

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### CASA EX45/24 — Operation of Remotely Piloted Aircraft Over Populous Area Exemption 2024

##### Purpose

The purpose of *CASA EX45/24 — Operation of Remotely Piloted Aircraft Over Populous Area Exemption 2024* (the **instrument**) is to exempt, in the stated circumstances, a person who operates a stated type of remotely piloted aircraft from compliance with certain requirements in Part 101 of the *Civil Aviation Safety Regulations 1998 (CASR)* in relation to the operation of the aircraft over a populous area.

##### Legislation

Section 98 of the *Civil Aviation Act 1988* (the **Act**) empowers the Governor-General to make regulations for the Act and in the interests of the safety of air navigation. Relevantly, the Governor-General has made CASR.

##### *Part 101 of CASR (Part 101)*

Under regulation 101.021 of CASR, an **RPA** is a remotely piloted aircraft, other than a balloon, kite or model aircraft.

Regulation 101.235 of CASR states that Subpart 101.F of CASR applies to the operation of **very small RPA**, **small RPA**, **medium RPA** and **large RPA**. These terms are defined in regulation 101.022 of CASR and referred to as a **relevant RPA** in this explanatory statement.

Under subregulation 101.245(1) of CASR, subject to other provisions in the regulation, a person must not operate a relevant RPA within 30 metres of a person who is not directly associated with the operation of the RPA. An offence against subregulation (1) is an offence of strict liability. Under subregulation 101.245(5), subregulation (1) does not apply if the first-mentioned person holds an approval under regulation 101.029 of CASR for the purposes of subregulation (5). Under regulation 101.029, the Civil Aviation Safety Authority (**CASA**) may grant an approval to a person for the purposes of subregulation (5).

Under subregulation 11.130(1A) of CASR, on application by the holder of an approval under regulation 101.029, CASA has the power to suspend the approval.

As far as is relevant, under paragraph 101.250(1)(b) of CASR, a person may operate a very small RPA, small RPA or medium RPA outside an approved area only if the RPA stays clear of populous areas. An offence against subregulation (1) is an offence of strict liability. Under regulation 101.236 of CASR, **approved area** is defined to mean an area approved under regulation 101.030 of CASR as an area for the operation of RPA. As far as is relevant, under regulation 101.030, CASA may approve an area as an area for the operation of RPA.

Under subregulation 101.280(1) of CASR, a **certificated RPA** is defined to mean a relevant RPA for which a certificate of airworthiness has been issued. The term **certificate of airworthiness** is defined in Part 1 of the CASR Dictionary. Under subregulation 101.280(2), a person must not operate a relevant RPA that is not a certificated RPA over a populous area

at a height less than the height from which, if any of its components fails, it would be able to clear the area. An offence against subregulation (2) is an offence of strict liability.

Under regulation 101.025 of CASR, for Part 101, an area is a **populous area**, in relation to the operation of an unmanned aircraft, if the area has a sufficient density of population for some aspect of the operation, or some event that might happen during the operation (in particular, a fault in, or failure of, the aircraft) to pose an unreasonable risk to the life, safety or property of somebody who is in the area but is not connected with the operation.

### *Exemptions*

Division 11.F.1 of CASR provides for the granting of exemptions from particular provisions of CASR. Subregulation 11.160(1) of CASR provides that, for subsection 98(5A) of the Act, CASA may grant an exemption under the Division from compliance with a provision of CASR in relation to a matter mentioned in that subsection.

Under subregulation 11.160(2), 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), 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 on application by a person, CASA must regard as paramount the preservation of at least an acceptable level of aviation safety. CASA has regard to the same criterion when deciding whether to grant an exemption on its own initiative.

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

### **Background**

Unless any of the exceptions stated in subregulations 101.245(2) to (4) apply, if a person wishes to operate a relevant RPA within 30 metres of a person who is not directly associated with the operation of the RPA, the person needs to be granted an approval under regulation 101.029 of CASR for the purposes of subregulation 101.245(5) for the purpose. If the operation is over a populous area, the person also needs to be granted an exemption against compliance with paragraph 101.250(1)(b), and subregulation 101.280(2), for the purpose. Before the commencement of the instrument, CASA has been granting approvals and exemptions to each RPA operator (being a person who is certified as an RPA operator under regulation 101.335 of CASR) and their remote pilots for the purpose.

