

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### Part 42 Manual of Standards Amendment Instrument 2022 (No. 1)

##### Purpose

The purpose of *Part 42 Manual of Standards Amendment Instrument 2022 (No. 1)* (the *instrument*) is to amend the Part 42 Manual of Standards to include Japan as a specified country for the Part 42 Manual of Standards and regulation 42.306 of the *Civil Aviation Safety Regulations 1998 (CASR)*, so that organisations can carry out maintenance in Japan on aeronautical products for certain Australian aircraft. It also makes a consequential amendment to refer to the European Union Aviation Safety Agency as EASA, consistent with how it is defined in CASR.

##### 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.

Part 42 of CASR sets out continuing airworthiness requirements for aircraft and aeronautical products.

Under regulation 42.020 of CASR, CASA may issue a Manual of Standards for Part 42 that specifies matters affecting the maintenance or airworthiness of aircraft.

Under subregulation 42.306 (1) of CASR, an organisation is permitted to carry out maintenance outside Australian territory on an aeronautical product for an Australian aircraft to which Part 42 applies if:

- (a) the organisation is approved to carry out the maintenance by the national aviation authority (the *NAA*) of a foreign country under a law of that country; and
- (b) the country is specified for regulation 42.306 in the Part 42 Manual of Standards.

Under paragraph 42.306 (2) (a) of CASR, the permission in subregulation (1) is subject to a condition that the organisation must carry out and certify the maintenance in accordance with an arrangement (the *NAA arrangement*) between CASA and the NAA of the foreign country that permits the organisation to carry out the maintenance, if there is such an arrangement.

CASA has issued the Part 42 Manual of Standards, which commenced on 27 June 2011.

Section 7.2 of the Part 42 Manual of Standards specifies countries for regulation 42.306 of CASR.

Subsection 12.3.1 of the Part 42 Manual of Standards provides for documents that are authorised release certificates for aeronautical products on which maintenance has been carried out under the law of a foreign country. Under subsection 12.3.1, a document that meets requirements of subsection 12.3.2 is an authorised release certificate if it is issued under a law of a foreign country that has permitted the carrying out of the maintenance and that is specified in Table 12.3.1. Table 12.3.1 specifies countries for the purpose of subsection 12.3.1.

## **Background**

Japan is not currently specified in the Part 42 Manual of Standards as a foreign country for regulation 42.306 of CASR. CASA has been negotiating with the Civil Aviation Bureau of Japan for mutual arrangements that would enable each country to permit companies to carry out maintenance in the other country on aeronautical products for aircraft for the purposes of their respective civil aviation safety regimes. Following the finalisation of agreements to this end, and amendments to Japanese legislation that came into effect in June 2022, CASA seeks to amend the Part 42 Manual of Standards, to permit organisations to carry out maintenance on aeronautical products for Australian aircraft in Japan, subject to approval by the Civil Aviation Bureau of Japan.

## **Overview of instrument**

The instrument substitutes a new section 7.2 of the Part 42 Manual of Standards to specify Japan as a foreign country for regulation 42.306 of CASR and include an explanatory Note. It also substitutes a new Table 12.3.1 of the Part 42 Manual of Standards to include Japan as a country specified in that Table, to change a reference to the European Aviation Safety Agency to “EASA”, and include an explanatory Note.

CASA is satisfied this has no negative impact on civil aviation safety.

## **Content of instrument**

Section 1 sets out the name of the instrument.

Section 2 provides that the instrument commences on the day after it is registered.

Section 3 provides that the Part 42 Manual of Standards is amended as set out in Schedule 1 to the instrument.

Item 1 of Schedule 1 substitutes a new section 7.2 of the Part 42 Manual of Standards, in order to include Japan as a specified country for regulation 42.306 of CASR. It also includes a Note that refers to the requirement in paragraph 42.306 (2) (a) of CASR, that a foreign maintenance organisation that is approved under an NAA arrangement between CASA and the NAA of a foreign country must carry out maintenance on aeronautical products for an Australian aircraft in accordance with the NAA arrangement. The Note also lists Singapore and Japan as countries that currently have NAA arrangements.

