

Explanatory Statement

Civil Aviation Regulations 1988

Civil Aviation Safety Regulations 1998

Civil Aviation Orders (CAO 95 Series) (Gyroplanes and Other Measures) Amendment Instrument 2023

Purpose

Civil Aviation Order 95.12 (Exemptions from CAR and CASR — Gyroplanes Not Exceeding 250 kg) Instrument 2021 (CAO 95.12) and *Civil Aviation Order 95.12.1 (Exemptions from CAR and CASR — LSA Gyroplanes and ASRA-compliant Gyroplanes) Instrument 2021 (CAO 95.12.1)* provide for the operation of these aircraft outside of generally applicable operating rules in the *Civil Aviation Regulations 1988 (CAR)* and the *Civil Aviation Safety Regulations 1998 (CASR)* if (broadly speaking) operators of the aircraft comply with the conditions of the Civil Aviation Order (the *CAO*) which include compliance with the operations manual of the sport aviation body that administers the aircraft. Those CAOs exclude gyroplanes administered by an approved self-administering aviation organisation (*ASAO*) under Part 149 of CASR. The purpose of the instrument is to make the amendments necessary to extend the scope of the CAOs to gyroplanes administered by an ASAO. The Australian Sport Rotorcraft Association (*ASRA*), which is the relevant sport aviation body administering sport and recreation gyroplane operations, is in the process of transitioning to an ASAO. Without the amendments, the CAOs would stop being effective to regulate gyroplanes once ASRA became an ASAO.

Also, the instrument amends CAO 95.12, CAO 95.12.1 and the following instruments within section 95 of the CAOs (the *95-series CAOs*) to deal with some unintended consequences arising from the delay of the Manual of Standards for Part 103 of CASR and provisions in Part 21 of CASR that were intended to ease the transition of aircraft to administration under Part 103:

- *Civil Aviation Order 95.32 (Exemptions from CAR and CASR — Powered Parachutes and Weight-shift-controlled Aeroplanes) Instrument 2021 (CAO 95.32)*
- *Civil Aviation Order 95.55 (Exemptions from CAR and CASR — Certain Light Sport Aircraft, Lightweight Aeroplanes and Ultralight Aeroplanes) Instrument 2021 (CAO 95.55).*

In particular, paragraph 21.181(4)(a) and subregulation 21.195B(4) of CASR were made as transitional provisions to prevent the lapse of certificates of airworthiness for aircraft whose registration was cancelled (under Part 47 of CASR) in order that the aircraft could be listed with a Part 103 ASAO. Without the Part 103 Manual of Standards, rotorcraft and aeroplanes currently administered by a sport aviation body, and regulated under some of the 95-series CAOs, have yet to be prescribed as **Part 103 aircraft** by the Manual of Standards, as required under subparagraphs 103.005(4)(b)(v), (vi) and (vii) of CASR. As such, it is not possible for them to be listed by a Part 103 ASAO (being an ASAO that administers a Part 103 aircraft) even though they are listed with a sport aviation body. The affected aircraft have a certificate of airworthiness that has been deemed not to be in force (for the transitional purposes), which will place the aircraft in breach of the requirement in subsection 20AA(3) of the *Civil Aviation Act 1988* (the *Act*). Amendments throughout the instrument adjust the application of the 95-series CAOs to ensure that the abovementioned provisions of Part 21 of CASR do not operate to create breaches of subsection 20AA(3) of the Act until the Manual of Standards for

Part 103 of CASR (the **Part 103 MOS**) is made and the Part 21 provisions can operate as intended. The Civil Aviation Safety Authority (**CASA**) is satisfied that there is no adverse impact on aviation safety to authorise such aircraft to be operated with a certificate of airworthiness that is not in force only because of those deeming provisions.

These amendments in the instrument also replace a number of provisions, that remain substantially in the same terms, for the purpose of including the changes mentioned in the paragraph above in a way that improves the readability of the provisions and to update the drafting in line with current drafting practices.

The opportunity has generally been taken to make some drafting improvements and corrections and to update some provisions, including to other CAOs in the 95-series CAOs not already mentioned:

- *Civil Aviation Order 95.4 (Exemptions from CAR and CASR — Sailplanes and Towing Aircraft) Instrument 2021 (CAO 95.4)*
- *Civil Aviation Order 95.8 (Exemptions from CAR and CASR (Hang Gliders and Paragliders) Instrument 2021 (CAO 95.8)*
- *Civil Aviation Order 95.10 (Exemptions from CAR and CASR — Microlight Aeroplanes) Instrument 2021 (CAO 95.10).*

The improvements and updates include a change to the date from which an aircraft listed with a sport aviation body is deemed to hold a flight permit issued by that body (called an SAB flight permit). That date is changed from 1 December 2021 to 1 December 2023 to accommodate aircraft for which sport aviation bodies have not issued SAB flight permits because they were unaware of the December 2021 change in the CAOs that required the issue of such permits. Amending the date rectifies this situation by ensuring all aircraft currently listed with a sport aviation body that do not have a permit will be compliant with the CAOs on commencement.

Legislation

The Act establishes the regulatory framework for maintaining, enhancing, and promoting the safety of civil aviation with particular emphasis on preventing aviation accidents and incidents. Relevantly, for present purposes, subsection 20AA(3) of the Act.

Section 98 of the Act empowers the Governor-General to make regulations for the Act and in the interests of the safety of air navigation. Relevantly, the Governor-General has made CASR and CAR.

Subpart 11.F of CASR provides for the granting of exemptions from particular provisions of the regulations. Subregulation 11.160(1) of CASR provides that, for subsection 98(5A) of the Act, CASA may grant an exemption from compliance with a provision of the regulations.

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.

Under subregulation 11.170(3) of CASR, in deciding whether to grant an exemption, CASA must regard as paramount the preservation of at least an acceptable level of aviation safety.

Also, under subregulation 11.175(4) of CASR, in deciding whether to reissue 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 grant an exemption on its 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.

Regulation 200.020 of CASR provides that, for paragraph 20AA(3)(b) of the Act, an Australian aircraft that is exempt from CASR is authorised to fly without a certificate of airworthiness.

CAO 95.55 includes a requirement, at sub-subparagraph 8.1(h)(i), that an amateur-built or kit-built aeroplane must be inspected before its initial flight by a person authorised by the relevant sport aviation body that administers the aeroplane. Item [3] of Schedule 7 amends CAO 95.55 to provide that CASA also may authorise a person to do the inspection. Such an authorisation by CASA had been in a previous version of CAO 95.55 (F2021L00073) before its revocation and the remaking of the instrument by the principal instrument currently in force.

