact on individuals or businesses, there will be no community impacts.

### **Impact on categories of operations**

The amendment made by the instrument would assist operators and pilots in command of certain aeroplanes engaged in aerial application operations by clarifying that they need not comply with the aeroplane's maximum take-off weight mentioned in the aircraft flight manual instructions before or after flight. Instead, arrangements under CASA EX92/22 will apply in relation to its take-off weight.

### **Impact on regional and remote communities**

There will be no adverse impact on operators or pilots in command of aeroplanes engaged in aerial application operations in regional and remote communities.

### **Office of Best Practice Regulation**

A RIS is not required in this case, as the exemption is covered by a standing agreement between CASA and OBPR under which a RIS is not required for exemption or direction instruments (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 the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

The instrument commences immediately after the commencement of CASA EX92/22 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*

### **CASA EX93/22 — Amendment of CASA EX81/21 (Maximum Take-off Weight for Aerial Application Operations) 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 amends the direction in section 5 of *CASA EX81/21 – Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021 (CASA EX81/21)* relating to compliance by pilots in command with aircraft flight manual instructions so that, for pilots in command of certain aeroplanes engaged in an aerial application operation (the *pilots*), the direction regarding this matter in section 6 of *CASA EX92/22 – Part 137 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2022 (CASA EX92/22)* applies instead of the direction in subsection 5 (1) of *CASA EX81/21*.

The amendment is required because of the exemption in *CASA EX92/22* for the pilots from compliance with subregulation 91.095 (2) of the *Civil Aviation Safety Regulations 1998 (CASR)*. That exemption is granted to the extent, in summary, that it requires the pilots to comply, during a flight, with the aircraft flight manual instructions about the aircraft's maximum take-off weight.

The amendment to the direction in section 5 of *CASA EX81/21* will ensure that the pilots also need not comply with activities relating to compliance with aircraft flight manual instructions about the aircraft's maximum take-off weight before and after flight. The direction in *CASA EX81/21* that is being amended was included because regulation 91.095 of *CASR* only requires compliance with the flight manual instructions during a flight. This oversight will be addressed during the next amendment to Part 91 of *CASR*.

*CASA EX92/22* commenced on 1 December 2022. In addition to the exemption for pilots from subregulation 91.095 (2) as described above, section 4 of that instrument includes exemptions from other *CASR* provisions relating to the maximum take-off weight of aeroplanes engaged in aerial application operations. The exemption ensures that the higher of the 3 maximum gross weights stated in subregulation 137.190 (1) of *CASR* apply. Conditions on the exemption in *CASA EX92/22* will apply.

#### **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**