

Explanatory Statement

Civil Aviation Regulations 1988

Civil Aviation Safety Regulations 1998

Civil Aviation Orders (CAO 95 Series) Amendment and Repeal Instrument 2023

Purpose

The main purpose of *Civil Aviation Orders (CAO 95 Series) Amendment and Repeal Instrument 2023* (the **instrument**) is to correct some unintended consequences of the amendments made in December 2021 and July 2022 to the 95-series Civil Aviation Orders (**CAOs**) that were required due to the *Civil Aviation Legislation Amendment (Flight Operations—Miscellaneous Amendments) Regulations 2020* that commenced on 2 December 2021. The instrument also makes some other amendments to the CAOs to correct unintended omissions and minor errors, and repeals 2 CAOs that have been replaced by newer versions.

The key amendments made by the instrument:

- extend the deeming of SAB flight permits (as defined in the amended CAOs) being taken to be in force for aircraft listed with sport aviation bodies (**SABs**) before 2 December 2021
- provide that approvals under regulation 91.045 or 91.050 of the *Civil Aviation Safety Regulations 1998 (CASR)* are not required for flights over populous areas that are not built-up areas of cities or towns, or certain flights over public gatherings, in specified aircraft to which the CAOs apply, similar to the arrangements already in place for similar flights by aircraft for which an experimental certificate is in force
- allow the holder of a pilot authorisation issued in relation to a lightweight aeroplane by a relevant approved self-administering aviation organisation (**ASAO**), rather than a third party, to carry out specified maintenance on the aeroplane if specified conditions are met.

The purpose of the amendments is to assist the aviation industry without impacting aviation safety. Without these changes, the affected industry sectors would suffer significant costs by needing to have lightweight aeroplane pilot maintenance conducted by a third party and apply for certain flight approvals. They will also ease the administrative burden of SABs by not requiring them to process SAB flight permits at a time when many SABs are transitioning to become approved ASAOs under Part 149 of CASR.

The CAOs to which the key amendments are made are named below under the heading Background.

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

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 a provision of the regulations.

Under subregulation 11.160 (2) of CASR, an exemption may be granted 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) of CASR, an exemption may be granted on application by a person or on CASA's own initiative.

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

Regulation 11.225 of CASR requires an exemption to be published on the internet. Under subregulation 11.230 (1), the maximum duration of an exemption is 3 years.

CAR

Under regulation 5 of CAR, if CASA is empowered or required under the regulations to issue a direction, instruction or notification, or give a permission, approval or authority, it may, unless the contrary intention appears in the regulation conferring the power or function or imposing the obligation or duty, issue the direction, instruction or notification, or give the permission, approval or authority, in a CAO.

CAOs 95.8 and 95.12.1 were made under regulations 11.160 and 11.205 of CASR. CAOs 95.10, 95.12 and 95.32 were made under regulations 11.160 and 11.205 of CASR and subregulations 5 (1) and (1A) of CAR. CAO 95.55 was made under regulations 11.160, 11.205 and 11.245 of CASR.

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.

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

The key amendments listed first under the heading Purpose are made to *Civil Aviation Order 95.12 (Exemptions from CAR and CASR — Gyroplanes Not Exceeding 250 kg) Instrument 2021 (CAO 95.12)*, *Civil Aviation Order 95.12.1 (Exemptions from CAR and CASR — LSA Gyroplanes and ASRA-compliant Gyroplanes) Instrument 2021 (CAO 95.12.1)*, *Civil Aviation Order 95.32 (Exemptions from CAR and CASR — Powered Parachutes and Weight-shift-controlled Aeroplanes) Instrument 2021 (CAO 95.32)* and *Civil Aviation Order 95.55 (Exemptions from CAR and CASR — Certain Light Sport Aircraft, Lightweight Aeroplanes and Ultralight Aeroplanes) Instrument 2021 (CAO 95.55)*. The key amendments listed second are made to *Civil Aviation Order 95.10 (Exemptions from CAR and CASR — Microlight Aeroplanes) Instrument 2021 (CAO 95.10)*, CAO 95.12, CAO 95.12.1, CAO 95.32 and CAO 95.55. The key amendments listed third are made to CAO 95.55.