Under regulation 11.015 of CASR, an approval of this type is an authorisation under Part 11 of CASR, with Subpart 11.BA of CASR applying to the authorisation.

Regulation 11.055 sets out criteria that apply to CASA when granting an authorisation. Regulation 11.056 provides that an authorisation may be granted subject to any condition that CASA is satisfied is necessary in the interests of the safety of air navigation. Under regulation 11.077, a person commits an offence of strict liability if the person breaches a condition of an authorisation.

In accordance with regulation 201.004 of CASR, a decision by CASA to refuse an approval under the instrument is subject to merits review by the Administrative Appeals Tribunal.

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

Most of the 95-series CAOs were reissued in late 2021, so that they could commence on 2 December 2021, at the time that the new suite of flight operations regulations, comprising new Parts 91, 103, 105, 131, 119, 121, 133, 135 and 138 of CASR, commenced. The CAOs continued the substance of the regulatory exemptions from CAR applying under the previous CAOs. However, in form, the exemptions are now largely from the equivalent provisions under CASR, in particular, new Part 91 provisions.

Part 91 provides a general set of rules for the operation of aircraft. It generally applies to all flights of all aircraft, although some rules are not applied to certain kinds of operations that either do not need to comply with a rule or are subject to a different specific rule that is tailored to the operation.

Part 103 of CASR sets out the operating rules for a wide range of sport and recreation aircraft, the majority of which are not registered under Part 47. Its purpose is to provide regulations, for the operation of those aircraft, that are administered by an ASAO under Part 149. These aircraft were historically regulated by the 95-series CAOs under a suite of exemptions from CAR, and generally exempted from CASR under Part 200 of CASR.

At the time that Part 103 commenced, the Manual of Standards that was needed to support and fill out the framework of the Part was delayed for further development and consultation with the established industry working group. This necessitated the continuation of the old regime for the relevant aircraft, but with updated exemptions that were in the form of reissued 95-series CAOs. At the time that the 95-series CAOs were being prepared, the relevant administering body for gyroplanes used for sport and recreational purposes, ASRA, was not an ASAO and it was not necessary to provide for ASAOs as an administering sport aviation body under CAOs 95.12 or 95.12.1. However, ASRA has applied for an ASAO certificate under regulation 149.070. As the 95-series CAOs are intended to keep operating until 2 December 2024, amendments are necessary to accommodate the transition of ASRA under Part 149 to an ASAO.

The *Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021* (the **CATS Regulations**) provided for a smooth transition from the old to the new flight operations regulations, including new Part 103. Items 73 and 79 of Schedule 1 to the CATS Regulations made changes to subregulations 21.181(4) and 21.195B(4) that deemed a certificate of airworthiness not to be in force during any period that the aircraft is either not registered or not listed with a Part 103 ASAO. The Explanatory Statement states that the effect of this requirement is to enable aircraft to cancel their registration on the Australian Civil Aircraft Register, for the purposes of listing with an ASAO without the certificate being automatically cancelled, in order to avoid breaching subsection 20AA(3) of the Act. The purpose was to reduce the administrative burden and expense on the owner of having the aircraft inspected for the issue of a new certificate because of a change to the scheme under which it is administered.

Overview of instrument

Schedules 1, 2 and 3 make minor amendments to CAOs 95.4, 95.8 and 95.10.

Schedule 4 amends CAO 95.12 and Schedule 5 amends CAO 95.12.1 to extend the scope of the CAOs to gyroplanes (defined as **relevant aircraft** in the CAOs) that are administered by an ASAO. This will allow the provisions of those CAOs to continue to apply in relation to gyroplanes when the sport aviation body that administers the aircraft transitions to an ASAO under Part 149 of CASR.

Amendments of CAOs 95.12, 95.12.1, 95.32 and 95.55 also deal with some unintended consequences caused by the delay of the making of Manual of Standards for Part 103 and issues arising from transitional provisions inserted by the CATS Regulations. These changes are required for consistency with legislative changes or to clarify or update existing provisions. These changes do not substantially alter existing regulatory arrangements. The requirements and safety standards in the amended instruments are designed to mitigate the risks that might have an impact on the continued safe conduct of aviation activities.

Also, Schedule 7 amends CAO 95.55 to provide a power for CASA to authorise persons that may inspect an amateur-built or kit-built aircraft before its initial flight. Such an inspection is a requirement in the CAO. The authorising power had been in force in the version of the CAO that was repealed by the primary instrument but had been overlooked in the reissued instrument.

The instrument changes the structure of provisions in some of the CAOs to facilitate amendment of the CAOs, improve comprehension and generally update the drafting in line with current drafting practices.

The instrument amends the CAOs in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.

Documents incorporated by reference

Under subsection 98(5D) of the Act, the instrument may apply adopt or incorporate any matter contained in any instrument or other writing. A non-legislative instrument may be incorporated into a legislative instrument made under the Act as that non-legislative instrument exists or is in force at a particular time or from time to time (including a non-legislative instrument that does not exist when the legislative instrument is made).

In accordance with paragraph 15J(2)(c) of the LA, the following table contains a description of the documents incorporated by reference into the legislative instrument, the organisation responsible for each document and how they may be obtained. The table also states how the document is incorporated.

Document	Description	Manner of incorporation	Source
Exposition (of an ASAO)	<p>Exposition, for an ASAO, means:</p> <p>(a) the set of documents approved by CASA under regulation 149.080 in relation to the ASAO; or</p> <p>(b) if the set of documents is changed under regulation 149.115 or 149.120, or in accordance with the process mentioned in paragraph 149.340(i)—the set of documents as changed.</p> <p>Various provisions of the instrument call up an exposition.</p>	<p>As existing from time to time.</p> <p>Subsection 98(5D) of the Act authorises the incorporation of this document into the instrument as existing from time to time.</p>	<p>The relevant exposition is available to members of the relevant ASAO. See further below.</p>
Operations manual (of a sport aviation body)	<p>The manual, approved from time to time by CASA, that contains the practices, procedures, instructions and other information by which the sport aviation body ensures the operational safety of the aircraft in accordance with the civil aviation legislation.</p> <p>Various provisions of the instrument call up an operations manual.</p>	<p>As existing from time to time.</p> <p>Subsection 98(5D) of the Act authorises the incorporation of this document into the instrument as existing from time to time.</p>	<p>Operations manuals of sport aviation bodies are available to members of the relevant sport aviation body and are usually freely available on the internet.</p>
Technical manual (of a sport aviation body)	<p>The manual, approved from time to time by CASA, that contains:</p> <p>(a) airworthiness, design and maintenance standards; and</p> <p>(b) aeronautical practices and test procedures and processes; by which the relevant sport</p>	<p>As existing from time to time.</p> <p>Subsection 98(5D) of the Act authorises the incorporation of this document into the instrument as existing from time</p>	<p>Technical manuals of sport aviation bodies are available to members of the relevant body and are usually freely available on the internet.</p>

