

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

### Civil Aviation Order 95.55 Amendment Instrument 2024 (No. 1)

#### Purpose

The purpose of *Civil Aviation Order 95.55 Amendment Instrument 2024 (No. 1)* (the **CAO amendment**) is to amend *Civil Aviation Order 95.55 (Exemptions from CAR and CASR — Certain Light Sport Aircraft, Lightweight Aeroplanes and Ultralight Aeroplanes) Instrument 2021* (the **CAO**).

The intention is two-fold:

- to bring requirements for designing and carrying out ultralight and lightweight aeroplane repairs and modifications into line with analogous requirements for Australian aircraft under regulation 42U of the *Civil Aviation Regulations 1988 (CAR)*; and
- to relieve ultralight aeroplanes that are type certificated from being deemed to be subject to a number of experimental certificate operating restrictions.

#### Legislation — the Act

The *Civil Aviation Act 1988* (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.

Section 98 of the Act empowers the Governor-General to make regulations for the Act and the safety of air navigation. Relevantly, the Governor-General has made the *Civil Aviation Safety Regulations 1998 (CASR)* and CAR.

Under paragraph 98 (5A) (a) of the Act, the regulations may empower CASA to issue instruments in relation to aviation safety. Subpart 11.F of CASR empowers the issue of instruments of exemption, including conditions for the operation of the exemption. The CAO is an instrument so empowered, and is comprised of exemptions and their conditions.

#### Legislation — exemptions

Subpart 11.F of CASR deals with exemptions. Under subregulation 11.160 (1), and for subsection 98 (5A) of the Act, CASA may, by instrument, grant an exemption from a provision of CASR in relation to a matter mentioned in subsection 98 (5A).

Subsection 98(5A) matters are, in effect, those affecting the safety, airworthiness or design of aircraft.

Under regulation 2C of CAR, CASR and CAR are to be read together as if, in effect, they constituted one instrument, thus enabling subregulation 11.160 (1) to also exempt from provisions of CAR.

Under subregulation 11.160 (2), an exemption may be granted to a person or a class of persons. Under subregulation 11.160 (3), CASA may grant an exemption on application, or on its own initiative.

Under subregulation 11.170 (3), for an application for an exemption, CASA must regard as paramount the preservation of an acceptable level of safety.

For making a decision on its own initiative, CASA is guided by the requirement in subsection 9A (1) of the Act that in exercising its powers and functions CASA must regard the safety of air navigation as the most important consideration. CASA also takes account of subregulation 11.170 (3) that an acceptable level of safety must be preserved.

Under regulation 11.205, CASA may impose conditions on an exemption if this is 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.

Under regulation 11.225, CASA must, as soon as practicable, publish on the internet details of all exemptions under Subpart 11.F.

Under subregulation 11.230 (1), an exemption may remain in force for 3 years or for a shorter period specified in the instrument.

Under subregulation 11.230 (3), an exemption, in force in relation to a particular aircraft owned by a particular person, ceases to be in force when the aircraft ceases to be owned by that person. Under regulation 11.235, an exemption is not transferable (as between operators, aircraft, etc.).

### **CAO amendments permitted**

Under subsection 33 (3) of the *Acts Interpretation Act 1901* where regulations empower the making of an instrument, the power includes a parallel power to amend the instrument. The CAO amendment is made under the same head of power, and in the same manner, as the CAO.

### **CAO amendment**

#### *Repairs and modifications*

This concerns the first of the two-fold amendments.

Many type certificated ultralight and lightweight aeroplanes transitioning from the Australian Civil Aircraft Register to listing with an approved self-administering aviation organisation (an *ASAO*) have been modified in compliance with regulation 42U of CAR. This requires that the design of the repair or modification, and its implementation, must be in accordance with certain prescribed approvals or specifications.

Once transitioned to fall under the CAO, ultralight aeroplanes were exempted from regulation 42U, but lightweight aeroplane were not.

For the purposes of the operation of the transiting aeroplanes under the CAO, paragraphs 8.7 and 8.8 were intended to impose the same regulation 42U requirements (as well as an option for Recreational Aviation Australia (*RAAus*) approval for ultralight aeroplanes).

However, the policy behind the drafting of paragraphs 8.7 and 8.8 failed to achieve the desired equivalency because ultralight aeroplanes and lightweight aeroplanes were not

equally subject to regulation 42U, mention of approval of repairs had been omitted, and some acceptable regulation 42U avenues of approval or specification were not included.

To resolve these anomalies, CASA has repealed the former paragraphs 8.7 and 8.8, and remade them to reflect the requirements of regulation 42U. The language adopted in paragraphs 8.7 and 8.8 is intended to be a somewhat clearer presentation of, but having essentially the same applicable meaning as, regulation 42U (though with the inclusion of an RAAus approval process added for ultralight aeroplanes).