Deeming of SAB flight permits — amendments to CAO 95.12, CAO 95.12.1, CAO 95.32 and CAO 95.55

The requirement in certain CAO provisions for aircraft to hold an SAB flight permit issued by a relevant sport aviation body after 1 December 2023 will be deferred for a further year by the amendments made to these CAOs to extend the deeming of SAB flight permits being taken to be in force for specified aircraft to which the CAO applies.

SAB flight permit is a defined term in each of the CAOs being amended. Each CAO currently provides that an SAB flight permit is taken to be in force for specified aircraft to which the CAO applies if the aircraft was listed with a relevant sport aviation body immediately before the CAO's commencement.

The amendments mean that SABs will not have to process applications for SAB flight permits for a further year. This will provide them with greater administrative capacity to finalise their applications to become ASAOs under Part 149 of CASR before the Part 149 transition end date of 2 December 2023. CASA estimates that SABs would together have to process up to 2 000 individual SAB flight permit applications by 2 December 2023 if this amendment was not made.

Flight approvals for flights over populous areas or public gatherings — amendments to CAO 95.10, CAO 95.12, CAO 95.12.1, CAO 95.32 and CAO 95.55

Section 25 of instrument *CASA EX81/21 – Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021* provides an exemption for the operator and pilot in command of an aircraft for which an experimental certificate is in force from (in summary) having to have an approval under regulation 91.045 or 91.050 of CASR for flights over:

- populous areas that are not the built-up area of a city or a town
- flights over public gatherings if the relevant aircraft is passing over a public gathering only for the purpose of arrival or departure at an aerodrome, in the course of normal navigation, or in transit, in the course of normal navigation.

The amendments made by the instrument provide for similar arrangements for specified aircraft that do not have a certificate of airworthiness issued under regulation 21.176 of CASR, and to which CAO 95.10, CAO 95.12, CAO 95.12.1, CAO 95.32 and CAO 95.55 apply.

CAO 95.55 amendments — pilot maintenance

CAO 95.55 as made unintentionally did not include provisions relating to pilot maintenance of lightweight aeroplanes. For lightweight aeroplanes administered by an ASAO, there is a person who holds a pilot certificate issued by the ASAO that includes the privileges of operating such a lightweight aeroplane. This person should have the same applicable privileges and limitations in relation to pilot maintenance for such an aeroplane (being a class B aircraft in Australian territory) as a Part 61 licence holder whose pilot licence permits them to operate an aeroplane in the class of single-engine aeroplane.

The safety rationale for allowing such pilot maintenance by a pilot certificate holder is that a Part 61 pilot licence holder is permitted under regulation 42ZC of CAR to conduct the maintenance specified in Part 1 of Schedule 8 of CAR and, under regulation 61.480 of CASR, the holder of a pilot certificate is considered to have passed the aeronautical knowledge examination and flight test for a Part 61 recreational pilot licence. It is, therefore, appropriate for the holder of a pilot certificate granted by a sport aviation body that administers activities involving a lightweight aeroplane to have the same Part 1 of Schedule 8 of CAR privileges that apply to the same aeroplane operated under the CAO by a Part 61 recreational pilot licence holder.

CAO 95.55 does not provide for the conduct of pilot maintenance by certain licensed maintenance engineers, because paragraph 42ZC (4) (e) of CAR applies in relation to the specified maintenance engineers conducting pilot maintenance on a lightweight aeroplane (being a class B aircraft in Australian territory) operated under the CAO.