Document	Description	Manner of incorporation	Source
	<p>aviation body ensures the technical safety of the aircraft in accordance with the civil aviation legislation.</p> <p>Various provisions of the instrument call up a technical manual, as specifying the manner and form of various requirements under the instrument.</p>	to time.	
Aircraft flight manual instructions	<p>The aircraft flight manual instructions include the flight manual, checklists of normal, abnormal and emergency procedures for the aircraft and any operating limitation, instructions, markings and placards relating to the aircraft.</p> <p>Various provisions of the instrument incorporate aircraft flight manual instructions requirements.</p>	As in force or existing from time to time.	The aircraft flight manual instructions for an aircraft is proprietary to the owner of the aircraft design (usually the manufacturer). The instructions are publicly available but not for free. The incorporated requirements of instructions are at the aircraft-specific level, and instructions are required to be provided to owners of aircraft. Where available, and by prior arrangement, CASA will make aircraft flight manual instructions available for inspection at any CASA office.
Part 149 Manual of Standards	<p>The Part 149 Manual of Standards prescribes matters relating to approved self-administering aviation organisations.</p> <p>The definition of <i>listed</i> in the 95-series CAOs calls up section 14 of the Part 149 Manual of Standards.</p>	<p>As in force from time to time.</p> <p>Paragraph 14(1)(a) of the <i>Legislation Act 2003</i> authorises the incorporation of this instrument as in force from time to time.</p>	This document is available for free on the Federal Register of Legislation.

Document	Description	Manner of incorporation	Source
Part 91 Manual of Standards	<p>The Part 91 Manual of Standards prescribes matters relating to general operating and flight rules permitted under Part 91 to be prescribed in the Manual of Standards.</p> <p>Paragraph 9.1E of CAO 95.32 calls up provisions in the Part 91 Manual of Standards.</p>	<p>As in force from time to time.</p> <p>Paragraph 14(1)(a) of the <i>Legislation Act 2003</i> authorises the incorporation of this instrument as in force from time to time.</p>	<p>This document is available for free on the Federal Register of Legislation.</p>
Part 61 Manual of Standards	<p>The Part 61 Manual of Standards prescribes matters relating to flight crew licensing permitted under Part 61 to be prescribed in the MOS.</p> <p>Various provisions of the instrument call up provisions in the Part 61 Manual of Standards.</p>	<p>As in force from time to time.</p> <p>Paragraph 14(1)(a) of the <i>Legislation Act 2003</i> authorises the incorporation of this instrument as in force from time to time.</p>	<p>This document is available for free on the Federal Register of Legislation.</p>
ASRA Basic Gyroplane Construction Standards	<p>The document of that name, prepared by the Australian Sport Rotorcraft Association Inc (ASRA).</p> <p>Incorporated by paragraph 5A.2 of CAO 95.12.</p>	<p>As existing from time to time.</p> <p>Subsection 98(5D) of the Act authorises the incorporation of this document into the instrument as existing from time to time.</p>	<p>This document is available for free on the website of ASRA: www.asra.org.au.</p>

Document	Description	Manner of incorporation	Source
<i>Determination of Airspace and Controlled Aerodromes Etc. (Designated Airspace Handbook) Instrument</i>	<p>This instrument determines relevant volumes of airspace as flight information regions and areas, as classifications of airspace, and as control zones, and determines relevant controlled aerodromes.</p> <p>It is a legislative instrument that is revised and reissued by CASA approximately every 6 months.</p> <p>Incorporated for the purpose of avoiding doubt about references made to a class of airspace.</p>	<p>As in force from time to time.</p> <p>Paragraph 14(1)(a) of the <i>Legislation Act 2003</i> authorises the incorporation of this instrument as in force from time to time.</p>	<p>This document is available for free on the Federal Register of Legislation.</p>
Civil Aviation Order 101.55	<p>Prescribes aircraft certification requirements—aeroplanes with a maximum weight not exceeding 450 kilograms.</p> <p>Incorporated for the purpose of prescribing aircraft that can be flown in Class A, B, C or D airspace in CAO 95.12.1</p>	<p>As in force on 31 May 2016.</p> <p>Paragraph 14(1)(a) of the <i>Legislation Act 2003</i> authorises the incorporation of this instrument as in force at a particular time.</p>	<p>This document is available for free on the Federal Register of Legislation.</p>

Exposition

This instrument incorporates the exposition of an ASAO that administers a gyroplane regulated under CAO 95.12 or 95.12.1. An exposition is a document, or suite of documents, that specifies the scope of the aviation administration functions conducted by the ASAO, and sets out the plans, processes, safe conduct procedures and other procedures, programs and systems implemented by the ASAO to comply with the civil aviation legislation. Reference to an ASAO's exposition is inserted in a number of provisions in the primary instruments as an alternative to a sport aviation body's operations manual or technical manual and such an exposition contains equivalent material, including operational requirements and airworthiness, design and maintenance standards relating to aircraft that the ASAO is authorised to administer.

The ASAO is required to keep the exposition up-to-date under regulation 149.350 of CASR. Accordingly, the exposition will, under Part 149 of CASR, effectively apply as it exists from time to time, even though those words are not used.

The document is not publicly or freely available. It is available to the personnel of the ASAO and any holders of an authorisation issued by the ASAO, as required under regulation 149.350 of CASR.

An exposition is proprietary to an ASAO and may include commercial in confidence information about the ASAO's functions and operations. The incorporated requirements of an exposition are at the ASAO-specific level and apply only to the ASAO, its personnel and persons to whom the ASAO has issued an authorisation to conduct a parachuting activity that the ASAO administers.

Approvals

The amendments repeat existing requirements in the 95-series CAOs for approvals under regulation 91.045 or 91.050 authorising aircraft to fly over a populous area or public gathering. In accordance with regulation 201.004 of CASR, a decision by CASA to refuse to approve a person is subject to merits review by the Administrative Appeals Tribunal. These approvals are made under Part 91 of CASR.

Content of instrument

Section 1 provides that the instrument is the *Civil Aviation Orders (CAO 95 Series) (Gyroplanes and Other Measures) Amendment Instrument 2023*.

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

Sections 3, 4, 5, 6, 7, 8 and 9 are the activating provisions for the Schedules, providing that:

- Schedule 1 amends CAO 95.4
- Schedule 2 amends CAO 95.8
- Schedule 3 amends CAO 95.10
- Schedule 4 amends CAO 95.12
- Schedule 5 amends CAO 95.12.1
- Schedule 6 amends CAO 95.32
- Schedule 7 amends CAO 95.55.