In April 2024, CASA published on its public website on the internet a temporary management instruction (the **TMI**) titled *RPA Operations over or near people - 2024-01*, which details the requirements that need to be met to demonstrate that a relevant RPA's operation meets an acceptable level of aviation safety to qualify for the grant of the relevant approval and exemptions. The TMI sets out 2 pathways (identified in the TMI as "Pathway 2" and "Pathway 3") that may be followed for an RPA operator and its remote pilots to be granted the approval and exemptions.

Pathway 2 assumes that each failure of a remotely piloted aircraft during an operation of the RPA will result in an impact to a person and limits the potential impact energy to a level at which the impact is unlikely to cause serious injury to the person. Under this pathway, the RPA operator and remote pilots are required to implement mitigating measures to ensure the RPA's operation remains below the maximum impact energy threshold.

Pathway 3 utilises a mathematical risk model that considers the probability of a relevant RPA impacting a person during an operation, having regard to several factors, including the complexity of the operation, the likely size of the impact area and the area's population density. This pathway imposes more onerous requirements on the RPA operator and remote pilots as the probability of impact increases.

The requirements set out in the TMI foster aviation safety.

CASA will eventually revise the TMI, to refer to the instrument. In particular, the TMI will state that if a relevant approval is granted to an RPA operator and its remote pilots, they will have the benefit of the exemptions granted by the instrument, subject to them complying with the conditions of the approval.

In granting the exemptions, CASA has regarded as paramount the preservation of at least an acceptable level of aviation safety.

### **Instrument**

Section 1 states the name of the instrument.

Section 2 states the duration of the instrument.

Section 3 contains definitions of terms used in the instrument.

Section 4 states the instrument applies if:

- (a) a person (the ***relevant person***) holds an approval under regulation 101.029, for the purposes of subregulation 101.245(5), to operate a relevant RPA that is not a certificated RPA within 30 metres of a person who is not directly associated with the operation; and
- (b) the approval is not suspended; and
- (c) the relevant person complies with the conditions of the approval.

If the relevant RPA is a very small RPA, small RPA or medium RPA, subsection 5(2) grants the relevant person an exemption from compliance with paragraph 101.250(1)(b) in relation to the operation of the RPA outside an approved area over a populous area.

Subsection 5(3) grants the relevant person an exemption from compliance with subregulation 101.280(2) in relation to the operation of the relevant RPA over a populous area.

The relevant person has the benefit of the exemptions regardless of when the approval was granted to the person, that is, whether it was granted before or after the commencement of the instrument.

Conditions imposed on the approval address any aviation safety risks posed by the operation by the relevant person of the relevant RPA within 30 metres of a person who is not directly associated with the operation. The relevant person can only utilise the exemptions if the relevant person complies with the conditions.

Also, regardless of the grant of the exemptions, the relevant person must comply with any applicable obligations stated in CASR, and *CASA 22/22 – Operation of Certain Unmanned Aircraft – Renewal of Directions Instrument 2022*, in relation to the operation of a relevant RPA.

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

Paragraph 98(5A)(a) of the Act provides that CASA may issue instruments in relation to matters affecting the safe navigation and operation, or the maintenance, of aircraft. Also, paragraph 98(5AA)(a) provides that an instrument issued under paragraph 98(5A)(a) is a legislative instrument if the instrument is expressed to apply in relation to a class of persons.

The instrument is made for the purpose of paragraph 98(5A)(a) and exempts a class of persons from complying with specified provisions of CASR, namely RPA operators and their remote pilots. The instrument is, therefore, a legislative instrument, and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

### **Sunsetting**

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

In any event, the instrument will be repealed at the end of 31 July 2027, which will occur before the sunset provisions would have repealed the instrument, if they had applied. Any renewal of the instrument will be subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA. Therefore, the exemption from sunset provisions does not affect parliamentary oversight of the instrument.

### **Consultation**

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 beneficial to the persons to whom they apply and who choose to take advantage of them. Therefore, CASA considers it unnecessary to engage in extensive public consultation in relation to a proposed exemption. However, it is CASA's policy to consult with sections of the aviation industry most likely to avail themselves of, or be affected by, a proposed exemption, so that industry members may have the opportunity to comment on the possible terms, scope and appropriateness of the exemption.