Overview of instrument

The instrument:

- (a) amends CAO 95.12, CAO 95.12.1, CAO 95.32 and CAO 95.55 to extend by a further year the deeming of SAB flight permits (as defined in the CAOs) being taken to be in force for aircraft listed with SABs before 2 December 2021; and
- (b) amends CAO 95.10, CAO 95.12, CAO 95.12.1, CAO 95.32 and CAO 95.55 to provide that approvals under regulation 91.045 or 91.050 of CASR are not required for flights over populous areas that are not built-up areas of cities or towns, or certain flights over public gatherings, in specified aircraft to which the CAOs apply; and
- (c) amends CAO 95.55 to provide an exemption for the operator and pilot in command of a lightweight aeroplane from subregulation 42ZC (1) of CAR to the extent specified, to allow the holder of a specified pilot authorisation issued by a **relevant ASAO** (as defined in CAO 95.55) to carry out **relevant maintenance** (as defined in CAO 95.55) on the aeroplane if specified requirements are met.

Relevant maintenance is defined to mean maintenance mentioned in Part 1 of Schedule 8 of CAR, other than items 19 and 25.

The instrument also amends *Civil Aviation Order 95.8 (Exemptions from CAR and CASR — Hang Gliders and Paragliders) Instrument 2021 (CAO 95.8)*. The amendments remedy the unintended omission in the exemption in section 8 of that CAO from Parts 4 to 4D of CAR for persons who have obligations under those Parts in relation to aircraft to which CAO 95.8 applies (that is, specified hang gliders, and paragliders, employed in private operations).

Also, the instrument amends CAO 95.32 to include further purposes, including the personal carriage of the pilot, for which aircraft to which CAO 95.32 applies may be used. The purposes for which two-place aircraft can be used now include the carriage of a passenger if the pilot holds a specified pilot authorisation. These purposes were inadvertently omitted from CAO 95.32 when it commenced on 2 December 2021.

The instrument also makes other amendments of minor and technical nature. These include correcting references to the “Australian Sport Rotorcraft Association” in definitions in CAO 95.12 and CAO 95.12.1 to refer to this entity as the “Australian Sport Rotorcraft Association Incorporated”, consistent with how it is referred to in the definition of *sport aviation body* in Part 1 of the CASR Dictionary, and its Australian Business Name.

The instrument would also repeal the following instruments to avoid any confusion as to which is the latest version of CAO 95.12 and CAO 95.12.1:

- Civil Aviation Order 95.12, Exemption from provisions of the Civil Aviation Regulations 1988 — gyroplanes having an empty weight not in excess of 250 kilograms (assigned the FRL number F2006C00314)
- Civil Aviation Order 95.12.1, Exemption from provisions of the Civil Aviation Regulations 1988 — 2 place gyroplanes and single-place gyroplanes certificated as light sport aircraft (assigned the FRL number F2006C00315).

CASA has assessed the impact that the amendments made by the instrument will have on aviation safety and is satisfied that they will not adversely affect aviation safety.

Documents incorporated by reference

The instrument inserts a new definition of *automatic ELT* into CAO 95.8, CAO 95.12 and CAO 95.12.1. The definition adopts by reference the meaning of that term in section 26.50 of the Part 91 Manual of Standards, as in force from time to time. The Part 91 Manual of Standards is a legislative instrument and is freely available on the Federal Register of Legislation (the *FRL*).

The instrument also replaces:

- (a) subsection 8.2 of CAO 95.8 with a new subsection 8.2 that includes Parts 4 to 4D of CAR as *exempted provisions* (as defined in CAO 95.8); and
- (b) subsection 8A.2 of CAO 95.55 with new subsection 8A.2 that, together with the definition of *relevant maintenance* in new subsection 8A.3, adopts the following 2 documents by reference, as in force from time to time:
 - Schedule 8 of CAR
 - a legislative instrument issued by CASA for the purposes of subparagraph 42ZC (4) (d) (iii) of CAR.

CAR, including Schedule 8, is freely available on the FRL.

As at commencement of this instrument, no legislative instrument has been issued by CASA for the purposes of subparagraph 42ZC (4) (d) (iii) of CAR. Any such legislative instrument issued would be freely available on the FRL.

As mentioned above, 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.

Content of instrument

Section 1 names the instrument.

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

Section 3 provides that Schedule 1 amends CAO 95.8.