Thus, the design and implementation of a repair or modification of an ultralight aeroplane must be in accordance with 1 of the following:

- an approval under regulation 35 of CAR, as in force before 27 June 2011 — this preserves a long-established and accepted approval process
- a modification/repair design approval — this references a CASA approval process under regulation 21.435 of CASR, and an analogous process by an authorised person or an approved design organisation
- an approval mentioned in regulation 21.475 of CASR — this references an approval process prescribed in the Part 21 Manual of Standards
- an approval under regulation 21.465 or 21.470 of CASR — this references an approved design in a CASA direction or a CASA airworthiness directive
- a CASA specification in or under an airworthiness directive — this references a specification under a CASA airworthiness directive
- a specification in the aeroplane's approved maintenance data — this references a specification in the aeroplane manufacturer's approved maintenance data
- an RAAus approval process where RAAus is the relevant sport aviation body, and a certificate of airworthiness is not in force for the aeroplane (other than merely because under paragraph 21.181 (4) (a) of CASR the certificate is taken to not be in force because the aeroplane is unregistered or not listed with a CASR Part 103 ASAO). The delay in the making and registration of the Part 103 Manual of Standards means that some sport and recreation aircraft are not yet Part 103 aircraft and, therefore, the administering ASAO does not satisfy the definition of **Part 103 ASAO**, which requires the ASAO to administer Part 103 activities for Part 103 aircraft.

The same avenues of repair or modification approval or specification (excluding the RAAus option) apply for a lightweight aeroplane.

#### *Type certificated ultralight aeroplanes*

This concerns the second of the two-fold amendments.

Relevantly, under regulation 91.875 of CASR, if an aircraft has an experimental certificate, it must meet certain requirements before flight. For example, the experimental certificate must be in force and complied with, it must not be an air transport flight, the flight must otherwise be for a prescribed purpose (for example, training, R&D or demonstration), it must be by day under the VFR or otherwise approved, it must be approved if over a populous area or a public gathering, it may only operate with passenger limitations, and it must be controllable in the normal range even if carrying an essential non-passenger/non-crew member.

Under paragraph 8.10 of the CAO, regulation 91.875 of CASR (except paragraphs 91.875 (2) (d) and (i) relating to prescribed purposes and passengers) applies in relation to an ultralight aeroplane “as if the ultralight aeroplane were an experimental aircraft and an experimental certificate were in force for the aeroplane”.

This requirement is framed too broadly and should only refer to an ultralight aeroplane that is not a type certificated ultralight aeroplane.

This will avoid inadvertently conflicting requirements where, for example, an approval is required for flight over a populous area despite the aeroplane being of a kind that is permitted under the CAO to operate over a populous area without such an approval.

Further details of the amendments in the CAO amendment are in Appendix 1.

### **Aviation safety**

In determining whether to issue the CAO amendment, CASA had regard to the safety of air navigation as the most important consideration.

CASA is satisfied that, given the nature of the amendments involved, an acceptable level of aviation safety will be preserved, and the safety of air navigation maintained for the period during which the instrument will be in force, that is, until the end of 1 December 2024 (as per subsection 2 of the CAO).

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

Exemptions under Subpart 11.F of CASR are “for subsection 98 (5A)” of the Act, that is, for regulations which empower the issue of certain instruments, like the CAO amendment, in relation to “(a) matters affecting the safe navigation and operation, or the maintenance, of aircraft”, and “(b) the airworthiness of, or design standards for, aircraft”.

The CAO amendment is clearly one in relation to matters affecting the safe navigation and operation of aircraft. Under subsection 98 (5AA) of the Act, an exemption issued under paragraph 98 (5A) (a), for such matters, is a legislative instrument if expressed to apply in relation to a class of persons, a class of aircraft or a class of aeronautical products (as distinct from a particular person, aircraft or product).

The CAO amendment, comprised of exemption-related amendments, is generic in nature and applies to classes of persons. It is, therefore, a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under section 15G, and sections 38 and 42, of the LA.

### **Sunsetting**

As the CAO amendment relates to aviation safety and is made under CASR, that means that 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 CAO amendment 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 CAO amendment amends the CAO 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 CAO, as amended, will be repealed at the end of 1 December 2024 within the sunset period. Thus, in practice, no sunset avoidance issues arise and there is no impact on parliamentary scrutiny in this respect.

### **Incorporation 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).

Under paragraph 15J (2) (c) of the LA, the Explanatory Statement must contain a description of the incorporated documents and indicate how they may be obtained.