Schedule 1 Amendment of Civil Aviation Order 95.4

Item [1] of Schedule 1 amends the definition of ***repealed Order*** in paragraph 11.3 of CAO 95.4, to change a reference to an Order “repealed under subsection 3” to an Order “assigned the FRL number F2012C00683”. The amendment clarifies the intent of paragraph 11.3 in the event that subsection 3 is repealed as a consequence of section 48C of the LA. Section 48C provides for the automatic repeal of repealing provisions.

Schedule 2 Amendment of Civil Aviation Order 95.8

Item [1] of Schedule 2 amends the definition of ***repealed Order*** in paragraph 12.3 of CAO 95.8, to change the reference to the Order repealed “under subsection 3” to a reference that identifies the repealed Order by the FRL number that was assigned to it. Subsection 3 was automatically repealed under section 48C of the LA. This makes the meaning of the provision more immediately available to the reader.

Schedule 3 Amendment of Civil Aviation Order 95.10

Item [1] of Schedule 3 amends the definition of *repealed Order* in paragraph 13.3 of CAO 95.10 in a similar way and for the same reason given for item [1] of Schedule 2.

Schedule 4 Amendment of Civil Aviation Order 95.12

Item [1] substitutes subsection 2 of CAO 95.12 to preserve the original repeal date and update the provision in line with legislative changes.

Item [2] amends subparagraph 4(b) to remove the words “other than an ASAO”.

Items [3] and [4] amend the definition of *listed* in paragraph 5.1 to provide that it includes an aircraft that is registered with an ASAO in accordance with section 14 of the *Part 149 Manual of Standards*. Section 14 prescribes the aviation administration function of administering an aircraft by maintaining a register that contains sufficient information to identify the aircraft, the owner and the operator.

Item [5] amends the definition of *relevant sport aviation body* to make it clear that a sport aviation body can have an approved function whether or not it is an ASAO. Following the making of Part 149 of CASR, “approved function” has a defined meaning for an ASAO, however, in the 95-series CAOs the words have their ordinary meaning in respect of sport aviation bodies that are not ASAOs.

Item [6] amends the definition of *SAB flight permit* to include an ASAO as a sport aviation body that can issue an authorisation that confirms an aircraft complies with the *ASRA Basic Gyroplane Construction Standards* and that the body has oversight of the aircraft’s operation.

Item [7] amends paragraph 5A.2 to clarify the policy intention that an SAB flight permit is taken to be in force for an aircraft if it is a listed aircraft on 1 December 2023, and at the date of the deeming is still listed with the same sport aviation body. New paragraph 5A.3 is a carve-out that has the effect that an aircraft that has an experimental certificate that is in force, or would be in force were it not for the operation subregulation 21.195B(4) of CASR, is not deemed to have an SAB flight permit.

Item [8] amends subsection 6 so that the scope, for the purposes of regulation 200.020 of CASR, is to include the requirement for relevant aircraft to have an SAB flight permit in force. The amendment also provides for the transitional issues sought to be addressed by the amendment to subregulation 21.195B(4) of CASR by the CATS Regulations and the delay in making the Part 103 MOS. For this purpose, the amendment includes within the scope a relevant aircraft, the certificate of airworthiness which is deemed not to be in force by subregulation 21.195B(4). This ensures that such aircraft will not breach subsection 20AA(3) of the Act, pending the making of the Part 103 MOS and the regularisation of the operation of subregulation 21.195B(4).

Item [9] amends sub-subparagraph 9(e)(i) to include pilot certificates issued by an ASAO as valid pilot certificates.

Item [10] amends subparagraph 9(f) to provide that, if the relevant sport aviation body is an ASAO, the aircraft must be operated in accordance with the ASAO’s exposition.

Item [11] amends subparagraph 9(g) to provide that, if the relevant sport aviation body is an ASAO, the aircraft must be maintained by a person who holds a qualification specified for that activity in the exposition of the ASAO, and maintain the aircraft in accordance with the exposition.

Item [12] moves paragraph 10.3 (containing definitions for subsection 10) to the front of subsection 10 so that the definitions that apply in subsection 10 appear before the provisions in which they are used and renumbers it as 10.1A. The amendment also includes a new definition of *applicable manual* (to mean a sport aviation body's operations manual or exposition (if it is an ASAO)) and makes consequential amendments to the definition of *Part 61-equivalent gyroplane rating and endorsement* to include reference to an exposition in the event that a sport aviation body is an ASAO.

Items [13] and [14] add headings to paragraphs 10.1 and 10.2 to aid in readability.

Item [15] amends paragraph 10.2 to provide that, in the case that the relevant sport aviation body is an ASAO, the aircraft must not be used for flying training for aerial mustering except in accordance with the ASAO's exposition.

Item [16] supports the amendment made by item [12].

Item [17] amends sub-subparagraph 11.1(h)(i) to allow aircraft for which there is an experimental certificate under regulation 21.195A that is in force, or would be in force were it not for the operation of subregulation 21.195B(4), that meets the other requirements of sub-subparagraph (i), to fly over populous areas or public gatherings.

Item [18] amends the flight condition in subparagraph 11.2(a) to permit an aircraft to fly in Class A, B, C or D airspace or a restricted area if it either has an SAB flight permit, or an experimental certificate in force (or that would be in force were it not for subregulation 21.195B(4)). The requirement in sub-subparagraph 11.2(a)(ii) for an approval under regulation 91.045 or 91.050 of CASR (that authorises flight in the aircraft over a populous area or public gathering) is omitted. This is because the requirement in subparagraph 11.1(h) for such an approval for flying over a populous area or public gathering works on its own terms.

Item [19] amends sub-subparagraph 11.3(a)(ii) to provide that, if the relevant sport aviation body is an ASAO, the aircraft must be maintained by a person who holds a qualification specified for that activity in the exposition of the ASAO, and maintain the aircraft in accordance with the exposition.

Item [20] of Schedule 4 amends the definition of *repealed Order* in paragraph 14.3 of CAO 95.12, to change the reference to the Order repealed "under subsection 3" to a reference that identifies the repealed Order by the FRL number that was assigned to it. Subsection 3 was automatically repealed under section 48C of the LA. This makes the meaning of the provision more immediately available to the reader.

Schedule 5 Amendment of Civil Aviation Order 95.12.1

Item [1] substitutes subsection 2 to preserve the original repeal date and update the provision in line with legislative changes.

Item [2] amends subsection 4 to remove the words “other than an ASAO”.