Item 2 of Schedule 1 substitutes a new Table 12.3.1 of the Part 42 Manual of Standards, in order to include Japan as a specified country for subsection 12.3.1 of the Part 42 Manual of Standards. The new Table also updates the reference to the European Aviation Safety Agency to “EASA”, to be consistent with the definition of that term in the CASR Dictionary. As the Table specifies, “Any country that is an EASA member”, a Note is included to clarify the current members of EASA. The list of members is current as at 31 January 2020, being the last date on which the membership of EASA changed, when United Kingdom ceased to be an EASA member.

## ***Legislation Act 2003 (the LA)***

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 the Part 42 Manual of Standard 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.

As the instrument amends the Part 42 Manual of Standards, which relates to aviation safety and is made under CASR, 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*). In this case, the instrument amends the principal instrument and is spent and repealed in accordance with section 48A of the LA.

The Part 42 Manual of Standards deals with aviation safety matters that, once identified, require a risk response or treatment plan. As such, the Part 42 Manual of Standards is intended to have enduring operation and it would not be appropriate for it to be subject to sunseting. The exemption from the sunseting provisions affects parliamentary oversight by not requiring the Part 42 Manual of Standards to be remade and subject to further tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

### **Consultation**

Consultation has been undertaken in accordance with section 17 of the LA and Subpart 11.J of CASR, which sets out consultation requirements for Manuals of Standards and amendments to them.

On 4 April 2022, CASA published an exposure draft of the instrument and a related Advisory Circular on its website and requested feedback by 21 April 2022. In addition, CASA circulated an exposure draft of the instrument to industry stakeholders that are likely to be affected by the instrument. As the instrument contains amendments that are of a minor or machinery nature, in accordance with subregulation 11.280 (4) of CASR, the consultation period was at least 14 days. During that time, stakeholders provided comments on the instrument. CASA considered the comments and made a number of changes to the instrument that incorporated the comments. At the date of making this instrument, details of the consultation are available on the CASA website at:

<https://consultation.casa.gov.au/regulatory-program/cd-2201ms/>

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.

The instrument makes minor or machinery changes to an existing instrument and there will be no significant change to the economic or cost impact on individuals, businesses or the community. The Office of Best Practice Regulation (**OBPR**) also made an assessment that a Regulation Impact Statement (**RIS**) was not required.

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

The instrument is likely to have a beneficial effect on maintenance operations and related businesses by providing those operations and businesses with another country in which to conduct or arrange maintenance of aeronautical products for Australian aircraft.

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

The instrument is likely to have little impact on regional or remote communities. Inasmuch as those communities are served by Australian aircraft, they may experience a benefit in that maintenance organisations for aeronautical products for those aircraft will have a wider choice of places at which to conduct the maintenance, which could expedite such maintenance.

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

OBPR assessed that the proposed amendments will have not more than a minor impact and that the preparation of a RIS was therefore not required (OBPR22-01733). Also, a RIS is not required in this case, as the instrument is covered by a standing agreement between CASA and OBPR under which a RIS is not required for amendments to Manuals of Standards (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 on the day after it is registered 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*

### Part 42 Manual of Standards Amendment Instrument 2022 (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

*Part 42 Manual of Standards Amendment Instrument 2022 (No. 1)* (the *instrument*) amends the Part 42 Manual of Standards to include Japan as a specified country for the Part 42 Manual of Standards and regulation 42.306 of the *Civil Aviation Safety Regulations 1998 (CASR)*, so that organisations can carry out maintenance in Japan on aeronautical products for certain Australian aircraft. It also makes a consequential amendment to refer to the European Aviation Safety Agency as EASA, consistent with how it is defined in CASR.

The instrument substitutes a new section 7.2 of the Part 42 Manual of Standards to specify Japan as a foreign country for regulation 42.306 of CASR and include an explanatory Note. It also substitutes a new Table 12.3.1 of the Part 42 Manual of Standards to include Japan as a country specified in that Table, thereby recognising certain documents to be an authorised release certificates for aeronautical products on which maintenance has been carried out under the law of Japan. It also changes a reference to the European Aviation Safety Agency to “EASA”, and include an explanatory Note.

#### 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