References to provisions of CASR and CAR are taken to be as they are in force from time to time, by virtue of paragraph 13 (1) (c) of the LA. CASR and CAR are freely available online on the Federal Register of Legislation.

The replacement paragraphs 8.7 and 8.8 list the kinds of *future administrative approvals*, issued by CASA that might furnish an appropriate design for a repair or modification. Insofar as they are future documents that might be issued to a person in response to an application by the person, they do not constitute incorporations as such.

However, as issued, they would be fixed-in-time approvals specific to a circumstance, and CASA would make any such approval available for inspection on request by a third party, subject to any reasonable consideration whether the design proposed for a modification approval contained proprietary commercial intellectual property, with any public release of such material ordinarily subject to the applicant's permission.

RAAus, a sport aviation body (SAB), may also issue such *administrative approvals* on application, in accordance with their exposition. An exposition is a CASA-approved suite of documents, in force from time to time, that set out the plans and procedures that the subject of the exposition intends to follow in conducting its approved aviation activities.

The exposition referenced here contains the proprietary commercial intellectual property of RAAus, and any public release would ordinarily be subject to their permission.

The replacement paragraphs 8.7 and 8.8 also identify certain *specifications* as the source for design conformity. If the specification is contained in an airworthiness directive, these are legislative instruments in force from time to time and freely available on the Federal Register of Legislation.

If the specification is contained in an aeroplane's *approved maintenance data*, this is a source of in force from time to time design conformity that is the proprietary commercial intellectual property of the aeroplane manufacturer. It is made available to the aeroplane operator, and others with the manufacturer's agreement.

## **Economic and cost impact, and sector risks**

### *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.

In terms of economic and cost impacts for subsection 9A (3) of the Act, the CAO amendment is facilitative only and adds to the avenues of approval that an operator may use to obtain a repair or modification approval. It does not add to operator costs.

### *Sector risks*

Only the ultralight aeroplane sector, and the lightweight aeroplane sector are affected by the CAO amendment. The addition of further prescribed avenues of design approval, consistent with regulation 42U of CAR, will not increase sector risks.

### **Office of Impact Analysis (OIA)**

An Impact Analysis (*IA*) is not required because the CAO amendment, as a vehicle for exemptions, is covered by a standing agreement between CASA and OIA under which an IA is not required for exemption or direction instruments (OIA id: 14507).

### **Environmental impact**

Under subsection 9A (2) of the Act, while regarding the safety of air navigation as the most important consideration, CASA must exercise its powers and perform its functions in a manner that ensures that, as far as practicable, the environment is protected from the effects and associated effects of the operation and use of aircraft.

It is not anticipated there will be any negative environmental impacts as a result of the CAO amendment. It does not create any new environmental impacts.

### **Consultation**

Under section 16 of the Act, in performing its functions and exercising its powers, CASA must consult government, industrial, commercial consumer and other relevant bodies and organisations insofar as CASA considers such consultation to be appropriate.

Under section 17 of the LA, before a legislative instrument is made, CASA must be satisfied that it has undertaken any consultation it considers appropriate and practicable in order to draw on relevant expertise and involve persons likely to be affected by the proposals.

Exemptions from regulatory requirements are considered to be beneficial for those to whom they apply, who voluntarily elect to take advantage of them, and who comply with their conditions. It is, therefore, rarely necessary to engage in extensive public consultation on a proposed exemption. However, it is CASA's policy to consult, where possible, in an appropriate way with those parts of the aviation industry most likely to avail themselves of, or be affected by, an exemption so that they may have the opportunity to comment on the possible or likely terms, scope and appropriateness of the exemption.

In this case, there was formal industry and public consultation in November 2023 on proposed amendments to the CAO. Submissions received by CASA in relation to that consultation identified the need to bring paragraphs 8.7 and 8.8 into conformity with regulation 42U of CAR, and to modify paragraph 8.10 to remove the conflicting requirements.

CASA acknowledged these concerns in the Summary of Consultation published in January 2024 on the CASA website and undertook to address the issues by means of a further amendment to the CAO — which is the purpose of this amendment instrument.

### **Statement of Compatibility with Human Rights**

The Statement in Appendix 2 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The CAO amendment is essentially a machinery instrument, designed only to harmonise paragraphs 8.7 and 8.8, and 8.10, of the CAO with the existing requirements of regulations 42U of CAR and 91.875 of CASR, respectively.

### **Commencement and making**

The CAO amendment commences on the day after it is registered.

The instrument has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

**DETAILS OF:****Civil Aviation Order 95.55 Amendment Instrument 2024 (No. 1)**

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**1 Name of instrument**

This section names the instrument.

**2 Commencement**

Under this section, the instrument commences on the day after it is registered.