Items [3] and [4] amend the definitions of *LSA gyroplane (experimental)* and *LSA gyroplane (production)* so that the requirement for the gyroplane to have an experimental certificate (experimental) or a special certificate of airworthiness (production) will include such a certificate that would have been in force were it not for the operation of either subregulation 21.195B(4) or paragraph 21.181(4)(a) of CASR (as applicable). These definitions establish the aircraft to which the CAO applies.

Item [5] makes consequential amendments to subsection 4A, flowing from amendments made to the provisions of the CAO by item [22].

Items [6] and [7] amend the definition of *listed* in paragraph 5.1 to provide for an aircraft that is registered with an ASAO in accordance with section 14 of the *Part 149 Manual of Standards*. Section 14 prescribes the aviation administration function of administering an aircraft by maintaining a register that contains sufficient information to identify the aircraft, the owner and the operator.

Item [8] amends the definition of *relevant sport aviation body* in paragraph 5.1 to make it clear that a sport aviation body can have an approved function whether or not it is an ASAO. Following the making of Part 149 of CASR, “approved function” has a defined meaning for an ASAO, however, in the 95-series CAOs the words have their ordinary meaning in respect of sport aviation bodies that are not ASAOs.

Item [9] amends the definition of *SAB flight permit* to include that, if the relevant sport aviation body is an ASAO, the SAB flight permit is issued in accordance with the ASAO’s exposition.

Item [10] amends paragraph 5A.2 to clarify the policy intention that an SAB flight permit is taken to be in force for an ASRA-compliant gyroplane if it is a listed aircraft on 1 December 2023, and at the date of the deeming is still listed with the same sport aviation body. New paragraph 5A.3 is a carve-out that has the effect that a gyroplane that has a certificate of airworthiness that is in force, or would be in force were it not for the operation of either paragraph 21.181(4)(a) or subregulation 21.195B(4) of CASR, is not deemed to have an SAB flight permit.

Item [11] amends subsection 7 so that the scope, for the purposes of regulation 200.020 of CASR, is to include an ASRA-compliant gyroplane only if an SAB flight permit is in force in relation to the aircraft. The amendment also addresses transitional issues sought to be addressed by the amendment to paragraph 21.181(4)(a) or subregulation 21.195B(4) of CASR, to include within the scope a relevant aircraft, being an LSA gyroplane, the certificate of airworthiness which is deemed not to be in force by paragraph 21.181(4)(a) or subregulation 21.195B(4). This ensures that such aircraft will not breach subsection 20AA(3) of the Act, pending the making of the Part 103 MOS and the regularisation of the operation of paragraph 21.181(4)(a) or subregulation 21.195B(4). The amendment also permits that an aircraft being evaluated in accordance with subparagraph 10.2(a) is included for the purposes of regulation 200.020. This is because aircraft are evaluated under that provision for the purpose of determining whether a certificate of airworthiness or SAB flight permit should be granted.

Item [12] amends the general conditions in subparagraphs 10.1(e), (f) and (g) to include the requirement that if a sport aviation body is an ASAO then it is the ASAO's exposition that must be complied with in relation to the conditions. Under subparagraph (e), a pilot certificate required by a person before permitted to fly a relevant aircraft must have been issued in accordance with the ASAO's exposition. Under subparagraph (f), a person operating a relevant aircraft must do so in accordance with the ASAO's exposition. Under subparagraph (g), a person maintaining a relevant aircraft must have the necessary qualification specified in the ASAO's exposition and maintain the aircraft in accordance with the exposition.

Item [13] amends sub-subparagraph 10.2(a)(iii) to include in the condition that a second person may be carried on an aircraft for the purpose of evaluating the aircraft that, if the sport aviation body is an ASAO, the flight or series of flights must have been approved by an operations manager, chief flying inspector or technical adviser appointed in accordance with the ASAO's exposition.

Item [14] amends subparagraph 10.2(b) to include in the condition that a second person may be carried on board an aircraft if there is a certificate of airworthiness in force, or such a certificate would be in force were it not for the operation of paragraph 21.181(4)(a) or subregulation 21.195B(4) of CASR.

Item [15] moves paragraph 11.3 (containing definitions for subsection 11) to the front of subsection 11 so that the definitions that apply will appear before the provisions in which they are used, and renumbers it as 11.1A. The amendment also includes a new definition of *applicable manual* (to mean a sport aviation body's operations manual or exposition (if it is an ASAO)) and makes consequential amendments to the definition of *Part 61-equivalent gyroplane rating and endorsement* to include reference to an exposition in the event that a sport aviation body is an ASAO.

Items [16] and [17] add headings to paragraphs 11.1 and 11.2 to aid in readability.

Item [18] amends paragraph 11.2 to provide that, in the case that the relevant sport aviation body is an ASAO, the aircraft must not be used for flying training for aerial mustering except in accordance with the ASAO's exposition.

Item [19] supports the amendment made by item [15].

Item [20] makes changes to the structure of the provisions imposing flight conditions. The changes move the conditions from being listed at subparagraph level in paragraph 12.1 to being set out severally in paragraphs numbering 12.1A to 12.1K.

This improves the readability of the provisions and facilitates the required amendments. The condition in subparagraph 12.1(h) (flying over populous areas or public gatherings: now in paragraph 12.IH) is amended such that the requirement for a relevant aircraft to have a certificate of airworthiness in force is met if it would be in force were it not for the operation of paragraph 21.181(4)(a) or subregulation 21.195B(4) of CASR.

Paragraph 12.1A is renumbered 12.J, and other minor consequential amendments have been made to the provisions.

Item [21] supports the amendment made by item [22].

Item [22] amends sub-subparagraph 12.3(a)(iii) such that a person who is authorised by a sport aviation body to operate VHF radiocommunications equipment must, in the case that the body is an ASAO, have been authorised in accordance with the ASAO's exposition.

Item [23] makes drafting improvements that move paragraph 12.2 (restrictions on flying in Class A, B, C or D airspace or restricted areas) into its own subsection 12A. The requirements that a relevant aircraft must have a certificate of airworthiness that is in force are expanded to include certificates of airworthiness that would be in force were it not for the operation of paragraph 21.181(4)(a) or subregulation 21.195B(4) of CASR. The requirement for an aircraft to have an approval under regulation 91.045 or 91.050 to fly over a populous area or public gathering has been removed, as that requirement is imposed already by the terms of paragraph 12.1H (as renumbered).

Item [24] amends the definition of *repealed Order* in paragraph 15.3 of CAO 95.12.1, to change the reference to the Order repealed "under subsection 3" to a reference that identifies the repealed Order by the FRL number that was assigned to it. Subsection 3 was automatically repealed under section 48C of the LA. This makes the meaning of the provision more immediately available to the reader.