Section 4 provides that Schedule 2 amends CAO 95.10.

Section 5 provides that Schedule 3 amends CAO 95.12.

Section 6 provides that Schedule 4 amends CAO 95.12.1.

Section 7 provides that Schedule 5 amends CAO 95.32.

Section 8 provides that Schedule 6 amends CAO 95.55.

Section 9 provides for the repeal of the 2 CAOs described in Schedule 7, which are:

- Civil Aviation Order 95.12, Exemption from provisions of the Civil Aviation Regulations 1988 — gyroplanes having an empty weight not in excess of 250 kilograms (assigned the FRL number F2006C00314)
- Civil Aviation Order 95.12.1, Exemption from provisions of the Civil Aviation Regulations 1988 — 2 place gyroplanes and single-place gyroplanes certificated as light sport aircraft (assigned the FRL number F2006C00315).

Details of the amendments to the CAOs included in Schedules 1 to 6 are set out in Attachment 1.

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 a number of CAOs, each of which was registered as a legislative instrument, and repeals 2 CAOs. Therefore, this instrument is 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 and CAR, Part 4 of Chapter 3 of the LA (the sunseting 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*).

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 6 CAOs and repeals 2 CAOs, 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. The CAOs amended by the instrument are themselves exemption instruments and repealed within 3 years by virtue of their terms. Thus, in practice, no sunset avoidance issues arise and there is no impact on parliamentary oversight.

Consultation

The main amendments made by the instrument remove unintended disadvantage from operators and pilots of aircraft to which the amended CAOs apply. The need for these changes were identified by the relevant SABs and submissions made to CASA for them to be addressed.

The amendments made to CAO 95.12, CAO 95.12.1, CAO 95.32 and CAO 95.55 to extend the deeming of SAB flight permits are also beneficial for industry and would free up their resources to finalise their applications to become ASAOs.

The remaining amendments have been made to correct matters inadvertently omitted when the CAOs were first made, or are of a minor and technical nature, for example, to fix minor drafting errors.

In these circumstances, 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 existing instruments and there will be no significant change to the economic or cost impact on individuals, businesses or the community. The Office of Impact Analysis (*OIA*) also made an assessment that an Impact Analysis (*IA*) was not required.

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

- (a) the identification of kinds of individuals and businesses affected by the instrument; and

- (b) consideration of how the requirements to be imposed on individuals and businesses under the instrument will be different compared to existing requirements; and
- (c) a valuation of the impact in terms of direct costs on individuals and businesses affected by the instrument to comply with the different requirements. This valuation is consistent with the principles of best practice regulation of the Australian Government.

The requirements of the CAO amendments made by the instrument apply to operators and pilots of aircraft to which the CAOs apply, and relevant sport aviation bodies. The instrument will not require these individuals or businesses to meet new requirements but will alleviate the cost burden for certain sectors of the aviation industry otherwise needing to have lightweight aeroplane pilot maintenance conducted by a third party and apply for certain flight approvals. It will also reduce the administrative burden of relevant SABs by ensuring that they do not need to issue numerous SAB flight permits for a further year.

CASA has assessed that the economic and cost impact of the amendments made by the instrument is not significant. The OIA has also made the assessment that the impact of the instrument is minor and that an IA is not required. 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 amendments made by the instrument to deem SAB flight permits to be in force for a further year will have a positive impact on sport aviation operations.

The amendments allowing for the maintenance of lightweight aeroplanes by persons whose authorisations include the privileges of operating such aeroplanes will also have a beneficial impact on lightweight aeroplane operations because operators will no longer need to source third parties to perform such maintenance.

Impact on regional and remote communities

The amendments made by the instrument are expected to have a beneficial impact on regional and remote communities in which sport aviation operations are conducted and lightweight aeroplanes are flown, for the reasons described above.

The amendments made by the instrument in relation to operations over populous areas will also have a beneficial effect for regional and remote communities by permitting relevant aircraft to overfly populous areas that are not cities or towns, thus enabling aircraft to operate from aerodromes located in regional and remote communities where operations may otherwise be restricted by the presence of a populous area that is not a city or town.