**3 Amendment of Civil Aviation Order 95.55**

Under this section, Schedule 1 amends *Civil Aviation Order 95.55 (Exemptions from CAR and CASR — Certain Light Sport Aircraft, Lightweight Aeroplanes and Ultralight Aeroplanes) Instrument 2021*.

**Schedule 1 Amendments****[1] Subsection 5, the Note**

This amendment adds some new technical terms to the Note about the source of relevant definitions.

**[2] Paragraphs 8.7 and 8.8**

This amendment repeals the previous paragraphs 8.7 and 8.8 and remakes them in revised form to increase the suitable avenues for design approval of repairs or modifications to type certificated ultralight aeroplanes.

Thus, under paragraph 8.7, a person must not operate a type certificated ultralight aeroplane that has been repaired, or modified to differ from its type design, unless the repair or modification is designed, and carried out, in accordance with 1 of the following:

- (a) an approval under regulation 35 of CAR, as in force before 27 June 2011;
- (b) a modification/repair design approval;
- (c) an approval mentioned in regulation 21.475 of CASR;
- (d) an approval under regulation 21.465 or 21.470 of CASR;
- (e) a CASA specification in or under an airworthiness directive;
- (f) a specification in the aeroplane's approved maintenance data;
- (g) an RAAus approval in accordance with a process for the approval of modifications and repairs specified in the RAAus exposition — but only if:
  - (i) RAAus is the relevant sport aviation body; and
  - (ii) a certificate of airworthiness under regulation 21.176 of CASR is not in force for the aeroplane (other than because of the operation of paragraph 21.181 (4) (a) of CASR).

A Note explains that sub-subparagraph 8.7 (a) (vii) does not apply to the modification or repair of a type certificated ultralight aeroplane if a certificate of airworthiness

under regulation 21.176 of CASR is in force or would be in force but for the operation of paragraph 21.181 (4) (a) of CASR.

Under paragraph 8.8, a person must not operate a type certificated lightweight aeroplane that has been repaired, or modified to differ from its type design, unless the repair or modification is designed, and carried out, in accordance with:

- (a) an approval under regulation 35 of CAR, as in force before 27 June 2011; or
- (b) a modification/repair design approval; or
- (c) an approval mentioned in regulation 21.475 of CASR; or
- (d) an approval under regulation 21.465 or 21.470 of CASR; or
- (e) a CASA specification in or under an airworthiness directive; or
- (f) a specification in the aeroplane's approved maintenance data.

**[3] Paragraph 8.10**

Relevantly, under regulation 91.875 of CASR, if an aircraft has an experimental certificate, it must meet certain requirements before flight. For example, the experimental certificate must be in force and complied with, not be an air transport flight, the flight must otherwise be for a prescribed purpose (for example, training, R&D or demonstration), must be by day under the VFR or otherwise approved, approved if over a populous area or a public gathering, with passenger limitations, and controllable in the normal range even if carrying an essential non-passenger/non-crew member.

Under paragraph 8.10 of the CAO, regulation 91.875 of CASR (except paragraphs 91.875 (2) (d) and (i) relating to prescribed purposes and passengers) applies in relation to an ultralight aeroplane "as if the ultralight aeroplane were an experimental aircraft and an experimental certificate were in force for the aeroplane".

This requirement is framed too broadly and should only refer to an ultralight aeroplane that is not a type certificated ultralight aeroplane.

## Statement of Compatibility with Human Rights

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

### Civil Aviation Order 95.55 Amendment Instrument 2024 (No. 1)

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### Overview of the legislative instrument

The purpose of *Civil Aviation Order 95.55 Amendment Instrument 2024 (No. 1)* (the **CAO amendment**) is to amend *Civil Aviation Order 95.55 (Exemptions from CAR and CASR — Certain Light Sport Aircraft, Lightweight Aeroplanes and Ultralight Aeroplanes) Instrument 2021* (the **CAO**).

The intention is:

- to bring requirements for designing and carrying out ultralight and lightweight aeroplane repairs and modifications into line with the analogous requirements under the *Civil Aviation Regulations 1988 (CAR)*; and
- to relieve ultralight aeroplanes that are type certificated from being deemed to be subject to experimental certificate operating requirements.

#### Human rights implications

The CAO amendment is essentially a machinery instrument, designed only to harmonise paragraphs 8.7 and 8.8, and 8.10, of the CAO with the existing requirements of regulations 42U of CAR and 91.875 of the *Civil Aviation Safety Regulations 1998*, respectively.

As such, it does not directly give rise to any human rights issues.

#### Conclusion

The CAO amendment is compatible with human rights because it does not give rise to any human rights issues.

**Civil Aviation Safety Authority**