Schedule 6 Amendment of Civil Aviation Order 95.32

Item [1] substitutes subsection 2 to preserve the original repeal date and update the provision in line with legislative changes.

Items [2] and [3] amend Table 1 in paragraph 4.1. The table sets out descriptions of aircraft to which the CAO applies. The descriptions of light sport aircraft in items 3 and 4 of the table are amended such that the reference to a special certificate of airworthiness in item 3 and an experimental certificate in item 4 being in force includes such a certificate that would be in force were it not for the operation of paragraph 21.181(4)(a) or subregulation 21.195B(4), respectively.

Item [4] amends paragraph 5A.2 to clarify the policy intention that an SAB flight permit is taken to be in force for a relevant aircraft if it is listed with a sport aviation body on 1 December 2023, and at the date of the deeming is still listed with the same sport aviation body. New paragraph 5A.3 is a carve-out that has the effect that a relevant aircraft that has a certificate of airworthiness that is in force, or would be in force were it not for the operation of either paragraph 21.181(4)(a) or subregulation 21.195B(4) of CASR, is not deemed to have an SAB flight permit.

Item [5] amends section 5B so that the scope, for the purposes of regulation 200.020 of CASR, is a relevant aircraft in relation to which there is an SAB flight permit in force. The amendment also addresses transitional issues sought to be addressed by the amendment to paragraph 21.181(4)(a) or subregulation 21.195B(4) of CASR, to include within the scope a relevant aircraft, the certificate of airworthiness which is deemed not to be in force by paragraph 21.181(4)(a) or subregulation 21.195B(4). This ensures that such aircraft will not breach subsection 20AA(3) of the Act, pending the making of the Part 103 MOS and the regularisation of the operation of paragraph 21.181(4)(a) or subregulation 21.195B(4).

Item [6] substitutes paragraph 6.1 and Table 2, which operate to impose exemptions on relevant aircraft. The amendment updates the drafting in line with current drafting practices. The condition in item 1 of the table is amended such that reference to an aircraft that has a standard certificate of airworthiness that is in force, includes a certificate of airworthiness that would be in force were it not for the operation of paragraph 21.181(4)(a) of CASR.

Item [7] makes changes to the structure of the provisions imposing the general flight conditions. The changes move the conditions from being listed at subparagraph level in subparagraphs 7.1(a) to (h) to being set out severally in paragraphs 7.2 to 7.9. The provisions imposing the requirements about when and what kind of flying training is permitted in what kinds of aircraft, listed in the principal instrument in sub-subparagraphs 7(d)(iii), (iv), (v), (vi) and (vii) have been removed to new section 8A and Table 8A, which approach aims to clarify the requirements.

The restructure improves the readability of the provisions and facilitates the required amendments.

The condition (now in paragraph 7.4) that a light sport aircraft must not be operated unless there is in force a certificate of airworthiness for the aircraft is amended so that the requirement is met if a certificate of airworthiness would be in force were it not for the operation of paragraph 21.181(4)(a) or subregulation 21.195B(4) of CASR.

Item [8] makes changes to the structure of the provisions imposing flight conditions in paragraph 8.1. The changes move the conditions from being listed at subparagraph level in subparagraphs 8.1(a) to (j) to being set out severally in paragraphs 8.1A to 8.1K.

This improves the readability of the provisions and facilitates the required amendments. The condition in subparagraph 8.1(i) (flying over populous areas or public gatherings: now in paragraph 8.1J) is amended such that the requirement for a relevant aircraft to have a certificate of airworthiness in force is met if it would be in force were it not for the operation of paragraph 21.181(4)(a) or subregulation 21.195B(4) of CASR.

Item [9] inserts the provision currently in paragraph 8.9 (exemption from the general requirement that an aircraft be authorised under regulation 91.045 or 91.050 for flight over a populous area or public gathering) as new paragraph 8.2.

The item supports the restructuring of provisions done in items [8] and [9] which includes renumbering the current paragraph 8.2 (about flying in Class A, B, C or D airspace or in restricted areas) as subsection 8B, and inserting the flying training provisions currently in subparagraph 7(d) to subsection 8A and Table 8A.

Item [10] supports the amendments made by items [8] and [9] by omitting paragraphs 8.8 and 8.9. New paragraph 8.1J now deals with the condition (previously in subparagraph 8.1(i)) about restricting flight over a populous area or public gathering, which provision now cross refers only to paragraph 8.2.

Item [11] inserts the new subsections 8A (flying training) and 8B (Class A, B, C or D airspace and restricted areas) referred to above. The flying training requirements (previously set out in subparagraph 7(d)) are substantially replicated except for amendments necessary to provide that the requirement that an aircraft must have a certificate of airworthiness in force is met if a certificate of airworthiness would be in force were it not for the operation of

paragraph 21.181(4)(a) or subregulation 21.195B(4) of CASR. This affects the aircraft described in items 2 and 5 of Table 8A. A small number of other amendments have been made to clarify the existing policy.

Section 8B provides for the restrictions on operating the relevant aircraft in Class A, B, C or D airspace or restricted areas. The existing requirements that an aircraft must have a certificate of airworthiness under regulation 21.176, or an experimental certificate under regulation 21.195A, in force are amended such that the requirement is met if such a certificate would be in force were it not for the operation of paragraph 21.181(4)(a) or subregulation 21.195B(4) (as relevant) of CASR. The requirement in the previous version of the provision, for an aircraft to have an approval under regulation 91.045 or 91.050 to fly over a populous area or public gathering has been removed, as that requirement is imposed already by the terms of paragraph 8.2 (as renumbered).

Items [12] to [15] make consequential amendments related to the changes in paragraph 8.1 (by item [8]).

Item [16] of Schedule 6 amends the definition of *repealed Order* in paragraph 11.4 of CAO 95.32, to change the reference to the Order repealed “under subsection 3” to a reference that identifies the repealed Order by the FRL number that was assigned to it. Subsection 3 was automatically repealed under section 48C of the LA. This makes the meaning of the provision more immediately available to the reader.

Schedule 7 Amendment of Civil Aviation Order 95.55

Item [1] substitutes subsection 2 to preserve the original repeal date and update the provision in line with legislative changes.

Item [2] amends the definition of *light sport aircraft (experimental)* in subsection 5 so that the requirement that the aircraft has an experimental certificate in force is met if the certificate would be in force were it not for the operation of subregulation 21.195B(4) of CASR.

Item [3] amends the definition of *light sport aircraft (production)* in subsection 5 so that the requirement that the aircraft has a special certificate of airworthiness in force is met if the certificate would be in force were it not for the operation of paragraph 21.181(4)(a) of CASR.