There has been no formal public consultation in relation to the instrument itself. However, the instrument has been developed based on feedback received by CASA during regulatory-development work, including its post-implementation review of Part 101 and its development of *The RPAS and AAM Strategic Regulatory Roadmap*, which is published on

CASA's public website on the internet. That document was developed with input from a technical working group (mainly comprising aviation industry members) established by the Aviation Safety Advisory Panel, which CASA has established. It outlines CASA's approach to aviation safety regulation, and oversight, for remotely piloted aircraft systems and advanced air mobility into the future.

No aviation safety issues have been raised by the industry in relation to the operational profiles detailed in the TMI. The industry has supported the 2 pathways, set out in the TMI, which may be followed for the grant of the relevant approval and exemptions.

In these circumstances, CASA is satisfied no further consultation is appropriate, or necessary, for the instrument for section 17 of the LA.

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

An Impact Analysis (*IA*) is not required in this case, as the exemptions are covered by a standing agreement between CASA and OIA, under which an IA is not required for exemptions (OIA id: OIA23-06252).

### **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) states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9(1)(c) of the Act, CASA must:

- (a) consider the economic and cost impact on individuals, businesses and the community of the standards; and
- (b) take into account the differing risks associated with different industry sectors.

The cost impact of a standard refers to the direct cost (in the sense of price or expense) which a standard would cause individuals, businesses and the community to incur. The economic impact of a standard refers to the impact a standard would have on the production, distribution and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly. The economic impact of a standard could also include the general financial impact of that standard on different industry sectors.

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

- (a) the identification of individuals and the businesses affected by the exemptions; and
- (b) consideration of how the requirements to be imposed on individuals and businesses under the instrument will be different compared to existing requirements.

Before the commencement of the instrument, CASA has been:

- (a) granting an RPA operator and its remote pilots an approval under regulation 101.029, for the purposes of subregulation 101.245(5), to operate a relevant RPA that is not a certificated RPA within 30 metres of a person who is not directly associated with the operation; and
- (b) granting the operator and remote pilots exemptions against compliance with paragraph 101.250(1)(b), and subregulation 101.280(2), in relation to the operation of the RPA over a populous area.

The need for the operator to apply to CASA for the grant, and renewal, of the exemptions has been an administrative, and cost, burden for the operator. Also, CASA was required to spend a lot of time administering the grant, and renewal, of the individual exemptions. Assuming the operator holds the relevant approval, as a result of the instrument, the operator will no longer need to apply to CASA for the exemptions. Accordingly, the instrument will have a beneficial economic and cost impact for RPA operators.

**Impact on categories of operations**

The instrument will have a positive impact on aircraft operations conducted using remotely piloted aircraft, as it will facilitate operations over populous areas, subject to the operations meeting an acceptable level of aviation safety.

**Impact on regional and remote communities**

The instrument does not have an impact that is specific to regional and remote communities.

**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*. The instrument is compatible with the listed human rights.

**Making and commencement**

A delegate of CASA has made the instrument, relying on the power of delegation under subregulation 11.260(1) of CASR.

The instrument commences on the day after it is registered on the Federal Register of Legislation and will be repealed at the end of 31 July 2027.

## Statement of Compatibility with Human Rights

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

### **CASA EX45/24 — Operation of Remotely Piloted Aircraft Over Populous Area Exemption 2024**

The 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 the instrument is to exempt, in the stated circumstances, a person who operates a stated type of remotely piloted aircraft (an **RPA**) from compliance with certain requirements in Part 101 of the *Civil Aviation Safety Regulations 1998 (CASR)* in relation to the operation of the RPA over a populous area.

#### **Human rights implications**

The instrument engages the right to work in Article 6(1) of the International Covenant on Economic, Social and Cultural Rights. The right to work includes the right of everyone to the opportunity to gain their living by work, which they freely choose or accept. The instrument indirectly facilitates the operation of RPA over populous areas, which would otherwise be prohibited under CASR. Accordingly, the instrument will enable RPA operators (being persons who are certified as RPA operators under regulation 101.335 of CASR) to expand the scope of their operations of RPA, which gives greater work opportunities for their remote pilots.

Accordingly, the right to work is promoted by the instrument.

#### **Conclusion**

The instrument is compatible with human rights.

**Civil Aviation Safety Authority**