Office of Impact Analysis

An IA is not required in this case as the amendments are to correct unintended omissions and minor errors in the CAOs and the OIA does not require the preparation of an IA for amendments that relate to correcting errors in drafting or making minor drafting clarifications to CAOs (OIA id: 22726).

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights at Attachment 2 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.

Details of Amendments included in Schedules 1 to 6

Schedule 1 includes the following amendments to CAO 95.8:

- (a) Item [1] substitutes the Note following the heading under subsection 5;
- (b) Items [2] to [5] amend or omit definitions;
- (c) Item [6] omits paragraph 5.2 regarding references to classes of airspace. This is because a new note regarding the determination of classes of airspace is inserted after subparagraph 10.1 (k) by item [10];
- (d) Item [7] substitutes a new definition of *exempted provisions* in paragraph 8.2 so that it includes reference to Parts 4 to 4D (inclusive), which was inadvertently omitted previously;
- (e) Item [8] corrects an incorrect cross-reference;
- (f) Item [9] is a minor and technical amendment;
- (g) Item [10] inserts a note after subparagraph 10.1 (k) explaining how classes of airspace are determined.

Schedule 2 includes the following amendments to CAO 95.10:

- (a) Item [1] inserts wording into subparagraph 10.1 (g) so that it is subject to new paragraph 10.1A;
- (b) Item [2] inserts new paragraph 10.1A that provides that certain approvals are not required for certain flights in a relevant aircraft (as defined in CAO 95.10).

Schedule 3 includes the following amendments to CAO 95.12:

- (a) Item [1] omits paragraph 2.3 so that paragraph 5A.2 is not repealed at the end of 1 December 2023;
- (b) Item [2] amends the definition in paragraph 5.1 of *ASRA Basic Gyroplane Construction Standards* so that instead of referring to “The Australian Sport Rotorcraft Association Inc.” it refers to the “Australian Sport Rotorcraft Association Incorporated”, consistent with the name of this entity in the definition of *sport aviation body* in Part 1 of the CASR Dictionary;
- (c) Item [3] inserts a definition of *automatic ELT* into paragraph 5.1;
- (d) Item [4] omits the definition of *emergency ELT* in paragraph 5.1;
- (e) Items [5] and [6] insert definitions of *Part 61 MOS* and *Part 103 MOS*, respectively, into paragraph 5.1;
- (f) Item [7] omits the definition of *pilot authorisation*;
- (g) Item [8] makes a minor amendment to the definition of *survival ELT*;
- (h) Item [9] omits paragraph 5.2 regarding references to classes of airspace. This is because a new note regarding the determination of classes of airspace is inserted after sub-subparagraph 11.1 (i) (ii) by item [15];
- (i) Item [10] amends paragraph 5A.2 so that an SAB flight permit is taken to be in force for a relevant aircraft if, on or before 1 December 2021, the circumstances in subparagraphs (a) and (b) of paragraph 5A.2 apply;
- (j) Item [11] makes a minor technical amendment to the definition of *exempted provisions* in paragraph 8.2;

- (k) Item [12] make a minor technical amendment to paragraph 10.3 to refer to the Part 61 MOS;
- (l) Item [13] amends sub-subparagraph 11.1 (g) (ii) so that it applies to a pilot of any relevant aircraft (as defined in CAO 95.12), not just pilots of power-assisted sailplanes or powered sailplanes;
- (m) Item [14] inserts wording into sub-subparagraph 11.1 (h) (ii) so that it is subject to new paragraph 11.1A;
- (n) Item [15] inserts a note after sub-subparagraph 11.1 (i) (ii) explaining how classes of airspace are determined;
- (o) Item [16] inserts new paragraph 11.1A that provides that certain approvals are not required for certain flights in a relevant aircraft (as defined in CAO 95.12).