Item [4] amends the definition of *lightweight aeroplane* in subsection 5 so that the requirement that the aircraft has a certificate of airworthiness in force is met if the certificate would be in force were it not for the operation of paragraph 21.181(4)(a) or subregulation 21.195B(4) of CASR.

Item [5] amends paragraph 5A.3 to clarify the policy intention that an SAB flight permit is taken to be in force for an aeroplane that is a lightweight aeroplane if it is listed with a sport aviation body on 1 December 2023, and at the date of the deeming is still listed with the same sport aviation body. The provision applies to an aeroplane that does not have a certificate of airworthiness (or an SAB flight permit) in force.

Item [6] amends subsection 5B so that the scope, for the purposes of regulation 200.020 of CASR, is a relevant aircraft in relation to which there is an SAB flight permit in force. The amendment also addresses transitional issues sought to be addressed by the amendment to

paragraph 21.181(4)(a) or subregulation 21.195B(4) of CASR, to include within the scope a relevant aircraft, the certificate of airworthiness for which is deemed not to be in force by paragraph 21.181(4)(a) or subregulation 21.195B(4). This ensures that such aircraft will not breach subsection 20AA(3) of the Act, pending the making of the Part 103 MOS and the regularisation of the operation of paragraph 21.181(4)(a) or subregulation 21.195B(4).

Item [5] amends section 5B so that the scope, for the purposes of regulation 200.020 of CASR, is a relevant aircraft in relation to which there is an SAB flight permit in force. The amendment also addresses transitional issues sought to be addressed by the amendment to paragraph 21.181(4)(a) or subregulation 21.195B(4) of CASR, to include within the scope a relevant aircraft, the certificate of airworthiness which is deemed not to be in force by paragraph 21.181(4)(a) or subregulation 21.195B(4). This ensures that such aircraft will not breach subsection 20AA(3) of the Act, pending the making of the Part 103 MOS and the regularisation of the operation of paragraph 21.181(4)(a) or subregulation 21.195B(4).

Item [7] substitutes paragraph 6.1 and Table 1, which operate to impose exemptions on relevant aircraft. The amendment updates the drafting in line with current drafting practices. The conditions of the table, in relation to lightweight aeroplanes, are amended such that reference to such an aircraft that has a certificate of airworthiness that is in force, includes a certificate of airworthiness that would be in force were it not for the operation of paragraph 21.181(4)(a) or subregulation 21.195B(4) of CASR.

Item [8] makes changes to the structure of the provisions imposing the general conditions. The changes move the conditions from being listed at subparagraph level in subparagraphs 8.1(a) to (k) to being set out severally in paragraphs 8.2 to 8.12. The amendment also renumbers existing paragraph 8.2 as paragraph 8.14. The existing requirements in the general conditions requiring the aircraft to have a certificate of airworthiness have been amended such that the requirement is met if the certificate of airworthiness would be in force were it not for the operation of paragraph 21.181(4)(a) or subregulation 21.195B(4) of CASR.

The restructure improves the readability of the provisions and facilitates the required amendments.

Item [9] inserts a paragraph heading at paragraph 9.1 for readability.

Items [10] and [11] make cross-referencing changes to provisions in paragraph 9.1 that are consequential to the amendments made by item [12].

Item [12] restructures the drafting of paragraphs 9.7 and 9.8 and renumbers them as paragraphs 9.2 and 9.2A. These provisions deal with restrictions relating to flying over a populous area or public gathering and an associated requirement for an approval under regulation 91.045 or 91.050 authorising an aircraft to fly over such areas. The existing requirement for an aircraft to have an experimental certificate in force is amended so that the requirement is met if the experimental certificate would be in force were it not for the operation of subregulation 21.195B(4) of CASR.

Items [13] and [14] insert paragraph headings and support the restructure of provisions done under item [12].

Item [15] supports the amendment made by item [12] by omitting paragraphs 9.7 and 9.8.

Item [16] inserts new subsection 9A which provides for the restrictions on operating the relevant aircraft in Class A, B, C or D airspace or restricted areas. The existing requirements that an aircraft must have a certificate of airworthiness under regulation 21.176, or an experimental certificate under regulation 21.195A, in force are amended such that the requirement is met if a such certificate would be in force were it not for the operation of paragraph 21.181(4)(a) or subregulation 21.195B(4) (as relevant) of CASR. The requirement in the previous version of the provision, for an aircraft to have an approval under regulation 91.045 or 91.050 to fly over a populous area or public gathering has been removed, as that requirement is imposed already by the terms of paragraph 8.2 (as renumbered).

The item supports the restructuring of provisions done in items [10] to [12] which involve the renumbering of paragraph 9.2 (about flying in Class A, B, C or D airspace or in restricted areas) as subsection 9A.

Item [17] of Schedule 6 amends the definition of *repealed Order* in paragraph 13.3 of CAO 95.55, to change the reference to the Order repealed “under subsection 3” to a reference that identifies the repealed Order by the FRL number that was assigned to it. Subsection 3 was automatically repealed under section 48C of the LA. This makes the meaning of the provision more immediately available to the reader.

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 the 95-series CAOs that are legislative instruments and is, therefore, also a legislative instrument, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Sunsetting

Part 4 of Chapter 3 of the LA (the *sunsetting provisions*) does not apply to the instrument, because the instrument relates to aviation safety and is made under CASR (item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

In this case, the instrument amends the 95-series CAOs and is spent and repealed in accordance with the automatic repeal provisions in section 48A of the LA. The 95-series CAOs are exemption instruments that are repealed at the end of 1 December 2024 by virtue of the terms of the repeal provision in each such amended instrument. Thus, in practice, no sunseting avoidance issues arise and there is no impact on parliamentary oversight.

Consultation

The principles of ASAO administration and proposed Part 149 regulations NPRM 1502SS were published for consultation from 22 August to 21 October 2016. The Part 149 MOS that set out ASAO aviation administration functions ([CD 1710SS](#)) was published for consultation from 21 September 2018 to 21 October 2019. Both consultations sought feedback from the aviation community about the proposed arrangements for self-administration. The Part 149 rules commenced on 14 July 2023, with a transition period that ends on 1 December 2023.

The Part 149 transitional regulations (Subpart 202.GI of CASR) expire on 1 December 2023, after which all sport aviation bodies will be required (under regulation 149.015 of CASR) to

hold an ASAO certificate. CAOs 95.12 and 95.12.1 that apply to gyroplanes do not presently provide for ASAO administration of gyroplanes. Consequently, the operation of gyroplanes under these two CAOs under ASAO administration, is not currently possible.

CASA engaged in public consultation between 6 November 2023 and 20 November 2023 on the proposed *Civil Aviation Orders (CAO 95 Series) (Gyroplane and Other Measures) Amendment Instrument 2023*. The consultation sought feedback on the amendments to CAOs 95.12 and 95.12.1 to provide for the operation of gyroplanes under ASAO administration. The opportunity was also taken to make some drafting improvements and corrections and to update some provisions of a number other CAO 95 series instruments.

The summary of consultation for the *Civil Aviation Orders (CAO 95 Series) (Gyroplanes and Other Measures) Amendment Instrument 2023* (when published) will be found at the [CASA consultation hub](#).

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, or no significant, change to the economic or cost impact on individuals, businesses or the community. The instrument is generally expected to avoid any economic or cost impact caused by the unintended consequences of provisions that were intended to operate in conjunction with the Part 103 MOS, until that instrument is made.

Impact on categories of operations

The instrument is likely to have a positive effect on industry by providing assurance of reasonable, reliable and non-discriminatory access for all persons to full membership of, or affiliation with, an ASAO. The proposed instrument will allow all existing gyroplane operators to continue operations under ASAO administration.

Impact on regional and remote communities

The instrument is likely to have a beneficial effect on the regional communities where gyroplane activities mainly occur. This may include a positive flow-on effect to local small business that support these activities.

Office of Impact Analysis (OIA)

CASA has assessed that the economic and cost impact of the instrument is not significant as the instrument makes minor or machinery changes to an existing instrument and there will be no change to the economic or cost impact on individuals, businesses or the community. OIA also made an assessment that an Impact Analysis was not required because the amendments are consequential to the making and implementation of Part 149 of CASR, for which a Regulation Impact Statement (*RIS*) was prepared and submitted to the Office of Best Practice Regulation (*OBPR*). The RIS received OBPR approval reference 21149.

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*

Civil Aviation Orders (CAO 95 Series) (Gyroplanes and Other Measures) Amendment 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

Civil Aviation Order 95.12 (Exemptions from CAR and CASR — Gyroplanes Not Exceeding 250 kg) Instrument 2021 (CAO 95.12) and *Civil Aviation Order 95.12.1 (Exemptions from CAR and CASR — LSA Gyroplanes and ASRA-compliant Gyroplanes) Instrument 2021 (CAO 95.12.1)* provide for the operation of these aircraft outside of generally applicable operating rules in the *Civil Aviation Regulations 1988 (CAR)* and the *Civil Aviation Safety Regulations 1998 (CASR)* if (broadly speaking) operators of the aircraft comply with the conditions of the Civil Aviation Order (the **CAO**) which include compliance with the operations manual of the sport aviation body that administers the aircraft. Those CAOs exclude gyroplanes administered by an approved self-administering aviation organisation (**ASAO**) under Part 149 of CASR. The purpose of the instrument is to make the amendments necessary to extend the scope of the CAOs to gyroplanes administered by an ASAO. The Australian Sport Rotorcraft Association (**ASRA**), which is the relevant sport aviation body administering sport and recreation gyroplane operations, is in the process of transitioning to an ASAO. Without the amendments, the CAOs would stop being effective to regulate gyroplanes once ASRA became an ASAO.

Also, the instrument amends CAO 95.12, CAO 95.12.1 and the following instruments within section 95 of the Civil Aviation Orders (the **95-series CAOs**) to deal with some unintended consequences arising from the delay of the Manual of Standards for Part 103 of CASR, and provisions in Part 21 of CASR that were intended to ease the transition of aircraft to administration under Part 103:

- *Civil Aviation Order 95.32 (Exemptions from CAR and CASR — Powered Parachutes and Weight-shift-controlled Aeroplanes) Instrument 2021 (CAO 95.32)*
- *Civil Aviation Order 95.55 (Exemptions from CAR and CASR — Certain Light Sport Aircraft, Lightweight Aeroplanes and Ultralight Aeroplanes) Instrument 2021 (CAO 95.55).*

In particular, paragraph 21.181(4)(a) and subregulation 21.195B(4) of CASR were made as transitional provisions to prevent the lapse of certificates of airworthiness for aircraft whose registration was cancelled (under Part 47 of CASR) in order that the aircraft could be listed with a Part 103 ASAO. Without the Part 103 Manual of Standards, rotorcraft and aeroplanes currently administered by a sport aviation body, and regulated under some of the 95-series CAOs, have yet to be prescribed as **Part 103 aircraft** by the Manual of Standards, as required under subparagraphs 103.005(4)(b)(v), (vi) and (vii) of CASR. As such, it is not possible for

them to be listed by a Part 103 ASAO (being an ASAO that administers a Part 103 aircraft) even though they are listed with a sport aviation body. The affected aircraft have a certificate of airworthiness that has been deemed not to be in force (for the transitional purposes), which will place the aircraft in breach of the requirement in subsection 20AA(3) of the *Civil Aviation Act 1988* (the *Act*). Amendments throughout the instrument adjust the application of the 95-series CAOs to ensure that the abovementioned provisions of Part 21 of CASR do not operate to create breaches of subsection 20AA(3) of the Act, until the Manual of Standards for Part 103 of CASR is made and the Part 21 provisions can operate as intended. CASA is satisfied that there is no adverse impact on aviation safety to authorise such aircraft to be operated with a certificate of airworthiness that is not in force only because of those deeming provisions.

These amendments in the instrument replace a number of provisions, that remain substantially in the same terms, for the purpose of including the changes mentioned in the paragraph above in a way that improves the readability of the provisions and to update the drafting in line with current drafting practices.

The opportunity has generally been taken to make some drafting improvements and corrections and to update some provisions, including to other CAOs in the 95-series not already mentioned:

- *Civil Aviation Order 95.4 (Exemptions from CAR and CASR — Sailplanes and Towing Aircraft) Instrument 2021 (CAO 95.4)*
- *Civil Aviation Order 95.8 (Exemptions from CAR and CASR (Hang Gliders and Paragliders) Instrument 2021 (CAO 95.8)*
- *Civil Aviation Order 95.10 (Exemptions from CAR and CASR — Microlight Aeroplanes) Instrument 2021 (CAO 95.10).*

The improvements and updates include a change to the date from which an aircraft listed with a sport aviation body is deemed to hold a flight permit issued by that body (called an SAB flight permit). That date is changed from 1 December 2021 to 1 December 2023 to accommodate aircraft for which sport aviation bodies have not issued SAB flight permits because they were unaware of the December 2021 change in the CAOs that required the issue of such permits. Amending the date rectifies this situation by ensuring all aircraft currently listed with a sport aviation body that do not have a permit will be compliant with the CAOs on commencement.

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