Schedule 4 includes the following amendments to CAO 95.12.1:

- (a) Item [1] omits paragraph 2.3 so that paragraph 5A.2 is not repealed at the end of 1 December 2023;
- (b) Item [2] inserts a definition of *Act* into paragraph 5.1;
- (c) Item [3] amends the definition in paragraph 5.1 of *ASRA Compliant Gyroplane Construction Standards* so that instead of referring to “The Australian Sport Rotorcraft Association Inc.” it refers to the “Australian Sport Rotorcraft Association Incorporated”, consistent with the name of this entity in the definition of *sport aviation body* in Part 1 of the CASR Dictionary;
- (d) Item [4] inserts a definition of *automatic ELT* into paragraph 5.1;
- (e) Item [5] inserts a definition of *two-place gyroplane* into paragraph 5.1;
- (f) Item [6] omits the definition of *emergency ELT* in paragraph 5.1;
- (g) Items [7] and [8] insert the definitions of *Part 61 MOS* and *Part 103 MOS*, respectively, into paragraph 5.1;
- (h) Item [9] omits the definition of *pilot authorisation*;
- (i) Item [10] makes a minor and technical amendment to the definition of *survival ELT*;
- (i) Item [11] omits paragraph 5.2 regarding references to classes of airspace. This is because a new note regarding the determination of classes of airspace is inserted after sub-subparagraph 12.1 (i) (ii) by item [18];
- (j) Item [12] amends paragraph 5A.2 so that an SAB flight permit is taken to be in force for an ASRA-compliant gyroplane if, on or before 1 December 2021, the gyroplane is listed with a relevant sport aviation body;
- (k) Item [13] makes a minor technical amendment to the definition of *exempted provisions* in paragraph 8.2;
- (l) Item [14] makes a minor technical amendment to subparagraph 10.1 (b);
- (m) Item [15] makes a minor technical amendment to paragraph 11.3 to refer to the Part 61 MOS;
- (n) Item [16] amends sub-subparagraph 12.1 (g) (ii) so that it applies to a pilot of any relevant aircraft (as defined in CAO 95.12.1), not just pilots of power-assisted sailplanes or powered sailplanes;
- (o) Item [17] inserts wording into sub-sub-subparagraph 12.1 (h) (iii) (B) so that it is subject to new paragraph 12.1A;

- (p) Item [18] inserts new paragraph 12.1A that provides that certain approvals are not required for certain flights in a relevant aircraft (as defined in CAO 95.12.1);
- (q) Item [19] inserts a note after sub-subparagraph 11.1 (i) (ii) explaining how classes of airspace are determined;
- (r) Item [20] is a minor technical amendment to the definition of *repealed Order* in paragraph 15.2.

Schedule 5 includes the following amendments to CAO 95.32:

- (a) Item [1] omits paragraph 2.3 so that paragraph 5A.2 is not repealed at the end of 1 December 2023;
- (b) Item [2] inserts a new definition of *pilot authorisation* into paragraph 5.1;
- (c) Item [3] amends subparagraph 5A.2 (a) so that an SAB flight permit is taken to be in force for a relevant aircraft if, on or before 1 December 2021, the circumstances in subparagraphs (a) and (b) of paragraph 5A.2 apply;
- (d) Item [4] inserts new sub-subparagraphs into subsection 7 to include additional purposes for which a relevant aircraft (as defined in CAO 95.32) may be used;
- (e) Item [5] substitutes paragraph 8.8 with new paragraphs 8.8 and 8.9. New paragraph 8.9 provides that certain approvals are not required for certain flights in a relevant aircraft (as defined in CAO 95.32) for which an SAB flight permit is in force.

Schedule 6 includes the following amendments to CAO 95.55:

- (a) Item [1] omits paragraph 2.3 so that paragraph 5A.2 is not repealed at the end of 1 December 2023;
- (b) Item [2] omits paragraph 4.3 because *CASA 86/19 — Flight of Certain Ultralight Aeroplanes in Class D Airspace (Approved Flight Training Schools) Instrument 2019* has been repealed and replaced by *CASA EX55/22 — Flight of Certain Ultralight Aeroplanes in Class D Airspace (Approved Flight Training Schools) Instrument 2022* and the paragraph is no longer required;
- (c) Item [3] inserts a new definition of *pilot authorisation* into paragraph 5.1;
- (d) Item [4] amends paragraph 5A.3 so that an SAB flight permit is taken to be in force for certain aeroplanes if, on or before 1 December 2021, the aeroplane was listed with a relevant sport aviation body;
- (e) Item [5] amends the Note after item 1 in Table 1;
- (f) Item [6] is a minor technical amendment to paragraph 6.2;
- (g) Item [7] inserts new paragraph 6.3. Paragraph 6.3 sets out an exemption for the operator of, and pilot in command of, a lightweight aeroplane from subregulation 42ZC (1) of CAR to the extent specified in the paragraph. This is to enable pilot maintenance of the aeroplane by the holder of a pilot authorisation issued in relation to a lightweight aeroplane by a relevant ASAO;
- (h) Items [8] and [9] are minor technical amendments;
- (i) Item [10] inserts wording into subparagraph 8.1 (k) so that it is subject to new paragraph 8A.2;
- (j) Item [11] amends the Note to subparagraph 8.1 (k) so that it refers to new paragraph 6.3;
- (k) Item [12] substitutes the heading to subsection 8A with a new heading;
- (l) Item [13] substitutes paragraph 8A.2 with new paragraphs 8A.2 and 8A.3. New paragraph 8A.2 sets out the requirements for the holder of a pilot authorisation issued in

relation to a lightweight aeroplane by a relevant ASAO to carry out maintenance on the lightweight aeroplane, and new paragraph 8A.3 includes a definition of ***relevant maintenance***;

- (m) Item [14] substitutes the Note under paragraph 9.2 with 2 explanatory notes;
- (n) Items [15] and [16] are minor and technical amendments to paragraph 9.7 to include correct cross-references;
- (o) Item [17] inserts a new subparagraph 9.7 (ba) into paragraph 9.7. The new subparagraph sets out requirements for ultralight aeroplanes of a kind mentioned in sub-subparagraph (e) (vi) of the definition of ***ultralight aeroplane***;
- (p) Item [18] inserts wording into sub-subparagraph 9.7 (b) (ii) so that it is subject to new paragraph 9.8;
- (q) Item [19] inserts new paragraph 9.8 that provides that certain approvals are not required for certain flights in an aeroplane for which an SAB flight permit is in force.

Statement of Compatibility with Human Rights

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

Civil Aviation Orders (CAO 95 Series) Amendment and Repeal Instrument 2023

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 instrument would amend a number of 95-series Civil Aviation Orders (*CAOs*) to correct some unintended consequences of the amendments made in December 2021 to the *CAOs* to accommodate the *Civil Aviation Legislation Amendment (Flight Operations—Miscellaneous Amendments) Regulations 2020* that commenced on 2 December 2021. The instrument also repeals 2 *CAOs* that have been replaced by newer versions and makes some other minor and technical amendments to the *CAOs*.

In particular, the instrument includes amendments to certain 95-series *CAOs* to:

- extend the deeming of SAB flight permits (as defined in the amended *CAOs*) being taken to be in force for aircraft listed with sport aviation bodies before 2 December 2021
- provide that approvals under regulation 91.045 or 91.050 of the *Civil Aviation Safety Regulations 1998* are not required for flights over populous areas that are not built-up areas of cities or towns, or certain flights over public gatherings, in specified aircraft to which the *CAOs* apply, similar to the arrangements already in place for similar flights by aircraft for which an experimental certificate is in force
- allow the holder of a pilot authorisation issued in relation to a lightweight aeroplane by a relevant approved self-administering aviation organisation, rather than a third party, to carry out specified maintenance on the aeroplane if specified conditions are met.

The purpose of the amendments is to alleviate administrative burden on the aviation industry without impacting aviation safety.

Human rights implications

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

Conclusion

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

Civil Aviation Safety Authority